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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–4 IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2001–02 Crop Natural (sun-dried) Seedless and Other Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes final volume regulation percentages for 2001–02 crop Natural (sun-dried) Seedless (NS) and Other Seedless (OS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 63 percent free and 37 percent reserve for both NS and OS raisins. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

DATES: Effective April 4, 2002. This rule applies to acquisitions of NS and OS raisins from the 2001–02 crop until the reserve raisins from that crop are disposed of under the marketing order. Comments received by June 3, 2002, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for NS and OS raisins for the 2001–02 crop year, which began August 1, 2001, and ends July 31, 2002. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule establishes final volume regulation percentages for 2001–02 crop NS and OS raisins covered under the order. The volume regulation percentages are 63 percent free and 37 percent reserve for both NS and OS raisins. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. Final percentages were recommended by the Committee on February 14, 2002. One Committee member opposed the NS raisin percentages. He believes that the Committee failed to properly consider certain factors in its deliberations, particularly the impact of additional free tonnage on a weakening market. Another Committee member opposed the OS percentages. That handler claims he has developed a specialty market for

OS raisins and indicated that he cannot meet his market needs under the volume regulation percentages.

Computation of Trade Demands

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 14, 2001, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for each varietal type is equal to a 5-year rolling average, dropping the high and low figures, of free tonnage shipments during the months of August, September, and October. In accordance with these provisions, the Committee computed and announced 2001–02 trade demands for NS and OS raisins at 235,850 tons and 1,692 tons, respectively, as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	NS Raisins	OS Raisins
Prior year's shipments	295,477	5,544
Multiplied by 90 percent	0.90	0.90
Equals adjusted base	265,929	4,990
Minus carryin inventory	116,131	4,273
Plus desirable carryout	86,052	975
Equals computed trade demand	235,850	1,692

Computation of Preliminary Volume Regulation Percentages

As required under § 989.54(b) of the order, the Committee met on September 20, 2001, and announced a preliminary crop estimate for NS raisins of 359,341 tons, which is comparable to the 10-year average of 344,303 tons. NS raisins are the major varietal type of California raisin. Adding the carryin inventory of 116,131 tons, plus 32,193 tons of reserve raisins released to handlers for free use in September 2001 through an export program, plus the 359,341-ton crop estimate resulted in a total available supply of 507,665 tons, which was significantly higher (about 115 percent) than the 235,850-ton trade demand. Thus, the Committee determined that volume regulation for NS raisins was warranted. The Committee announced preliminary free and reserve percentages for Naturals, which released 85 percent of the computed trade demand since the field price (price paid by handlers to producers for their free tonnage raisins) had been established. The preliminary percentages were 56 percent free and 44 percent reserve.

Also at its September 20, 2001, meeting, the Committee announced a preliminary crop estimate for OS raisins at 7,073 tons, which is almost double the 10-year average of 3,786 tons. Combining the carry-in inventory of 4,273 tons with the 7,073-ton crop estimate resulted in a total available supply of 11,346 tons. With the estimated supply significantly higher (over 500 percent) than the 1,692-ton trade demand, the Committee determined that volume regulation for OS raisins was warranted. The Committee announced preliminary percentages for OS raisins, which released 85 percent of the computed trade demand since field price had been established. The preliminary percentages were 20 percent free and 80 percent reserve.

In addition, preliminary percentages were also announced for Dipped Seedless, Oleate and Related Seedless, and Zante Currant raisins. The Committee ultimately determined that volume regulation was only warranted for NS and OS raisins. As in past seasons, the Committee submitted its marketing policy to USDA for review.

Modification to Marketing Policy Regarding OS Raisins

Pursuant to § 989.54(f) of the order, the Committee met on December 11, 2001, and revised its marketing policy regarding OS raisins due to a major change in economic conditions. The 7,073-ton crop estimate was reduced to 5,000 tons, and the 1,692-ton trade demand was increased to 2,800 tons. This resulted in volume regulation percentages at 48 percent free and 52 percent reserve to release 85 percent of the 2,800-ton trade demand.

The Committee took this action in response to concerns raised by OS handlers who were facing difficulties under the preliminary percentages of 20 percent free and 80 percent reserve. Volume regulation has not been implemented for OS raisins since the 1994–95 season. Some handlers who developed markets since that time, in the absence of volume regulation, were having difficulties meeting their customers' needs. The merits of suspending volume regulation were deliberated by the Committee. However, the majority of Committee members supported some level of regulation. The Committee ultimately determined that the OS trade demand should be increased to 2,800 tons which resulted in less restrictive volume regulation percentages.

Computation of Final Volume Regulation Percentages

Pursuant to § 989.54(c), the Committee met on February 14, 2002, and recommended interim percentages for NS and OS raisins to release slightly less than their full trade demands. Specifically, interim percentages were announced for both NS and OS raisins at 62.75 percent free and 37.25 percent reserve. The interim percentages were based on revised crop estimates. The NS crop estimate was increased from 359,341 to 372,499 tons, and the OS crop estimate was decreased from 5,000 to 4,416 tons. Pursuant to § 989.54(d), the Committee also recommended final percentages to release the full trade demands for NS and OS raisins. Final percentages compute to 63 percent free and 37 percent reserve for both varietal types. The Committee's calculations to arrive at final percentages for NS and OS raisins are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES

[Natural condition tons]

	NS Raisins	OS Raisins
Trade demand	235,850	2,800
Divided by crop estimate	372,499	4,416
Equals free percentage	63	63
100 minus free percentage equals reserve percentage	37	37

In addition, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal will be met for NS and OS raisins by the establishment of final percentages, which release 100 percent of the trade demands and the offer of additional reserve raisins for sale to handlers under the ''10 plus 10 offers.''

As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins, which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use, or primary markets. Handlers may sell their 10 plus 10 raisins to any market.

The ''10 plus 10 offers'' for NS raisins were held in November 2001. A total of 59,095 tons was made available to raisin handlers, and 4,000 tons of raisins were purchased. Adding the 4,000 tons of 10 plus 10 raisins to the 235,850-ton trade demand figure, plus 116,131 tons of 2000–01 carryin inventory, plus 32,193 tons of reserve raisins released for free use in September 2001 through an export program, equates to about 388,174 tons of natural condition raisins, or about 363,940 tons of packed raisins, that were actually under the control of handlers for free use to primary markets. This is about 131 percent of the quantity of NS raisins shipped during the 2000–01 crop year (295,477 natural condition tons or 277,030 packed tons).

For OS raisins, a total of 1,108 tons were made available to handlers through 10 plus 10 offers in February 2002, and 407 tons were purchased. Adding the 407 tons of 10 plus 10 raisins to the 2,800-ton trade demand figure, plus 4,273 tons of 2000–01 carryin inventory equates to 7,480 tons of natural condition raisins, or about 6,843 tons of packed raisins, that were actually under the control of handlers for free use, or primary markets. This is about 135 percent of the quantity of OS raisins shipped during the 2000–01 crop year (5,544 tons natural condition tons or 5,072 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, the additional offers of reserve raisins make even more raisins available to primary markets which is consistent with the USDA's Guidelines.

Initial Regulatory Flexibility Analysis

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

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

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

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that can be marketed freely in any outlet by raisin handlers. This volume control mechanism is used to stabilize supplies and prices and strengthen market conditions.

Pursuant to § 989.54(d) of the order, this rule establishes final volume regulation percentages for 2001–02 crop NS and OS raisins. The volume regulation percentages are 63 percent free and 37 percent reserve for both NS and OS raisins. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation is warranted this season for NS raisins because the crop estimate of 372,499 tons combined with the carryin inventory of 116,131 tons, plus 32,193 tons of reserve raisins released for free use in September 2001 through an export program, plus 18,439 tons of reserve raisins released to-date for free use through another export program, results in a total available supply of 539,262 tons, which is about 130 percent higher than the 235,850-ton trade demand. Volume regulation is warranted for OS raisins this season because the crop estimate of 4,416 tons combined with the carryin inventory of 4,273 tons results in a total available supply of 8,689 tons, which is significantly higher than the 2,800-ton trade demand.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help reduce the burden of oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, over 60 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970's, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins

remained fairly steady between the 1992–93 through the 1997–98 seasons, although production varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94, or about 42 percent. According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or 16 percent. Total producer prices for the 1998–99 and 1999–2000 seasons increased significantly due to back-to-back short crops during those years. Producer prices dropped dramatically for the 2000–01 season due primarily to record-size production.

NATURAL SEEDLESS PRODUCER PRICES

Crop Year	Deliveries (natural condition tons)	Producer Prices
2000–01	432,616	[1] $570.82
1999–2000	299,910	1,211.25
1998–99	240,469	[2] 1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	928.27
1993–94	387,007	904.60
1992–93	371,516	901.41

[1] Return to date, reserve pool still open.
[2] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. In recent years, both export and domestic shipments have been decreasing. Domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000. In addition, exports decreased from 114,576 packed tons in 1991–92 to a low of 91,600 packed tons in the 1999–2000 crop year.

In addition, the per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.55 pounds in 2000. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit through out the year.

While the overall demand for raisins has been decreasing (as reflected in decline in commercial shipments), production has been increasing. Deliveries of dried raisins from producers to handlers reached an all-time high of 432,616 tons in the 2000–01 crop year. This large crop was preceded by two short crop years; deliveries were 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Deliveries for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields. Estimated production is more moderate at 372,499 tons in 2001–02. However, with 2000–01 carryin inventory totaling 116,131 tons, total available supply is quite large.

The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, grower prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances grower returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been constructed. The model developed is for the purpose of estimating nominal prices under a number of scenarios using the volume control authority under the Federal marketing order. The price growers receive for the harvest and delivery of their crop is largely determined by the level of production and the volume of carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of reserve and free percentages for primary markets, and a reserve pool. The establishment of reserve percentages impacts the production that is marketed in the primary markets.

The reserve percentage limits what handlers can market as free tonnage. Assuming the 37 percent reserve limits the total free tonnage to 234,674 natural condition tons (.63 x 372,499 tons) and carryin is 116,131 natural condition tons, and purchases from reserve total 74,193 natural condition tons (which includes anticipated reserve raisins released through the export program and other purchases), then the total free supply is estimated at 424,998 natural condition tons. The econometric model estimates prices to be $123 per ton higher than under an unregulated scenario. This price increase is beneficial to all growers regardless of size and enhances growers' total revenues in comparison to no volume control. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Regarding OS raisins, OS raisin production is much smaller than NS raisin production. Volume regulation is warranted this season because the available supply significantly exceeds the trade demand. In assessing the impact of OS regulation, the Committee addressed concerns raised by some handlers who were facing difficulties under the initial preliminary percentages of 20 percent free and 80 percent reserve. Volume regulation has not been implemented for OS raisins since the 1994–95 season. Some handlers who developed markets since that time, in the absence of volume regulation, were having difficulties meeting their customers' needs under the preliminary percentages established. The merits of suspending volume regulation were deliberated by the Committee. However, the majority of Committee members supported some level of regulation. The Committee ultimately determined that the OS trade demand should be increased to 2,800 tons which resulted in less restrictive volume regulation percentages.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, the Committee recommended that only two of the nine raisin varietal types defined under the order be subject to volume regulation this season.

The free and reserve percentages established by this rule release the full trade demands and apply uniformly to all handlers in the industry, regardless of size. For NS raisins, with the exception of the 1998–99 crop year, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to

better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action imposes no additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

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

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

This rule invites comments for a 60-day period on the establishment of final volume regulation percentages for 2001–02 crop NS and OS raisins covered under the order. All comments received within the comment period will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 2001–02 crop year apply to all NS and OS raisins acquired from the beginning of that crop year; (2) handlers are currently marketing their 2001–02 crop NS and OS raisins and this action should be taken promptly to achieve the intended purpose of making the full trade demands available to handlers; (3) handlers are aware of this action, which was recommended at a public meeting, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

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

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

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601–674.

2. Section 989.255 is added to Subpart—Supplementary Regulations to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 989.255 Final free and reserve percentages for the 2001–02 crop year.

The final percentages for standard Natural (sun-dried) Seedless and Other Seedless raisins acquired by handlers during the crop year beginning on August 1, 2001, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Varietal type	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	63	37
Other Seedless	63	37

Dated: March 27, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–8141 Filed 4–1–02; 12:11 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 95–066–2]

Viruses, Serums, and Toxins and Analogous Products; Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Virus-Serum-Toxin Act regulations for autogenous biologics by reducing the number of test summaries that manufacturers must submit to the Animal and Plant Health Inspection Service. In addition, we are amending the requirement concerning the submission of containers selected from each serial of autogenous biologic that exceeds 50 containers. Manufacturers will hold these containers, and submission is not required unless requested by the Animal and Plant Health Inspection Service. These actions will result in savings in time and resources for autogenous biologics manufacturers and the Animal and Plant Health Inspection Service without a significant reduction in regulatory oversight.

EFFECTIVE DATE: May 3, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 113 (referred to below as the regulations) contain standard requirements for the preparation of veterinary biological products. Section 113.113 of the regulations sets forth the requirements for autogenous biologics. Autogenous biologics are prepared from cultures of microorganisms that are isolated from sick or dead animals from a particular flock or herd. The cultures are used to produce an autogenous veterinary

biological product that is administered to other animals of the originating flock or herd to prevent them from being infected by the same disease. Autogenous biologics may also be used in adjacent and nonadjacent herds under certain conditions, if approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Autogenous biologics are intended for use in isolated cases of diseases in animals when licensed products are not available or such products are unable to protect the vaccinated animals (e.g., the strain of microorganism in the licensed product differs from the strain associated with the disease outbreak). Autogenous biologics can also be used to respond to emergency outbreaks of animal diseases when the immediate need for the product is such that it precludes the usual route of vaccine development.

Given the special circumstances pertaining to the preparation and use of autogenous biologics, special testing and serial release reporting requirements have been applied. In § 113.113, paragraph (c)(1)(ii) allows first serials or subserials of an autogenous biologic that are satisfactory after the third day of observation of the purity test cultures and safety test animals to be released for shipment to the customer while the purity and safety tests are continued through the required period. Paragraph (c)(1)(iii) of § 113.113 provides that such serials must be immediately recalled if evidence of contamination occurs in the purity test or if any of the test animals used to demonstrate product safety become sick or die during the observation period. However, because autogenous biological products can be shipped prior to the completion of testing, the products, in most cases, have been used in animals prior to the completion of testing. In addition, § 113.113(c)(1)(iv) requires autogenous biologics manufacturers to submit to APHIS the test summaries of the first serial or subserial within 4 days of the completion of the purity and safety tests. The test summaries must be submitted to APHIS in accordance with § 116.7 of 9 CFR part 116, ''Records and Reports.'' (Section 116.7, in short, provides the requirements for maintenance of detailed records of all tests conducted on each serial and subserial and the preparation and submission of summaries of such tests using APHIS Form 2008 or an acceptable equivalent form prior to release of the serial or subserial.

In 1993, the last year for which full data are available, veterinary biologics manufacturers submitted approximately 11,400 autogenous biologics first serial test summaries to APHIS for processing, and the number of reports has increased in succeeding years. However, we believe that the requirement to submit test summaries from the first serial or subserial of an autogenous biologic within 4 days of completion of purity and safety tests for serials that may have already been used in animals is unnecessary. We believe that these reports can be submitted on a quarterly basis without reducing our regulatory oversight.

On March 8, 2000, we published in the **Federal Register** (65 FR 12151–12153, Docket No. 95–066–1) a proposal to amend the regulations for autogenous biologics. We proposed to reduce the number of test summaries that autogenous biologics manufacturers must submit to APHIS, and to amend the requirement concerning the submission to APHIS of containers selected from each serial of autogenous biologic that exceeds 50 containers. Manufacturers would hold these containers and submit them to APHIS when requested.

We solicited comments concerning our proposal for 60 days ending May 8, 2000. We received four comments by that date. They were from two veterinary biologics manufacturers and two trade associations representing veterinary biologics manufacturers. We carefully considered these before reaching a final decision concerning our proposal. Two comments were received after the close of the comment period. However, the issues they raised were not materially different from those contained in the timely comments.

Of the four comments that were received by the May 8, 2000, close of the comment period, three expressed support for the changes set forth in the proposed rule, but suggested additional changes or requested that we clarify points related to reserve samples. Two commenters observed that first serials or subserials of autogenous biologics are frequently not shipped due to contamination, an unsatisfactory test, or for other reasons. Both suggested wording for § 113.3(b)(8) that would make the requirement to select samples for submitting to APHIS applicable to the ''first serial or subserial of autogenous biologic eligible for shipment.'' We agree with the commenters regarding the need to make it clear that this provision is only applicable to the first serials or subserials of autogenous biologics eligible to be shipped and, therefore, in the final rule each reference to first serial or subserial is changed to ''first serial or subserial of autogenous biologic eligible for shipment.''

With regard to reserve samples, one commenter questioned whether the proposed wording of § 113.3(b)(8) requires 10 containers of autogenous biologic selected for submission upon request by APHIS to be held in reserve until 6 months beyond the expiration date. It appears that our use of the term ''reserve'' in § 113.3(b)(8) in the proposed rule could be interpreted as requiring that 10 containers be held in reserve until 6 months beyond the expiration date. Because it was not our intent to change the requirements of § 113.3(e) for reserve samples, the term ''reserve'' has been deleted in this final rule. The second sentence of § 113.3(b)(8) now reads: ''For first serials or subserials of autogenous biologic eligible for shipment with more than 50 containers, 10 samples from each serial or subserial must be selected and held for submission to the Animal and Plant Health Inspection Service upon request in accordance with paragraph (e)(4) of this section.''

In addition, one of the commenters suggested that § 113.3(b)(8) be modified to provide that samples not selected for testing by APHIS could be restocked by the manufacturer and become eligible for distribution. We believe that the disposition of samples not selected for testing by APHIS is beyond the scope of the proposed rule; thus, we are making no changes in this final rule as a result of that comment.

One commenter was opposed to the provisions set forth in the proposed rule. The commenter stated that the proposed changes would result in a weakening of the regulatory oversight that APHIS is expected to provide concerning the regulation of autogenous biologics. We believe that the changes to the regulations contained in the proposed rule and this final rule will not weaken our regulatory oversight. The regulations that we are amending have required samples to be submitted to APHIS when selected and test summaries to be submitted within 4 days of test completion, whereas under this final rule, manufacturers will be required to hold samples for submission when requested by APHIS and to submit test summaries on a quarterly basis. Confirmatory testing of autogenous samples will remain at current levels, and quarterly test summaries will be monitored to ensure that tests are completed satisfactorily and accurately reported. Therefore, we have made no change to this final rule in response to this comment.

The same commenter stated that the proposed special testing and serial

release reporting requirements pertaining to the preparation and use of autogenous biologics would result in preferential treatment for firms producing autogenous biologics that is unavailable to firms that do not prepare those products. The commenter requested that the special testing and serial release reporting requirements proposed for autogenous biologics be extended to all products and all manufacturers. We agree that the regulations, as amended by this final rule, will provide for different treatment of autogenous biologics under certain special circumstances, but we would like to emphasize that this different treatment only applies to the first serial or subserial of autogenous biologic that is produced from an isolate. Thereafter, the preparation of autogenous biologics is subject to the same treatment as other biologics; each serial or subserial of autogenous biologic other than the first serial or subserial prepared from that same isolate must be prepared in accordance with the applicable general requirements for bacterial or viral products specified in the regulations, and any serial or subserial found unsatisfactory by any prescribed test shall not be released. In addition, the preparation of autogenous biologics is not restricted and that all manufacturers may, at their option, choose to produce autogenous biologics and take advantage of the special testing and serial release reporting requirements applicable to first serials or subserials of autogenous biologics. We have made no change in this final rule in response to that comment.

Some comments regarding the regulation of autogenous biologics were not specific to the provisions in the proposal. These comments stated that the preparation and distribution of such products are not in keeping with the intent for autogenous biologics as cited in the preamble to the proposed rule. These commenters were concerned that autogenous biologics may be more widely distributed than should be allowed; may not be adequately evaluated for extraneous agents; may not be effective under certain circumstances; and may not be evaluated adequately for safety. We have also made no changes in this final rule in response to those comments.

One change that had been proposed was an address correction in § 113.113(a)(2). This change does not appear in this final rule because the address in that section is correct.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends the Virus-Serum-Toxin Act regulations for autogenous biologics by reducing the number of test summaries that manufacturers of autogenous veterinary biologics must submit to APHIS. This rule also amends the requirements concerning the submission of containers selected from each serial of autogenous biologic that exceeds 50 containers to provide that manufacturers will hold these containers and not submit them unless requested by APHIS. These actions will result in savings in time and resources for autogenous biologics manufacturers and APHIS without a significant reduction in regulatory oversight.

The entities expected to be affected by this rule are veterinary biologics establishments that produce autogenous biologics. There are currently approximately 135 veterinary biologics establishments that may fit that category. According to the Small Business Administration's criteria, many of those establishments would be classified as small entities.

This rule provides that 10 samples must be selected for submission when requested by APHIS from each serial or subserial of autogenous biologics, with the exception of first serials or subserials, that exceeds 50 containers, and that test summaries of autogenous biologics must be submitted on a quarterly basis as summary reports by the 21st day of January, April, July, and October, or more often as required by the Administrator. These changes to the regulations are not expected to have any adverse economic effects on firms and may provide a benefit, since the amount of time and resources required to complete reports and/or package samples for submission to APHIS should be reduced.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 7 CFR part 3015, subpart V).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It actually reduces the information collection without a disruption to program services.

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR Part 113 as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. In § 113.3, paragraph (b)(8) is revised to read as follows:

§ 113.3 Sampling of biological products.

* * * * *

(b) * * *

(8) *Autogenous biologics:* With the exception of the first serial or subserial, 10 samples must be selected and submitted to the Animal and Plant Health Inspection Service from each serial or subserial of an autogenous biologic eligible to be shipped that consists of more than 50 containers. For first serials or subserials eligible for shipment consisting of more than 50 containers, 10 samples from each serial or subserial must be selected and held for submission to the Animal and Plant Health Inspection Service upon request in accordance with paragraph (e)(4) of this section. For serials or subserials of autogenous biologic with 50 or fewer containers, no samples, other than those required by paragraph (e) of this section, are required.

* * * * *

3. In § 113.113, the introductory text of paragraph (a)(2) and paragraph (c)(1)(iv) are revised to read as follows:

§ 113.113 Autogenous biologics.

* * * * *

(a) * * *

(2) Under normal circumstances, microorganisms from one herd must not be used to prepare an autogenous biologic for another herd. The Administrator, however, may authorize preparation of an autogenous biologic for use in herds adjacent to the herd of origin, when adjacent herds are considered to be at risk. To request authorization to prepare a product for use in herds adjacent to the herd of origin, the establishment seeking authorization must submit to the Administrator (in c/o the Director, Center for Veterinary Biologics, Inspection and Compliance, 510 South 17th Street, Suite 104, Ames, IA 50010–8197) the following information. (If any of the data are unavailable, the applicant for authorization should indicate that such data are unavailable and why.)

* * * * *

(c) * * *

(1) * * *

(iv) Test summaries must be submitted to the Administrator (in c/o the Director, Center for Veterinary Biologics, Inspection and Compliance, 510 South 17th Street, Suite 104, Ames, IA 50010–8197) on a quarterly basis by the 21st day of January, April, July, and October or more often as required by the Administrator.

* * * * *

Done in Washington, DC, this 28th day of March, 2002.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–8058 Filed 4–2–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–42–AD; Amendment 39–12695; AD 2002–07–01]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 series airplanes. This AD requires you to visually inspect certain horizontal stabilizer attachment reinforcement brackets for the existence of seam welds and replace any reinforcement bracket found without seam welds. This AD authorizes the pilot to check the logbooks to determine whether one of the affected horizontal stabilizer attachment reinforcement brackets is installed. This AD is the result of a report that certain parts were manufactured without seam welds. The actions specified by this AD are intended to detect and replace structurally deficient horizontal stabilizer attachment brackets. Continued use of such brackets could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

DATES: This AD becomes effective on May 13, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 13, 2002.

ADDRESSES: You may get the service information referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–42–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Al Phillips, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4116; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD?

Cessna notified FAA of a defect in the manufacturing of the horizontal stabilizer attachment reinforcement brackets. Cessna manufactured reinforcement brackets without seam welds on certain Cessna Model 206H and T206H airplanes. AD 2001–09–06, Amendment 39–12211 (66 FR 21278, April 30, 2001), addresses these airplanes. The seam welds help provide the required structural integrity for the horizontal stabilizer attachment bracket.

Since the issuance of AD 2001–09–06, Cessna determined that certain Model P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 series airplanes may have had horizontal stabilizer attachment reinforcement brackets (part number 1232624–1) without seam welds installed as replacement parts. Cessna shipped these brackets from February 27, 1998, through March 17, 2000.

What is the potential impact if FAA took no action?

This condition, if not corrected, could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

Has FAA taken any action to this point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 17, 2001 (66 FR 64925). The NPRM proposed to require you to visually inspect the right and left horizontal stabilizer attachment reinforcement brackets for the existence of seam welds along the lower inboard and outboard wall/flange. The NPRM also proposed to require you to remove and replace any horizontal stabilizer bracket found without seam welds.

Was the public invited to comment?

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

FAA's Determination

What is FAA's final determination on this issue?

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

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

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

What are the differences between the service information and this AD?

Cessna requires you to inspect and, if necessary, replace the horizontal stabilizer attachment reinforcement brackets, part number 1232624–1, within 20 hours time-in-service (TIS), not to exceed 30 days, of operation. We are requiring that you inspect and, if necessary, replace the horizontal stabilizer attachment reinforcement brackets, part number 1232624–1, within 50 hours TIS of operation after the effective date of this AD.

We do not have justification to require this action within 20 hours TIS. Compliance times such as this are utilized when we have identified an urgent safety of flight situation. We believe that 50 hours TIS will give the owners/operators of the affected airplanes enough time to have the actions accomplished without compromising the safety of the airplanes.

Cost Impact

How many airplanes does this AD impact?

We estimate that this AD affects 144 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 = $120.	Not applicable.	$120.	$120 × 144 = $17,280.

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

Labor cost	Parts cost	Total cost per airplane
24 workhours to replace both brackets × $60 = $1,440 .	$135 for both the right and left bracket	$1,440 + $135 = $1,575.

Regulatory Impact

Does this AD impact various entities?

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

Does this AD involve a significant rule or regulatory action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–07–01 Cessna Aircraft Company: Amendment 39–12695; Docket No. 2001–CE–42–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
P206C and TP206C .	P206–0420 through P206–0519
P206D and TP206D .	P206–0520 through P206–0603
P206E and TP206E .	P20600604 through P20600647, and P206–0001
U206C and TU206C .	U206–0915 through U206–1234
U206D and TU206D .	U206–1235 through U206–1444, U20601445 through U20601587
U206E and TU206E .	U20601588 through 20601700
U206F and TU206F .	U20601701 through U20602588, and U20602590 through U20603521
U206G and TU206G .	676, U20602589, and U20603522 through U20607020
207 and T207	20700001 through 20700362
207A and T207A .	20700363 through 20700788
210G	21058819 through 21058936
210H	21058937 through 21059061
210J	21059062 through 21059199
210K and T210K .	21059200 through 21059502
210L and T210L .	21059503 through 21061041, and 21061043 through 21061573
210M and T210M .	21061042, and 21061574 through 21062954
210N and T210N .	21062955 through 21064897
P210N	P21000001 through P21000834
T210G	T210–0198 through T210–0307
T210H	T210–0308 through T210–0392
T210J	T210–0393 through T210–0454, and 21058140

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and replace structurally deficient horizontal stabilizer attachment brackets. Continued use of such brackets could result in structural failure of the horizontal

stabilizer with reduced or loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Maintenance Records Check:	Within the next 50 hours time-in-service (TIS) after May 13, 2002 (the effective date of this AD), unless already accomplished .	No special procedures required to check the logbook.
(i) Check the maintenance records to determine whether a horizontal stabilizer attachment reinforcement bracket, part number (P/N) 1232624–1, shipped by Cessna from February 27, 1998, through March 17, 2000, is installed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check .		
(ii) If, by checking the maintenance records, the owner/operator can positively show that a horizontal stabilizer attachment reinforcement bracket, P/N 1232624–1, shipped by Cessna from February 27, 1998, through March 17, 2000, is not installed, then the inspection requirement of paragraph (d)(2) and the replacement requirement of paragraph (d)(3) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9) .		
(2) Inspection: Visually inspect the right and left horizontal stabilizer attachment reinforcement brackets, part number (P/N) 1232624–1, for the existence of seam welds along both the lower inboard and outboard wall/flange .	Within the next 50 hours TIS after May 13, 2002 (the effective date of this AD), unless already accomplished .	In accordance with the Accomplishment Instructions in Cessna Service Bulletin SEB00-10, dated November 6, 2000, and the applicable maintenance manual.
(3) Replacement:	Accomplish any necessary replacements prior to further flight after the inspection required by paragraph (d)(2) of this AD, unless already accomplished .	In accordance with the Accomplishment Instructions in Cessna Service Bulletin SEB00–10, dated November 6, 2000, and the applicable maintenance manual.
(i) If no seam weld is found along both the lower inboard and outboard wall/flange on the right and left horizontal stabilizer attachment reinforcement bracket during the inspection required in paragraph (d)(2) of this AD, replace with a new or airworthy P/N 1232624–1 horizontal stabilizer attachment reinforcement bracket. .		
(ii) If the right and left horizontal stabilizer attachment reinforcement bracket has seam welds along both the lower inboard and outboard wall/flange, no further action is required .		
(4) Installation Prohibition: Do not install any P/N 1232624–1 horizontal stabilizer attachment reinforcement bracket (or FAA-approved equivalent part) unless the bracket: .	As of May 13, 2002 (the effective date of this AD) .	Not applicable.

(i) is inspected as required in paragraph (d)(2) of this AD; and

(ii) has seam welds along both the lower inboard and outboard wall/flange.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Al Phillips, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4116; facsimile: (316) 946–4407.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Cessna Service Bulletin SEB00–10, dated November 6, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on May 13, 2002.

Issued in Kansas City, Missouri, on March 22, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7645 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–65–AD; Amendment 39–12696; AD 2002–07–02]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Galaxy Airplanes and Model Gulfstream 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model Galaxy airplanes and Model Gulfstream 200 series airplanes. This action requires repetitive inspections of the main landing gear (MLG) actuators for leakage of hydraulic fluid, a one-time inspection of the MLG actuators for internal abrasions or scratches, and replacement of the MLG actuator with a new or serviceable or new, improved actuator, if necessary. This action also provides an optional terminating action for the repetitive inspections. This action is necessary to prevent failure of an MLG actuator to fully extend and retract, which could prevent proper engagement of the downlock mechanism and result in collapse of the MLG during landing. This action is intended to address the identified unsafe condition.

DATES: Effective April 18, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 18, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 3, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–65–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries, Ltd., Model Galaxy airplanes and Model Gulfstream 200 series airplanes. The CAAI advises of an incident in which the main landing gear (MLG) would not lock in the ''up'' or ''down'' position. Although the airplane landed safely, the MLG remained unlocked. Investigation revealed severe internal abrasion of an MLG actuator, which caused metal chips to accumulate in the MLG actuator, preventing full travel of the actuator piston and proper engagement of the downlock mechanism. The severe abrasion has been attributed to metal-to-metal contact between the MLG actuator and piston. Subsequent to the original report, similar conditions have been found on several other airplanes. This condition, if not corrected, could result in failure of an MLG actuator to fully extend and retract, which could prevent proper engagement of the downlock mechanism and result in collapse of the MLG during landing.

Explanation of Relevant Service Information

Israel Aircraft Industries has issued Galaxy Alert Service Bulletin GALAXY–32A–125, Revision 1, dated February 4, 2002, which describes procedures for repetitive visual inspections of the left and right MLG actuators for leakage of hydraulic fluid, and a one-time detailed inspection of the MLG actuators for internal abrasions or scratches. If leakage of hydraulic fluid or internal abrasions or scratches outside certain limits specified in the service bulletin are found on the MLG actuator, the service bulletin specifies that the existing MLG actuator be replaced with either a new, improved actuator, or a new or serviceable actuator that has been inspected for and is without internal abrasions or scratches. Replacement of existing MLG actuators with new, improved actuators eliminates the need for the repetitive inspections. The CAAI classified this service bulletin as mandatory and issued Israeli emergency airworthiness directive 32–02–01–24, dated February 13, 2002, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type designs registered in the United States, this AD is being issued to prevent failure of the MLG actuator to fully extend and retract, which could prevent proper engagement of the downlock mechanism and result in collapse of the MLG during landing. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below. This AD also provides for an optional replacement of the existing MLG actuators with new, improved actuators, which ends the repetitive inspections.

Interim Action

This is considered to be interim action. The FAA is currently

considering requiring the replacement of the existing MLG actuators with new, improved actuators, which will end the repetitive inspections required by this AD. However, the planned compliance time for the replacement is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Differences Between This AD, the Service Bulletin, and the Foreign AD

This AD differs from the service bulletin and the parallel Israeli emergency airworthiness directive described previously in the following ways:

• The service bulletin and Israeli emergency airworthiness directive specify that the initial inspection for hydraulic leakage must be performed before the next flight. However, this AD specifies that the initial inspection must be done within 3 days after the effective date of this AD. In developing an appropriate compliance time for this AD, the FAA considered not only the CAAI's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the average utilization of the affected fleet. In light of these factors, the FAA finds a 3-day compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

• The service bulletin and Israeli emergency airworthiness directive specify that the inspection for leakage of hydraulic fluid must be done before each flight for 100 flights (flight cycles), at which time the MLG actuators must be replaced with new, improved actuators. This AD provides for such replacement as an option that, if accomplished, ends the required repetitive inspections. As explained previously in the ''Interim Action'' section of this AD, the FAA is currently considering requiring the replacement of existing MLG actuators with new, improved actuators. Since this AD does not require such replacement, this AD requires the repetitive inspections for leakage to continue until the replacement with new, improved MLG actuators is done.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the AD is being requested.

• Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–65–AD.'' The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–07–02 Israel Aircraft Industries, Ltd.: Amendment 39–12696. Docket 2002–NM–65–AD.

Applicability: Model Galaxy airplanes and Model Gulfstream 200 series airplanes, certificated in any category, serial numbers 003 through 057 inclusive.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main landing gear (MLG) actuator to fully extend and retract, which could prevent proper engagement of the downlock mechanism and result in collapse of the MLG during landing, accomplish the following:

Inspections

(a) Do the inspections in paragraphs (a)(1) and (a)(2) of this AD, according to Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–32A–125, Revision 1, dated February 4, 2002.

(1) Within 3 days after the effective date of this AD, do a general visual inspection of the left and right MLG actuators for leakage of hydraulic fluid. Repeat this inspection before each flight, until paragraph (c) of this AD is accomplished.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Within 15 flight cycles after the effective date of this AD, do a one-time detailed inspection of the left and right MLG actuators for internal abrasions or scratches.

Note 3: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Replacement

(b) If leakage of hydraulic fluid or an internal abrasion or scratch outside the limits specified in Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–32A–125, Revision 1, dated February 4, 2002, is found on either MLG actuator during any inspection required by paragraph (a) of this AD: Before further flight, replace the discrepant MLG actuator with a new, improved actuator, or with a new or serviceable actuator that has been inspected for and is without internal abrasions or scratches, according to the service bulletin. Replacement of the existing MLG actuator with a new, improved actuator ends the repetitive inspections of that actuator.

Optional Terminating Action

(c) Replacement of the existing left and right MLG actuators with new, improved actuators having part number 4AS2521010–507 (left side) or –508 (right side), as applicable, according to Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–32A–125, Revision 1, dated February 4, 2002, ends the repetitive inspections required by paragraph (a)(1) of this AD.

Spares

(d) As of the effective date of this AD, no person may install an MLG actuator with part number 4AS2521010–505 (left side) or –506 (right side) on any airplane, unless it has been inspected according to paragraph (a)(2) of this AD and found to be without any internal abrasion or scratch outside the limits specified in Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–32A–125, Revision 1, dated February 4, 2002.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(g) The actions shall be done in accordance with Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–32A–125, Revision 1, dated February 4, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Israeli emergency airworthiness directive 32–02–01–24, dated February 13, 2002.

Effective Date

(h) This amendment becomes effective on April 18, 2002.

Issued in Renton, Washington, on March 25, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7750 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 01F–0233]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent in water applied to processed fruits and vegetables. This action is in response to a petition filed by Alcide Corp.

DATES: This rule is effective April 3, 2002. Submit written objections and requests for a hearing by May 3, 2002.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3074.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 23, 2001 (66 FR 28525), FDA announced that a food additive petition (FAP 1A4729) had been filed by Alcide Corp., 8561 154th Ave., NE., Redmond, WA 98052. The petition proposed to amend the food additive regulations in § 173.325 *Acidified sodium chlorite solution* (21 CFR 173.325) to provide for the safe use of aqueous solutions of acidified sodium chlorite as an antimicrobial agent in processing waters applied to processed fruits and vegetables.

FDA is using the term ''processed'' consistent with the meaning of that term set forth in FDA's Antimicrobial Food Additives—Guidance (64 FR 40612, July 27, 1999) (the 1999 guidance). The 1999 guidance describes FDA's interpretation of its jurisdiction over antimicrobial substances subsequent to the enactment of the Food Quality Protection Act of 1996 and the Antimicrobial Regulation Technical Corrections Act of 1998. The 1999 guidance is consistent with the Environmental Protection Agency's

(EPA's) and FDA's joint legal and policy interpretation of ''processed food'' (63 FR 54532, October 9, 1998). According to the 1999 guidance, processed fruits and vegetables include those that are ground, chopped, sliced, cut or peeled, and do not include fruits and vegetables that simply have leaves, stems, or husks removed. This food additive use of acidified sodium chlorite is for use in water to which processed fruits and vegetables are added (e.g., to which fruits and vegetables that have been ground, chopped, sliced, cut, or peeled are added) in order to mitigate microbiological organisms on the processed fruits and vegetables.

Also, as discussed in the 1999 guidance, antimicrobial substances used to mitigate microbiological organisms on processed food, by adding such substances to water to which processed food is added, are subject to regulation as food additives. The petitioned use of acidified sodium chlorite as an antimicrobial agent in ''processing waters'' is intended to mitigate microbiological organisms only on the processed fruits and vegetables that are added to the water. Thus, the petitioned use is subject to regulation by FDA as a food additive. To the extent that a manufacturer wants to use acidified sodium chlorite in water to mitigate microbiological organisms in the water itself or to include mitigation of microbiological organisms in the water in addition to those on the processed fruits and vegetables that are added to the water, the manufacturer would need to petition FDA for that food additive use, which is outside the scope of this rule. In addition, the manufacturer would need to consult with EPA to determine whether a pesticide registration would be required for such use.

FDA is requiring, as part of this regulation, that the use of the additive be followed by a potable water rinse and a 24-hour holding period to ensure that there are no detectable residue levels from the use of the additive on the treated processed fruits and vegetables.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulation in § 173.325 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

In the notice of filing, FDA gave interested parties an opportunity to submit comments on the petitioner's environmental assessment. FDA received no comments in response to that notice.

The agency has considered carefully the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be affected adversely by this regulation may file with the Dockets Management Branch (address above) written objections by May 3, 2002. Each objection shall be numbered separately, and each numbered objection shall specify with particularity the provisions of the regulation to which the objection is made and the grounds for the objection. Each numbered objection for which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in the brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.325 is amended by redesignating paragraph (g) as paragraph (h) and by adding a new paragraph (g) to read as follows:

§ 173.325 Acidified sodium chlorite solutions.

* * * * *

(g) The additive is used as an antimicrobial agent in the water applied to processed fruits and processed root, tuber, bulb, legume, fruiting (i.e., eggplant, groundcherry, pepino, pepper, tomatillo, and tomato), and cucurbit vegetables in accordance with current industry standards of good manufacturing practices, as a component of a spray or dip solution, provided that such application be followed by a potable water rinse and a 24-hour holding period prior to consumption. However, for processed leafy vegetables (i.e., vegetables other than root, tuber, bulb, legume, fruiting, and cucurbit vegetables) and vegetables in the Brassica [Cole] family, application must be by dip treatment only, and must be preceded by a potable water rinse and followed by a potable water rinse and a 24-hour holding period prior to consumption. When used in a spray or dip solution, the additive is used at levels that result in sodium chlorite concentrations between 500 and 1,200 ppm, in combination with any GRAS acid at a level sufficient to achieve a solution pH of 2.3 to 2.9.

* * * * *

Dated: February 28, 2002.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–7969 Filed 4–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA62

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE; Partial Implementation of Pharmacy Benefits Program; Implementation of National Defense Authorization Act for Fiscal Year 2001

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements several sections of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The rule allows coverage of physical examinations for beneficiaries ages 5 through 11 that are required in connection with school enrollment; provides an additional two-year period for survivors of deceased active-duty members to remain eligible for TRICARE medical and dental benefits at active-duty dependent rates; extends eligibility for medical and dental benefits to Medal of Honor recipients and their immediate dependents in the same manner as if the recipient were entitled to retired pay; partially implements the Pharmacy Benefits Program establishing revised co-pays and cost-shares for the prescription drug benefit; implements the TRICARE Senior Pharmacy Program by establishing a new eligibility for prescription drug benefits for Medicare-eligible retirees; allows a waiver of copayments, cost-shares, and deductibles for all Uniformed Services TRICARE eligible active duty family members residing with their TRICARE Prime Remote eligible Active Duty Service Member Sponsor within a TRICARE Prime Remote designated area until implementation of the TRICARE Prime Remote for Family Member Program or October 30, 2001, whichever is later; provides for the elimination of TRICARE Prime copayments for active duty family members enrolled in TRICARE Prime; provides for the reimbursement of reasonable travel expenses for TRICARE Prime beneficiaries referred by a primary care provider to a specialty care provider who provides services over 100 miles away; and reduces the maximum amount which retirees, their family members and survivors would be liable from $7,500 to $3,000.

EFFECTIVE DATE: April 1, 2001.

ADDRESSES: Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Tariq Shahid, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, Office of the Assistant Secretary of Defense (Health Affairs), telephone (303) 676–3801. Questions regarding payment of specific CHAMPUS claims should be addressed to the appropriate TRICARE/CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

On October 30, 2000, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) was signed into law. On February 9, 2001 (66 FR 9651), DoD published an interim final rule to partially implement the Pharmacy Benefits Program and implement several sections of this Act. On February 15, 2001 (66 FR 10367), March 26, 2001 (66 FR 16400), and March 19, 2002 (67 FR 12472), DoD published administrative corrections to the interim final rule. This final rule is being published as a follow-up to the interim final rule incorporating all three of the administrative corrections. It also makes administrative corrections in Section 199.4(g)(68) and Section 199.22.

The final rule implements provisions of the Act that were effective upon the date of enactment or a date within 180 days thereafter. Specifically, this rule implements the following sections of the Act:

Section 703, school required physicals, which was effective on the date of enactment.

Section 704, two-year extension of benefits for survivors, which was effective on the date of enactment.

Section 706, benefits for Medal of Honor recipients, which was effective on the date of enactment.

Section 711, TRICARE Senior Pharmacy Program, which was effective April 1, 2001.

Section 722, that portion of TRICARE Prime Remote for Family Members that was effective on the date of enactment.

Section 752, elimination of copayments for Active Duty Dependents in TRICARE Prime, which the statute requires be implemented within 180 days.

Section 758, reimbursement of certain travel expenses for TRICARE Prime beneficiaries, which was effective on the date of enactment; and

Section 759, reduction of retiree catastrophic cap, which was effective on the date of enactment.

In addition, because of the effect on the overall pharmacy program of the new TRICARE Senior Pharmacy Program and the change in TRICARE Prime active duty dependent copayments, this rule also partially implements the Pharmacy Benefits Program, as authorized by Section 1074g of title 10, United States Code, as a significant step toward expected implementation in 2002 of the comprehensive Pharmacy Benefits Program.

II. School Required Physicals

This rule implements Section 703 of the National Defense Authorization Act for Fiscal Year 2001 which extends coverage of physical examinations to CHAMPUS eligible beneficiaries ages 5 through 11 that are required in connection with school enrollment. The scope of the legislative provision encompasses all programs and beneficiary categories. These newly covered school physicals will be recognized as preventive services, and as such, subject to the same cost-sharing/copayment and referral/authorization requirements as prescribed under TRICARE Prime and Standard/Extra clinical preventive benefits. TRICARE Prime enrollees will not be required to pay copayments or seek referral/authorization from their primary care managers (PCMs) unless they go to a non-network provider. While Standard and Extra beneficiaries will not require referral and/or authorization, they will have to pay the applicable cost-sharing and deductibles for preventive services as prescribed under their respective plans.

School physicals for TRICARE Prime enrollees ages 5 through 11 will be covered under the enhanced benefit provision of the CHAMPUS administering regulation (32 CFR 199.18(b)(3)), which allows benefit enhancements and waiver or relaxation of benefit restrictions under the Uniform HMO Benefit at the discretion of the Assistant Secretary of Defense (Health Affairs). However, since coverage also extends to both Standard and Extra beneficiaries, an exception is being added to the preventive care general exclusion (32 CFR 199.4(g)(37)) that will allow school physicals for these beneficiary categories (i.e., active duty family members, retirees and their family members that are seeking care under Standard or Extra plans).

III. Two-Year Extension of Benefits for Survivors

This rule implements Section 704 of the National Defense Authorization Act for Fiscal Year 2001 which amended

chapter 55 of title 10, United States Code, by providing a two-year extension to the one-year period for survivors of deceased active-duty members to remain eligible for TRICARE medical and dental benefits at active-duty dependent rate. Before the Authorization Act, survivors of members who die while on active duty were allowed to continue participation in TRICARE Prime, Extra, or Standard as active-duty dependent family members for a period of one year following the date of death of the deceased member. At the end of the one-year period, these family members continued eligibility for care under TRICARE, but faced higher out-of-pocket costs as non-active-duty dependents. With respect to the TRICARE dental insurance benefits, family members enrolled in the TRICARE Dental Program (TDP) at the time of the member's death, continued to receive benefits for one year from the member's date of death, with the Government paying 100 percent of the TDP premiums.

IV. Benefits for Medal of Honor Recipients

This rule implements Section 706 of the National Defense Authorization Act for Fiscal Year 2001 which amended chapter 55 of title 10, United States Code, by adding a new Section 1074h. Section 1074h expands eligibility to Medal of Honor recipients who are not otherwise entitled to medical and dental care including their immediate dependents. The term *immediate dependent* means a dependent described in title 10, United States Code, chapter 55, section 1072, (2)(A), (B), (C), or (D). They are entitled to the same medical and dental benefit that is provided to former members who are entitled to military retired pay and the dependents of those former members. To receive TRICARE/CHAMPUS benefits, they must register in the Defense Enrollment Eligibility Reporting System (DEERS). Eligible beneficiaries are required to obtain an identification card. The Medal of Honor recipients should visit the Uniformed Service identification card issuing facility nearest to them. The address for the closest location may currently be obtained by calling 1–800–538–9552. The recipient should bring a photo identification card and the departmental order or citation for the Medal of Honor. To register family members in DEERS, the following additional documentation is required: marriage license, birth certificates, and death certification or DD Form 1300, Report of Casualty if the Medal of Honor recipient is deceased.

V. Partial Implementation of Pharmacy Benefits Program

The Secretary of Defense is required under title 10, United States Code, Section 1074g, to establish an effective, efficient, and integrated Pharmacy Benefits Program. The Secretary may establish cost-sharing/copayment requirements under the Pharmacy Benefits Program as a percentage and/or fixed dollar amount for generic, formulary (non-generic), and non-formulary pharmaceutical agents. Designation of pharmaceutical agents as non-formulary will be based upon an evaluation of the agent's clinical and cost-effectiveness in comparison to other agents in the therapeutic class by the DoD Pharmacy and Therapeutics Committee and the comments on that evaluation by the Uniform Formulary Beneficiary Advisory Committee. The Department is unable to implement the portion of the Pharmacy Benefits Program that allows classification of a drug as non-formulary as outlined in section 1074g until Proposed and Final Rules fully implementing the Pharmacy Benefits Program have been published and required Committees become operational. Existing Department policies on non-formulary pharmaceutical agents remain in effect at this time. However, partial implementation of the Pharmacy Benefits Program, including reform of cost-sharing/copayment requirements under Section 1074g should proceed in connection with the April 1, 2001, start date of the TRICARE Senior Pharmacy Program and overall reform of TRICARE Prime active duty dependent copayments.

The prescription drug and medicine benefit under CHAMPUS includes the Food and Drug Administration approved drugs and medicines that by United States law require a physician's or other authorized individual professional provider's prescription (acting within the scope of their license) that has been ordered or prescribed by them. The benefit does not include prescription drugs for medical conditions that are expressly excluded from the TRICARE benefit by statute or regulation. Pharmaceutical agents are subject to preauthorization or utilization review requirements to assure medical necessity. Until full implementation of the Pharmacy Benefits Program under which all authorized drugs will be classified as generic, formulary, or non-formulary, during this period of partial implementation, drugs and medicines shall be designated as either generic drugs and medicines, which are those that have the identical chemical composition of a name brand drug or medicine, or non-generic (or brand name) drugs.

Before the effective date of this rule, cost-sharing/copayment requirements were based upon beneficiary status, enrollment or non-enrollment in TRICARE Prime, and the location where the drug or medicine was purchased, i.e., the point of sale, such as a military treatment facility, network or non-network pharmacy, or the National Mail Order Pharmacy (NMOP). This led to a complex set of cost sharing requirements, difficult for beneficiaries to understand, lacking in clear incentives for appropriate use, and inconsistent with evolving industry practice. DoD is implementing new cost sharing requirements in this regulation, consistent with the Congressional direction to modernize the pharmacy program. Cost-sharing/copayment requirements will no longer be based upon beneficiary status, except for active duty members who never pay cost-shares/copays. Cost-sharing/copayment requirements of prescription drugs and medicines based upon their status as generic or non-generic are being implemented through this rule. Cost-sharing/copayment requirements will no longer be based upon a beneficiary's enrollment or non-enrollment in TRICARE Prime (except point of service charges will still apply for beneficiaries enrolled in TRICARE Prime), but will be based upon the drug or medicine's status as generic or non-generic and its point of sale.

The new cost-sharing/copayment structure is based on commercial industry practices in pharmacy benefit design and benefit management. Cost-sharing/copayment amounts were selected to assure that all beneficiaries could obtain a reduction in their current cost-sharing/copayment through use of generic products, and that brand-name cost-sharing/copayment was substantially higher than generic without unduly penalizing beneficiaries in relation to their current cost-sharing/copayment levels.

Active duty members do not pay a cost-share/copayment. Cost-sharing/copayment requirements for pharmaceutical agents for all other beneficiaries will be based upon the generic/non-generic status and the point of sale (i.e., network pharmacy, non-network pharmacy, NMOP) from which the agent was acquired. There is a $9.00 copay per prescription required under the retail pharmacy network program for up to a 30-day supply of a non-generic drug or medicine, and a $3.00 copay for up to a 30-day supply of a generic drug or medicine. There is a $9.00 copay per

prescription required under the NMOP program for up to a 90-day supply of a non-generic drug or medicine, and a $3.00 copay for up to a 90-day supply of a generic drug or medicine. There is a 20 percent or $9.00 (whichever is greater) copay per prescription required for all drugs obtained under the retail pharmacy non-network program for up to a 30-day supply. The TRICARE Standard annual deductible of $150 individual/$300 family (or $50 individual/$100 family for lower grade enlisted families) applies only to services obtained from non-network pharmacies. The TRICARE annual catastrophic cap of $1,000 for active duty families and $3,000 for retiree families (as reduced by the Fiscal Year 2001 National Defense Authorization Act) also applies. TRICARE Prime enrollees generally face higher ''point-of-service'' cost-sharing when they obtain non-network services, as described in § 199.17(n). With regard to pharmacy services, TRICARE Prime beneficiaries who use non-network pharmacies will face point-of-service cost-sharing rather than the 20 percent cost-sharing which applies to TRICARE Standard beneficiaries. This point-of-service cost-sharing includes a deductible of $300 individual or $600 family, and a 50 percent cost-share. No deductibles apply to prescription drugs acquired from network retail pharmacies and NMOP.

The revised co-pay amounts simplify the cost-share structure and are consistent with the best business practices used in the private sector. The co-pay amounts were selected because they provide an equitable adjustment across the current co-pay matrix, will encourage the use of cost effective sources of pharmaceuticals for both the beneficiaries and the government, and will encourage the use of generic products where clinically appropriate. For most beneficiaries and in most circumstances, cost-sharing/copayments will be reduced under the new cost-sharing/copayment structure; in all cases beneficiaries will have lower costs if they use generic products. The pricing structure reflects a reduction for active duty family members using the NMOP. In some cases, beneficiaries will pay more than at present if they obtain brand-name products: active duty family members will pay $4 to $5 more for brand-name products, and retirees and their family members will pay $1.00 more for mail order brand-name products.

VI. TRICARE Senior Pharmacy Program

This rule implements Section 711 of the National Defense Authorization Act for Fiscal Year 2001, which establishes the TRICARE Senior Pharmacy Program for DoD beneficiaries who are 65 years of age and older, effective April 1, 2001. Under the TRICARE Senior Pharmacy Program, the Act requires the same coverage for pharmacy services and the same requirements for cost-sharing and reimbursement as are applicable under Section 1086 of title 10, United States Code.

As specified further in the regulation, to be eligible for the TRICARE Senior Pharmacy Program, a person is required to be a retiree, dependent, or survivor who is Medicare eligible, 65 years of age or older, and enrolled in Medicare Part B (except for a person who attained age 65 prior to April 1, 2001).

To receive benefits under the TRICARE Senior Pharmacy Program, beneficiaries must be registered in DEERS. Currently, the TRICARE Senior Pharmacy Program beneficiaries are not eligible to enroll in TRICARE Prime.

The benefit under the TRICARE Senior Pharmacy Program includes the Basic Program pharmacy benefit as found under 32 CFR 199.4(d)(vi). The senior beneficiaries are entitled to the same pharmacy benefit that was found at 32 CFR 199.17(k), but it is no longer limited to the Base Realignment and Closure (BRAC) sites and access to non-network retail drugstores is included. These beneficiaries will have access to retail network pharmacies, non-network pharmacies, and the National Mail Order Pharmacy (NMOP) program with the associated revised copays and cost-shares as described under Partial Implementation of Pharmacy Benefits Program, above. For prescription drugs acquired from non-network retail pharmacies, the Senior Pharmacy Program beneficiaries are subject to TRICARE Standard annual deductible of $150 individual/$300 family. The catastrophic cap of $3000.00 per federal fiscal year, as reduced by the Fiscal Year 2001 National Defense Authorization Act, will apply to beneficiaries who are eligible under the TRICARE Senior Pharmacy Program.

The double coverage rules in 32 CFR 199.8 are applicable to services provided to all beneficiaries under the retail pharmacy network, retail pharmacy non-network, or NMOP programs. For this purpose, to the extent they provide a prescription drug benefit, Medicare supplemental insurance plans or Medicare HMO plans are double coverage plans and will be the primary payor.

The TRICARE Senior Pharmacy Program replaces the BRAC pharmacy benefit and the Pharmacy Redesign Pilot Program in accordance with Section 711 of the Act.

VII. TRICARE Prime Remote for Family Members

This rule implements Section 722(b)(2) of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) which modified Section 731(b) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). This rule provides a waiver of charges for TRICARE eligible family members residing with their active duty uniformed services TRICARE Prime Remote (TPR) eligible sponsor.

Full implementation of the TPR program for active duty family members will be subject of a proposed rule to be published soon. The TPR program will supplant the waiver of charges described in this rulemaking, effective October 30, 2001 or later. In order to obtain coverage under the follow-on TPR program, it will be proposed that eligible beneficiaries will be required to enroll in TPR and be subject to many of the rules of TRICARE Prime. Full details will be provided in the proposed rule to be published soon.

Some Active Duty Service Members (ADSM) are assigned Permanent Change of Station Orders to locations where Military Treatment Facilities are unavailable. TPR was established by Section 731(b) of the National Defense Authorization Act for Fiscal Year 1998 to provide a TRICARE Prime-like benefit. As defined by 10 U.S.C. 1074(c)(3) the benefit is for ADSM assigned to remote locations, who pursuant to that assignment, work and reside at a location that is more than 50 miles, or approximately one hour of driving time to the nearest military medical treatment facility. ADSM who are TPR eligible are required to enroll in TPR. Starting October 30, 2000, TRICARE eligible Active Duty Family Members residing with TPR eligible ADSM sponsors within a TPR designated area, have copayments, cost-shares, and deductibles waived for CHAMPUS covered benefits, except for pharmacy benefits, until the implementation of TRICARE Prime Remote for Family Members or October 30, 2001 whichever is later. Non-covered CHAMPUS benefits are not waived and shall be processed according to current requirements. The claims processor will pay the waived portion of the claim to the eligible

family member or the provider, as appropriate. If the claims processor is able to determine the eligible family member has already paid the waived portion of the claim, the processor shall reimburse the family member. Retrospective payments of waived charges for dates of service on or after October 30, 2000 are authorized.

Eligible family members will be able to access authorized providers without preauthorization for services covered by TRICARE. However, when accessing care, eligible family members are required to use network providers where and when available within the TRICARE access standards to obtain the waiver of charges. If a network provider cannot be identified within the access standards established under TRICARE, the eligible family member shall use an authorized provider to be eligible for the waiver. Existing specialty care preauthorization requirements remain in affect for eligible family members enrolled in TRICARE Prime. To the greatest extent possible, contractors will assist eligible family members in finding a TRICARE network, participating, or authorized provider.

VIII. Elimination of TRICARE Prime Copayments for Dependents of Active Duty Members

Section 752 of the National Defense Authorization Act for Fiscal Year 2001 provides that no copayment shall be charged for care provided under TRICARE Prime to a dependent of a member of the uniformed services. Copayments for prescriptions and point-of-service (POS) charges are not covered by this provision and will continue to be applied. Copayments for prescriptions will be in accordance with those authorized by 10 U.S.C. 1074g, partially implemented by this rule. This is consistent with the Conference Committee Report statement that ''it is not the intent of the conferees to eliminate copayments for pharmaceutical benefits under the mail order pharmacy program or such similar cost shares.'' (H. Conf. Rept. No 106–945, p. 819–20.) Point-of-service (POS) charges are not covered by Section 752 because they are not for care provided under TRICARE Prime, but rather for care provided outside the TRICARE Prime network structure under the POS option. The POS option allows enrollees to self-refer for non-emergency health care services to any TRICARE authorized civilian provider. The elimination of copayments applies to all CHAMPUS-covered services received by a TRICARE Prime active duty family member on or after April 1, 2001.

IX. Reimbursement of Reasonable Travel Expenses for Distant Referrals of TRICARE Prime Beneficiaries

Section 758 of the National Defense Authorization Act for Fiscal Year 2001 provides reimbursement of reasonable travel expenses for TRICARE Prime beneficiaries referred by their primary care manager to a specialty care provider who provides services more than 100 miles from the primary care manager's office.

X. Reduction of Retiree Catastrophic Cap

Section 759 of the National Defense Authorization Act for Fiscal Year 2001 modified chapter 55 of title 10, United States Code, by amending Section 1086(b)(4) and reducing the catastrophic cap on payments from $7,500 to $3,000 for retirees, their family members and survivors.

XI. Public Comments

We published the interim final rule on February 9, 2001, and provided a 60-day comment period. We received public comments from one commenter who indicated that she was writing on behalf of over 150 recruiting families remotely located in Wisconsin and the upper peninsula of Michigan. This commenter made two recommendations.

The first recommendation pertains to the coverage for school required physicals. While she applauded the addition of coverage for school required physicals for CHAMPUS eligible beneficiaries ages 5 through 11, the commenter raised concerns that the scope of such coverage with regard to age is too limited. The commenter stated that a physical examination in reality is a necessity and recommended to extend coverage for yearly physical examinations to all CHAMPUS eligible dependent children. The recommendation cannot be accommodated since the legislative language was specific regarding the requirements for coverage under the program. Section 703 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398) restricts coverage of school physicals to beneficiaries ages 5 through 11 required in connection with school requirement. Legislative action would be required in order to extend physical examinations to all eligible dependent children.

The second recommendation pertains to the higher cost-shares for TRICARE Prime enrollees under the point-of-service option when they use non-network pharmacies. The point-of-service cost sharing includes a deductible of $300 individual or $600 family, and a 50 percent cost-share. The commenter stated that TRICARE Prime enrollees, located in areas where Military Treatment Faciities are unavailable (remote locations), face an unjust hardship financially with this rule and quite often in remote locations they do not have a choice of pharmacies for filling their prescriptions. She gave an example of a situation where a medication was not available through network pharmacies or the mail order pharmacy but was available through a non-network pharmacy and raised her concerns regarding the higher point-of-service cost sharing in this case when according to her the use of non-network pharmacy was the only choice. With reference to section 199.21(f)(4), regarding application of point-of-service cost-share of 50 percent for Prime enrollees who use non-network pharmacies without proper authorization, she requested clarification of the wording ''without proper authorization.'' The commenter recommended that TRICARE Prime enrollees should face, at most, the same cost-share and deductibles faced by TRICARE Standard beneficiaries when using non-network pharmacies. The Standard beneficiaries pay 20 percent or $9.00 copay, whichever is greater, per prescription from non-network retail pharmacies for a 30-day supply of a drug. We non-concur with the commenter's recommendation. The point-of-service cost sharing for TRICARE Prime enrollees is the same as existing policy and is simply restated in the rule for completeness. The advantages of establishing retail networks is to keep prices down for both the beneficiary and the government. Non-network pharmacies can charge the government and the beneficiary higher prices. Network pharmacies are under contract to provide services at negotiated prices. As with all national health plans, enrollees who do not take advantage of established networks will pay an additional portion of the cost-share that could have been avoided had they used the networks established by their plan sponsor. Regarding the example on availability of drugs, the availability of prescription drugs generally is the same for networks as non-network pharmacies. Normally, if a covered drug is available at a non-network pharmacy, it should also be available at a network pharmacy. If a TRICARE Prime enrollee is encountering availability problems of a specific medication, then the Managed Care Support (MCS) contractor for that TRICARE region should be contacted for

assistance. The term ''proper authorization'' applies to authorization that must be given by the MCS contractor when the enrollee requires the use of non-network source of care. The primary focus of this clause is for extenuating circumstances and situations involving out of region care. With these authorizations, enrollees are not subject to the point-of-service cost sharing. Situations for remote locations are also being addressed in a separate rule on TRICARE Prime Remote for Family Members.

All comments within DoD and from other interested federal agencies have been reviewed and considered.

XII. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule is a significant regulatory action under Executive Order 12866, as it would add over $200 million for DoD in annual healthcare benefit costs. This cost estimate is based on historical TRICARE costs and an assessment of potential users times average benefit costs per person for each of the provisions addressed. Benefits of the rule include an increased level of health care, particularly pharmacy coverage for Medicare-eligible beneficiaries of the Department of Defense military health system. It has been determined to be major under the Congressional Review Act. However, this rule does not require a regulatory flexibility analysis as it would have no significant economic impact on a substantial number of small entities. This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

The interim final rule published on February 9, 2001 (66 FR 9651), and corrected on February 15, 2001 (66 FR 10367), March 26, 2001 (66 FR 16400), and March 19, 2002 (67 FR 12472) is adopted as final with the following changes:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.3 is amended by revising paragraphs (b)(2)(i)(D), (b)(4)(iii), (f)(3)(vi) and the text of paragraph (f)(3)(vii) preceding the note to read as follows:

§ 199.3 Eligibility.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) Must not be eligible for Part A of Title XVIII of the Social Security Act (Medicare) except as provided in paragraphs (b)(3), (f)(3)(vii), (f)(3)(viii) and (f)(3)(ix) of this section; and

* * * * *

(4) * * *

(iii) *Effective date.* The CHAMPUS eligibility established by paragraphs (b)(4)(i) and (ii) of this section is applicable to health care services provided on or after October 30, 2000.

* * * * *

(f) * * *

(3) * * *

(vi) Attainment of entitlement to hospital insurance benefits (Part A) under Medicare except as provided in paragraphs (b)(3), (f)(3)(vii), (f)(3)(viii) and (f)(3)(ix) of this section. (This also applies to individuals living outside the United States where Medicare benefits are not available.)

(vii) Attainment of age 65, except for dependents of active duty members, beneficiaries not eligible for Part A of Medicare, beneficiaries entitled to Part A of Medicare who have enrolled in Part B of Medicare; and as provided in paragraph (b)(3) of this section. For those who do not retain CHAMPUS, CHAMPUS eligibility is lost at 12:01 a.m. on the first day of the month in which the beneficiary becomes entitled to Medicare.

* * * * *

3. Section 199.4 is amended by revising paragraph (g)(68) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) * * *

(68) *Travel.* All travel even though prescribed by a physician and even if its purpose is to obtain medical care, except as specified in paragraph (a)(6) of this section in connection with a CHAMPUS-required physical examination and as specified in § 199.17(n)(2)(vi).

* * * * *

4. Section 199.22 is amended by revising paragraph (d)(1)(i) and adding a Note after paragraph (d)(1)(v) to read as follows:

§ 199.22 TRICARE Retiree Dental Program (TRDP).

* * * * *

(d) * * *

(1) * * *

(i) Members of the Uniformed Services who are entitled to retired pay, or former members of the armed forces who are Medal of Honor recipients and who are not otherwise entitled to dental benefits;

* * * * *

(v) * * *

Note to paragraphs (d)(1)(iii), (d)(1)(iv), and (d)(1)(v): Eligible dependents of Medal of Honor recipients are described in § 199.3(b)(2)(i) (except for former spouses) and § 199.3(b)(2)(ii) (except for a child placed in legal custody of a Medal of Honor recipient under § 199.3(b)(2)(ii)(H)(*4*)).

* * * * *

Dated: March 20, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7862 Filed 4–2–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 659

[FTA–A–2002–11440]

RIN 2132–AA69

Rail Fixed Guideway Systems; State Safety Oversight

AGENCY: Federal Transit Administration, DOT.

ACTION: Direct final rule.

SUMMARY: The Federal Transit Administration (FTA) is revising the definition of ''accident'' as used in the State Safety Oversight regulation to achieve consistency with the reporting requirements of the revised Safety and Security Module of the National Transit Database (NTD), updated February 2002. The term and definition of ''accident'' is removed and replaced with the term and definition ''major incident.''

DATES: This rule is effective July 2, 2002 unless a written adverse comment, or written notice of intent to submit an adverse comment, reaches the Docket Management Facility on or before June 3, 2002. If an adverse comment, or notice of intent to submit an adverse comment, is received, FTA will

withdraw this direct final rule and publish a notice of withdrawal in the **Federal Register**.

ADDRESSES: You may mail your comments to the United States Department of Transportation, Docket Management Facility, PL–401, 400 Seventh Street SW., Washington, DC 20590. Written comments must refer to the above docket number. All comments received will be available for inspection at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Those desiring the agency to acknowledge receipt of their comments should include a self-addressed stamped postcard with their comments. You may also access this docket on the Internet at *http://dms.dot.gov.* The fax number is (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: For questions regarding this rule, contact Jerry Fisher or Roy Field, Office of Safety and Security, FTA, telephone 202–366–2233, fax 202–366–7951. For questions on viewing or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

FTA encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [FTA 2002–11440] and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES** above. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**, but please submit your comments and materials by only one means. FTA will consider all comments and material received during the comment period.

Regulatory Information

The FTA is publishing a direct final rule because it anticipates no adverse comment. If no adverse comment or written notice of intent to submit an adverse comment is received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, FTA will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if FTA receives a written adverse comment or written notice of intent to submit an adverse comment, it will publish a document in the **Federal Register** announcing withdrawal of all or part of this rule. If FTA decides to proceed with a rulemaking following receipt of an adverse comment, FTA will publish a separate Notice of Proposed Rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered ''adverse'' if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change.

Background and Purpose

This rulemaking will remove the term ''accident'' under this section and add in its place the definition and term ''major incident.'' This action is taken because FTA's review of the NTD, as mandated by the Department of Transportation's FY 2000 Appropriations Act, resulted in revisions of the Safety and Security Module of the NTD ''Reporting Manual for 2002.'' Consequently, the definition of ''accident'' in Part 659.5 has been removed and replaced with the definition and term ''major incident'' in this part. The amended reporting criteria include an expanded field of causal events and reporting thresholds. ''Major Incidents'' include both safety and security occurrences that involve fatalities, multiple injuries, property damage and evacuations resulting from both accidents and crimes.

FTA solicited input from NTD stakeholders, which include rail transit agencies reporting to State Oversight Agencies as required by the State Safety Oversight regulations. It was apparent that two accident/incident reporting definitions would cause confusion, generate inconsistent data, and create an additional burden for rail transit reporters.

Although this rule consists of a change in definition and conforms this section with the NTD reporting requirement, it is emphasized that the reporting requirement of § 659.39, which permits the State Oversight Agency to specify the period of time in which an affected agency must report accidents/major incidents, has not been changed.

Regulatory Evaluation

This direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Since the rule is not significant under this Order, it has not been reviewed by the Office of Management and Budget. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Federal Transit Administration (FTA) expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This direct final rule would remove the phrase and definition of ''accident'' in 49 CFR part 659 and add in its place the phrase and definition of ''major incident'' in order to be consistent with the revised reporting requirements of the NTD. Consequently, this rule would not impose any mandatory cost on the agencies it involves. Any incremental costs are negligible, and the policy and economic impact will have no significant effect.

Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FTA considers whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include 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.

FTA expects that this rule would have a minimal economic impact on small entities. It will provide greater clarity and ease of implementation for small entities by conforming FTA's regulatory definition to that of the NTD.

Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act of 1995 (PWRA) (44 U.S.C. 3501, *et. seq.*) The Office of Management and Budget approved FTA's PWRA request for part 659 under OMB 2132–0558. This rule includes the same information collection previously approved by OMB.

Executive Order 13132

FTA has analyzed this rule under the principles and criteria contained in Executive Order 13132, and has determined that this rule does not have sufficient implications for Federalism to

warrant the preparation of a Federalism Assessment. This rulemaking only removes the definition and term accident in part 659 and replaces it with the definition and phrase ''major incident;'' therefore a Federal assessment is unnecessary.

Other Executive Orders

There are a number of other Executive Orders that can affect rulemakings. These include Executive Orders 13084 (Consultation and Coordination with Indian Tribal Governments), 12988 (Civil Justice Reform), 12875 (Enhancing the Intergovernmental Partnership), 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights), 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), 13045 (Protection of Children from Environmental Health Risks and Safety Risks), and 12889 (Implementation of North American Free Trade Agreement). We have considered these Executive Orders in the context of this rule, and we believe that the rule does not directly affect the matters covered by the Executive Orders.

List of Subjects in 49 CFR Part 659

Railroads.

For the reasons discussed in the preamble, FTA amends 49 CFR Part 659 as follows:

PART 659—RAIL FIXED GUIDEWAY SYSTEMS: STATE SAFETY OVERSIGHT

1. The authority citation for Part 659 continues to read as follows:

Authority: 49 U.S.C. 5330.

2. Amend § 659.5 by removing the definition for ''Accident'' and adding in alphabetical order a new definition for ''Major Incident'' and revising the definition for ''Investigation'' as follows:

§ 659.5 Definitions.

Investigation means a process to determine the probable cause of a major incident or an unacceptable hazardous condition; it may involve no more than a review and approval of the transit agency's determination of the probable cause of a major incident or unacceptable hazardous condition.

Major Incident means any event involving a transit vehicle or occurring on a transit-controlled property, involving one or more of the following:

(1) A fatality;

(2) Injuries requiring immediate medical attention away from the scene for two or more persons;

(3) Property damage equal to or exceeding $25,000;

(4) An evacuation due to life safety reasons;

(5) A collision at a grade crossing;

(6) A main-line derailment;

(7) A collision with person(s) on a right-of-way resulting in injuries that require immediate medical attention away from the scene for one or more persons; and

(8) A collision between a rail transit vehicle and other rail transit vehicle or a transit non-revenue vehicle resulting in injuries that require immediate medical attention away from the scene for one or more persons.

* * * * *

§ 659.39 [Amended]

3. Amend § 659.39 by removing the word ''accidents'' from the paragraph and section heading and add in its place the words ''major incidents.''

§ 659.41 [Amended]

4. Amend § 659.41 by removing the word ''accidents'' in paragraphs (a) and (b) and add in its place the word ''major incidents.''

§ 659.45 [Amended]

5. Amend § 659.45 by removing the word ''accidents'' in paragraphs (b) and (c) and add in its place the word ''major incidents.''

Dated: March 28, 2002.

Jennifer L. Dorn,

Administrator, Federal Transit Administration.

[FR Doc. 02–8051 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–57–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301223; FRL–6828–4]

RIN 2070–AB78

Furilazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the inert ingredient (herbicide safener) 3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethyloxazolidine, which is also known as furilazole (CAS Reg. No. 121776–33–8)] in or on corn commodities. Monsanto Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 3, 2002. Objections and requests for hearings, identified by docket control number OPP–301223, must be received by EPA on or before June 3, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI.. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301223 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: 703 305-6304; and e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from

the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm. A frequently updated electronic version of 40 CFR part 180 is available at: http://www.access.gpo.gov/cfr/cfrhtml_00/Title_40/40cfr180_00.html, beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301223. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes thedocuments that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

Time-limited tolerances for 3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethyloxazolidine, also known as furilazole, in or on corn commodities have been established as requested by Monsanto Company under the Federal Food, Drug, and Cosmetic Act (FFDCA).

In the **Federal Register** of October 20, 1999 (64 FR 56502)(FRL–6386– 9), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 1E4031) for tolerance by Monsanto, Suite 1100, 700 14th Street NW. , Washington DC 20005. This notice included a summary of the petition prepared by Monsanto, the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.471 be amended to establish again tolerances for residues of the inert ingredient (herbicide safener) 3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethyloxazolidine, in or on corn commodities at 0.01 part per million (ppm). Time-limited tolerances, expiring February 25, 2002, were established in the **Federal Register** of February 23, 2000, (65 FR 8859) (FRL–6490–3). Permanent tolerances were not established due to an incomplete data base. The following data gaps were identified: Animal metabolism studies, radiovalidation and specificity studies for the analytical enforcement method for plants, field trial data, chronic toxicity study in the dog, developmental toxicity study in the rabbit, general metabolism study, and in vitro cytogenetic assay. These data gaps have now been either fulfilled or addressed in another manner, such as a data waiver.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of furilazole on corn commodities at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the furilazole tolerances follows.

A. Toxicological Profile

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

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 7 mg/kg/day LOAEL = 34/38 mg/kg/day (male/female) based on increased absolute liver weight in males, increased liver-to-body weight ratio in males and females, and increased gamma glutamyltransferase in females.
870.3150	90–Day oral toxicity in nonrodents	NOAEL = 5 mg/kg/day LOAEL = 15 mg/kg/day based on decreased body weight gain and bile duct inflammation in one-fourth of females.

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

Guideline No.	Study Type	Results
870.3200	21–Day dermal toxicity	Systemic NOAEL = 25 mg/kg/day Systemic LOAEL = 250 mg/kg/day based on increased liver weights.
870.3700a	Prenatal developmental in rodents	Maternal NOAEL = 10 mg/kg/day LOAEL = 75 mg/kg/day based on increased liver weight. Developmental NOAEL = 10 mg/kg/day LOAEL = 75 mg/kg/day based on increased number of resorptions.
870.3700b	Prenatal developmental in nonrodents	Maternal NOAEL = 10 mg/kg/day LOAEL = 50 mg/kg/day based on clinical signs of toxicity and reductions in body weight, body weight changes, and food consumption. Developmental NOAEL = greater than or equal to 50 mg/kg/day LOAEL = is not identified, but would be greater than 50 mg/kg/day
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 8.97/10.67 mg/kg/day male/female LOAEL = 92.39/106.42 mg/kg/day male/female based on lower body weight gains and microscopic lesions of the liver, kidneys (females) . Reproductive NOAEL = equal to or greater than 92.39/106.42 mg/kg/day male/female LOAEL = is not identified, but would be greater than 92.39/106.42 mg/kg/day male/female Offspring NOAEL = 8.97/10.67 mg/kg/day male/female LOAEL = 92.39/106.42 mg/kg/day based on decreased body weight gains in both generations and microscopic lesions of the liver and kidneys of F1 males and females.
870.4200	Combined Chronic/Carcinogenicity rats	Chronic NOAEL = 0.26 mg/kg/day (males) LOAEL = 5.05 mg/kg/day (males) based on increased absolute and relative liver and kidney weights in males and females, and kidney nephropathy, increased gamma glutamyl transferase, decreased body weight gain,and moderate increase in non-neoplastic liver lesions in females. Carcinogenic (hepatocellular carcinoma/adenoma) in both sexes.
870.4300	Carcinogenicity mice	Chronic NOAEL = 5.9 mg/kg/day (males) LOAEL = 60.2 mg/kg/day (males) based on increased incidence of mortality and elevated alanine aminotransferase in males and increased liver weights, increased incidence of panlobular hepatocellular hypetrophy and chronic lung inflammation in females. Carcinogenic (hepatocellular carcinoma/adenoma and bronchio-alveolar carcinoma/adenoma) in both sexes
870.5100 and 5300	Gene Mutation	There was a weak positive response for inducing reverse gene mutations at high precipitating doses in *Salmonella typhimurium*, but the response was negative in cultured mammalian cells.
870.5375	Cytogenetics	Induced dose-related chromosomal aberrations over background
870.5385	Cytogenetics	Did not induce chromosomal aberration in bone marrow cells
870.5395	Cytogenetics	Did not yield convincing evidence that the compound was clastogenic or aneugenic in this *in vivo* system; however, the maximum tolerated dose was not achieved.
870.5550	Other Effects	Negative for the induction of unscheduled DNA synthesis in rat primary hepatocytes.
870.7485	Metabolism and pharmacokinetics	The compound undergoes rapid absorption and nearly complete excretion within 48 hours. The total recovery of administered radioactivity was 87.7 - 95.1% for all treatment groups. Primary route of excretion was via the feces which accounted for 58 - 77% of the administered dose; excretinggreater than or equal to 94% within 48 hours. Urinary excretion was minor and accounted for 13 - 24% of the administered dose and most of it (greater than or equal to 84%) was excreted within 24 hours.
870.7600	Dermal penetration	A dermal absorption study is not available. A dermal absorption factor of 30 % was extrapolated from the developmental toxicity study and the 21-day dermal toxicity study, both in the rat.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences. An additional uncertainty factor of 3X was used to account for the lack of a chronic dog study.

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

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

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

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13-50years of age	NOAEL = 10 mg/kg/day UF = 100 Acute RfD = 0.1 mg/kg/day	FQPA SF = 1 aPAD = acute RfD/FQPA SF = 0.1 mg/kg/day	Developmental Toxicity Study in the rat LOAEL = 75 mg/kg/day based on increased number of resorptions.
Chronic Dietary all populations	NOAEL = 0.26 mg/kg/day UF = 300 Chronic RfD = 0.0009 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.0009 mg/kg/day	Combined Chronic/Carcinogenicity Study in the rat LOAEL = 5.05 mg/kg/day based on increased absolute and relative liver and kidney weights in males
Short-Term Incidental Oral (1 to 7 days) (Residential)	oral study NOAEL = 10 mg/kg/day	LOC for MOE = 100 (Residential)	DevelopmentalToxicity Study in the rat LOAEL = 75 mg/kg/day based on increased liver weights, decreased body weights, body weight gains and food consumption.
Intermediate-Term Incidental Oral (1 week toseveral months) (Residential)	oral study NOAEL = 7 mg/kg/day	LOC for MOE = 100 (Residential)	90-Day rat LOAEL = 34 mg/kg/day based on increased absolute and relative liver weights and alterations in clinical chemistry parameters.
Short-Term Dermal (1 to 7 days) (Residential)	dermal study NOAEL = 25 mg/kg/day (dermal absorption rate = N/A%)	LOC for MOE = 100 (Residential)	21-Day Dermal in the rat LOAEL = 250 mg/kg/day based on increased liver weights.
Intermediate-Term Dermal (1 week to several months) (Residential)	dermal study NOAEL = 25 mg/kg/day (dermal absorption rate = N/A%)	LOC for MOE = 100 (Residential)	21-Day Dermal in the rat LOAEL = 250 mg/kg/day based on increased liver weights.
Long-Term Dermal (several months to lifetime) (Residential)	oral study NOAEL = 0.26 mg/kg/day (dermal absorption rate = 30 %	LOC for MOE = 100 (Residential)	Combined Chronic/Carcinogenicity Study in the rat LOAEL = 5.05 mg/kg/day based on increased absolute and relative liver and kidney weights in males
Short-Term Inhalation (1 to 7 days) (Residential)	oral study NOAEL = 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Developmental Toxicity Study in the rat LOAEL = 75 mg/kg/day based on increased liver weights, decreased body weights, body weight gains and food consumption.

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Intermediate-Term Inhalation (1 week to several months) (Residential)	oral study NOAEL = 7 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	90-Day rat LOAEL = 34 mg/kg/day based on increased absolute and relative liver weights and alterations in clinical chemistry parameters.
Long-Term Inhalation (several months to lifetime) (Residential)	oral study NOAEL = 0.26 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Combined Chronic/Carcinogenicity Study in the rat LOAEL = 5.05 mg/kg/day based on increased absolute and relative liver and kidney weights in males
Cancer (oral, dermal, inhalation)	oral study Q1* = 0.0274 (mg/kg/day) [1] (dermal absorption rate = 30 % inhalation absorption rate = 100%)	LOC = the range of 1 x 10^{6}	Classified as likely to be carcinogenic to humans by all routes of exposure based on hepatocellular ademonas and carcinomas in rats and mice, branchio-alveolar adenomas and carcinomas in female mice, testicular interstitial cell tumors in male rats and stomach tumors in female mice.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Time-limited tolerances (expiring February 25, 2002) have been established (40 CFR 180.471) for the residues of furilazole, in or on corn commodities. Risk assessments were conducted by EPA to assess dietary exposures from furilazole in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported byrespondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The Agency made the following assumptions for the acute exposure assessment: that 100% of the entire corn crop received an application of furilazole, i.e. 100% crop treated (PCT), and that all corn commodities contained residues of furilazole at the tolerance level.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The same assumptions were made for the chronic exposureassessments: That 100% of the entire corn crop received an application of furilazole, i.e. 100% crop treated (PCT), and that all corn commodities contained residues of furilazole at the tolerance level.

iii. *Cancer*. In conducting this carcinogenic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The same assumptions were made for the cancer exposure assessments: That 100% of the entire corn crop received an application of furilazole, i.e. 100% crop treated (PCT), and that all corn commodities contained residues of furilazole at the tolerance level.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for furilazole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of furilazole.

The Agency used the Pesticide Root Zone/Exposure Analysis Modeling System(PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir for an Ohio corn crop. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater.

Neither of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage isto provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

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

Based on the PRZM/EXAMS model the estimated environmental concentrations (EECs) of furilazole for acute exposures are estimated to be 1.2 parts per billion (ppb), for chronic (non-

cancer) exposures are estimated to be 0.8 ppb, and for cancer exposures are estimated to be 0.22 ppb for surface water. Based on the SCI-GROW model the estimated environmental concentrations (EECs) of furilazole for acute, chronic and cancer exposures are estimated to be 0.02 ppb for ground water.

3. *From non-dietary exposure*. The term ''residentialexposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Furilazole is not registered for use on any sites that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. No qualitative or quantitative evidence of increased susceptibility in the rat or rabbit fetuses following *in utero* exposure in the developmental toxicity studies nor to the offspring following pre/post natal exposure in the two generation reproduction study.

3. *Conclusion*. With the exception of the chronic dog study, there is a complete toxicity data base for furilazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Taking into account the lack of increased susceptibility and the completeness of the data on toxicity and exposure, EPA determined that the 10X safety factor to protect infants and children should be removed.

E. Aggregate Risks and Determination of Safety

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

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

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

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure (at the 95th percentile) from food to furilazole is less than one percent of the aPAD for females 13 to 50 years. In addition, there is potential for acute dietary exposure to furilazole in drinking water. The acute DWLOC is 3000 ppb. Since, the DWLOC is greater than the EEC for surface or ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to furilazole from food will utilize 1.4 % of the cPAD for the U.S. population, and 3.4 % of the cPAD for all infants less than 1 year old. Percent PADs for all other population subgroups are less than 3.4%. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expectthe aggregate exposure to exceed 100% of the cPAD, as shown in Table 3:

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

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.0009	1.4	0.8	0.02	31
All infants (less than 1 year old)	0.0009	3.4	0.8	0.02	8.7
Children 1-6 years old	0.0009	3.3	0.8	0.02	8.7
Children 7-12 years old	0.0009	2.5	0.8	0.02	8.7

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

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

5. *Aggregate cancer risk for U.S. population*. Using the exposure assumptions discussed in this unit for cancer exposure, the cancer dietary exposure from food to furilazole is 3.5 x 10^{-7}. In addition, there is potential for cancer dietary exposure to furilazole in drinking water. The cancer DWLOC is 1.3 ppb. Since, the DWLOC is greater than the EEC for surface or groundwater, EPA does not expect the aggregate exposure to exceed the range of 1 x 10^{-6}.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (capillary gas chromotography using electron capture detection) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian or Mexican limits for residues of furilazole in corn raw agricultural commodities.

V. Conclusion

Therefore, tolerances are established for residues of furilazole, 3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethyloxazolidine, which is also known as furilazole (CAS Reg. No. 121776–33–8), in or on corn commodities at 0.01 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301223 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 3, 2002.

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

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

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

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

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

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

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301223, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Regulatory Assessment Requirements

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

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: March 19, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.471 is amended by revising paragraph (a) to read as follows:

§ 180.471 Furilazole; tolerances for residues.

(a) *General*. Tolerances are established for residues of furilazole; 3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethyloxazolidine (CAS Reg. No. 121776–33–8) when used as an inert ingredient (safener) in pesticide formulations in or on the following raw agricultural commodities when applied at an annual application rate of 0.1 pound of safener per acre:

Commodity	Parts per million
Corn, field, forage	0.01
Corn, field, grain ...	0.01
Corn, field, stover	0.01
Corn, pop, grain	0.01
Corn, pop, stover ..	0.01

* * * * *

[FR Doc. 02–8060 Filed 4–2–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–712, MM Docket No. 01–162, RM–10183]

Digital Television Broadcast Service; Cocoa, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Good Life Broadcasting, Inc., licensee of station WTGL–TV, substitutes DTV channel 53c for DTV channel 51. *See* 66 FR 39726, August 1, 2001. DTV channel 53c can be allotted to Cocoa, Florida, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (28–35–12 N. and 81–04–58 W.) with a power of 13.0, HAAT of 514 meters and with a DTV service population of 1876 thousand.

With this action, this proceeding is terminated.

DATES: Effective May 16, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–162, adopted March 25, 2002, and released April 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Florida, is amended by removing DTV channel 51 and adding DTV channel 53c at Cocoa.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–7978 Filed 4–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–620; MM Docket No. 99–244; RM–9678, 9873]

Radio Broadcasting Services; Cumberland, KY and Weber City, Glade Spring, Marion, Richlands and Grundy, VA.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Holston Valley Broadcasting Corporation, allots Channel 274A at Glade Spring, Virginia, as the community's first local aural transmission service (RM–9873). To accommodate the allotment, we will (1) substitute Channel 263A for Channel 273A at Marion, Virginia, and modify Station WOLD–FM's license accordingly; (2) substitute Channel 249A for Channel 264A at Richlands, Virginia, and modify Station WRIC–FM's license accordingly; and (3) substitute Channel 2654A for Channel 249A at Grundy, Virginia, and modify Station WMJD(FM)'s license accordingly. We also deny the petition for rule making filed by Cumberland City Broadcasting Company requesting the substitution of Channel 274C3 for Channel 274A at Cumberland, the reallotment of Channel 274C3 from Cumberland to Weber City, Virginia, and the modification of Station WSEH(FM)'s license accordingly (RM–9678). *See* 64 FR 37925, July 14, 1999. *See* Supplementary Information, *infra.*

DATES: Effective May 3, 2002. A window for Channel 274A at Glade Spring, Virginia, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–244, adopted March 6, 2002, and released March 19, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Channel 274A can be allotted to Glade Spring in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.3 kilometers (8.3 miles) east at petitioner's requested site. The coordinates for Channel 274A at Glade Spring are 36–45–15 North Latitude and 81–37–56 West Longitude. Additionally, Channel 263A can be substituted at Marion with a site restriction of 2.2 kilometers (1.3 miles) north at

petitioner's requested site. The coordinates for Channel 263A at Marion are 36–51–23 North Latitude and 81–30–21 West Longitude. Channel 249A can be substituted at Richlands at Station WRIC-FM's presently licensed site. The coordinates for Channel 249A at Richlands are 37–09–04 North Latitude and 81–53–56 West Longitude. Channel 264A can be substituted at Grundy at Station WMJD(FM)'s presently licensed site. The coordinates for Channel 264A at Grundy are 37–18–08 North Latitude and 82–07–04 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Glade Spring, Channel 274A; by removing Channel 273A and adding Channel 263A at Marion; by removing Channel 264A and adding Channel 249A at Richlands; and by removing Channel 249A and adding Channel 264A at Grundy.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7975 Filed 4–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–614; MM Docket No. 00–79; RM–9802]

Radio Broadcasting Services; Jackson and Salyersville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the joint request of Intermountain Broadcasting Company and Wallingford Broadcasting Company, Inc., substitutes Channel 247C2 for Channel 293A at Jackson, Kentucky, and modifies Station WJSN–FM's license accordingly. To accommodate the upgrade, we also substitute Channel 293C3 for Channel 247C3 at Salyersville, Kentucky, and modify Station WRLV–FM's license accordingly. *See* 65 FR 34996, June 1, 2000. Channel 247C2 can be substituted at Jackson in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.1 kilometers (8.2 miles) north at Station WJSN–FM's requested site. The coordinates for Channel 247C2 at Jackson are 37–40–19 North Latitude and 83–24–21 West Longitude. Additionally, Channel 293C3 can be substituted at Salyersville without the imposition of a site restriction at Station WRLV–FM's requested site. The coordinates for Channel 293C3 at Salyersville are 37–49–05 North Latitude and 83–17–01 West Longitude.

DATES: Effective April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–79, adopted March 6, 2002 , and released March 15, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 293A and adding Channel 247C2 at Jackson; and by removing Channel 247C3 and adding Channel 293C3 at Salyersville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7974 Filed 4–2–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 176, 178, 180

[Docket No. RSPA–2000–7702 (HM–215D)]

RIN 2137–AD41

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; corrections and response to petitions for reconsideration.

SUMMARY: On June 21, 2001, RSPA published a final rule under Docket HM–215D amending the Hazardous Materials Regulations (HMR) based on corresponding provisions of international standards. The revisions were made to facilitate the transportation of hazardous materials in international commerce. This final rule corrects errors in the June 21, 2001, final rule and responds to two petitions for reconsideration.

DATES: *Effective Date:* April 3, 2002.

Voluntary Compliance Date: Compliance with the regulations, as amended herein, is authorized as of June 21, 2001.

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SUPPLEMENTARY INFORMATION:

I. Introduction

On June 21, 2001, the Research and Special Programs Administration (RSPA, we) published a final rule under Docket HM–215D (66 FR 33316) revising the HMR to maintain alignment with recent changes to corresponding provisions in international standards. Changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) necessitated amendments to domestic regulations to provide consistency and facilitate the transport of hazardous materials in international commerce. This final rule corrects various errors primarily made during the printing process of the June 21, 2001, **Federal Register** and responds to two petitions for reconsideration.

II. Section-by-Section Review

Part 171

Section 171.12. In § 171.12, in paragraph (b)(5), a redundant phrase is removed and in paragraph (e)(4), a nonexistent paragraph reference is corrected.

Section 171.14. We received a petition for reconsideration requesting we revise § 171.14(d)(4) as adopted in the June 21, 2001, final rule. Paragraph (d)(4) reads as follows:

> (4) Until January 1, 2010, a hazardous material may be transported in an IM or IMO portable tank in accordance with the T Codes (Special Provisions) assigned to a hazardous material in Column (7) of the HMT in effect on September 30, 2001.

Specifically, the petitioner seeks reconsideration of the provision as it relates to IM portable tanks, stating the provision is unreasonable by limiting the continued use of IM Specification portable tanks to less than 10 years from the publication date of the final rule. The petitioner reasoned that from a safety perspective we have no reason to impose such a time limitation. The petitioner also cited our authorization for the indefinite continued use of DOT Specification 51 tanks and questioned the omission of the same provision for IM Specification portable tanks.

Paragraph (d)(4) does not limit the continued use of IM portable tanks, rather it authorizes, until January 1, 2010, the use of the ''old'' T code special provisions in effect prior to the effective date of the HM–215D final rule (October 1, 2001). Persons have the option of using the ''old'' or the ''new'' T codes until January 1, 2010 at which time the ''new'' T codes as adopted in the June 21, 2001, final rule become mandatory. Section 173.32(c)(2) of the June 21, 2001 final rule includes the authorization for the continued use of IM portable tanks provided certain requirements are met. No time limitations are imposed. In addition, § 173.32 allows IM portable tanks to be constructed until January 1, 2003. We are responding to the petition for reconsideration by adding a phrase to § 171.14(d)(4) to refer the reader to § 173.32(c) for the continued use of IM portable tanks. Additionally, we are adding a clarifying phrase to § 173.32(c)(2) to describe the reason for referring the reader to § 171.14(d)(4).

Part 172

Section 172.101. In § 172.101, in paragraph (c)(11)(iv)(A), we are correcting the paragraph by adding the authorization for the word ''Sample'' to appear as part of the proper shipping name (for example, ''Flammable liquid, n.o.s., Sample''). This serves as an alternative to the requirement for the word ''Sample'' to appear in association with the basic description on the shipping paper, unless the word ''Sample'' already appears in the proper shipping name. Although we discussed the intent in the preamble of the June 21, 2001, final rule, the phrase was omitted from the regulatory text.

The Hazardous Materials Table (HMT). Following are corrections made to the § 172.101 HMT. Unless otherwise specified, the corrections are due to errors made during the typesetting process.

—The entry ''Batteries, wet, filled with alkali, *electric storage,*'' UN2795, which was inadvertently deleted, is added.

—For the entry, ''Diethylthiophosphoryl chloride,'' UN2751, Columns (8A) through (10B) are corrected to read ''None,'' ''212,'' ''240,'' ''15 kg,'' ''50 kg,'' ''D,'' and ''12, 40,'' respectively.

—For four entries, Special Provision TP37 is added to Column (7) of the HMT. The Special Provision was proposed for the entries in the October 23, 2000, notice of proposed rulemaking (NPRM), however, it was inadvertently omitted in the final rule. The four entries are: ''Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary),*'' UN2014; ''Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary),*'' UN2014; ''Hydrogen peroxide, stabilized *or* Hydrogen peroxide aqueous solutions, stabilized *with more than 60 percent hydrogen peroxide,*'' UN2015; and ''Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary),*'' UN2984.

—For the entry ''Metal catalyst, dry,'' UN2881, Packing Group I, Columns (9A) and (9B) are corrected to read ''Forbidden.''

—For the entry ''Nitromethane,'' UN1261, Column (9B) is corrected to read 60 L.

—The entry ''2,5-Norbornadiene, stabilized, *see* Bicyclo 2,2,1 hepta-2,5-diene, stabilized'' is corrected by adding a comma before ''stabilized.''

—The entry ''Organochlorine, pesticides, solid, toxic,'' UN2761 is corrected by adding a comma after ''solid'' in the proper shipping name.

—The entry ''*Pepper spray, see Aerosols, etc. or Self-defense spray, non-pressurized*'' is removed the second time it appears in the HMT. The ''see'' entry was mistakenly duplicated and erroneously included column entries from the previous entry.

—The entry ''Phosphoric acid, *liquid or solid,*'' UN1805 is revised by adding the optional ''liquid or solid'' wording.

—For the entry ''Polymeric beads, expandable, *evolving flammable vapor,*'' UN2211, ''9'' is added to Column (6) and Special Provision IP7 is added to Column (7).

—For nine Class 7 entries, the vessel stowage code ''95'' is added. The stowage code was inadvertently deleted from Column (10B).

—For 11 entries ''IP8'' is removed as a special provision reference from Column (7) of the HMT. In the NPRM and final rule, the reference was inadvertently included in Column (7). IP8 is consistent with the UN Recommendations special IBC packing provision and gives a vapor pressure limitation for liquids transported in IBCs. This special provision is unnecessary for inclusion into the HMR because the ''Additional Requirements'' in Special Provisions IB1 through IB3 already contain the vapor pressure limits on materials that are authorized to be transported in IBCs and these special provisions are currently assigned to the appropriate entries. The 11 entries are: ''Cyclopentene,'' UN2246; ''Dichloromethane,'' UN1593; ''Dimethyl sulfide,'' UN1164; Ethyl

bromide,'' UN1891; ''Glycidaldehyde,'' UN2622; ''Isohexenes,'' UN2288; ''2-Methyl-2-butene,'' UN2460; ''Methyl propyl ether,'' UN2612; ''Methylal,'' UN1234; ''Pentanes,'' UN1265; and ''Propyl chloride,'' UN1278.

—The entry ''Samples, explosive, *other than initiating explosives*'' which was inadvertently deleted is added.

—The entry ''Substances, explosive, n.o.s.'' is corrected by revising ''6'' to read ''G'' in Column (1).

—The entry ''Vinyl chloride, stabilized'' is corrected by removing the duplicative wording ''*or* Vinyl chloride, stabilized'' from the proper shipping name.

Appendix B to § 172.101. In Appendix B to § 172.101, the List of Marine Pollutants is corrected as follows:

''Cumene'' is removed. ''Cumene'' and ''Isopropylbenzene'' describe the same material. Although ''Isopropylbenzene'' was removed from the List of Marine Pollutants in the June 21, 2001, final rule, ''Cumene'' was overlooked as its synonym.

''2,4-D'' is removed. ''2,4-D'' and ''2,4 Dichlorophenoxyacetic acid'' describe the same material and we overlooked the former when removing ''2,4 Dichlorophenoxyacetic acid.''

''Dimethylphenols, liquid or solid'' is removed. ''Dimethylphenols'' and ''Xylenols'' describe the same material. We removed ''Xylenols'' and overlooked ''Dimethylphenols, liquid or solid'' as its synonym.

''Ethyl acrylate, stabilized,'' ''Methylstyrenes, stabilized'' and ''Vinyltoluenes, stabilized *mixed isomers*'' are removed. ''Ethyl acrylate, inhibited'' and ''Vinyltoluenes, inhibited *mixed isomers*'' were proposed to be removed, but were mistakenly added to the List of Marine Pollutants in the final rule, published on June 1, 2001, with the word ''stabilized'' replacing the word ''inhibited.''

Section 172.102. In § 172.102, the following corrections are made:

—In Special Provision 136, ''part 173'' is corrected to read ''part 172.''

—Paragraph (c)(4) is editorially revised for clarity.

—Paragraph (c)(7)(i) is revised by adding ''IM'' Specification portable tanks to indicate that the ''T'' Codes apply to UN and IM Specification portable tanks.

—In the paragraph (c)(7)(iv) Portable Tank Code T50 table, the maximum filling density (kg/l), 0.811954, for the entry ''UN1912, Methyl chloride and methylene chloride mixture'' is revised to read ''0.81.''

Section 172.519. The date ''September 30, 2001'' is corrected to read ''October 1, 2001'' the second place it appears in paragraph (b)(4).

Part 173

Section 173.24b. In paragraph (e)(2) introductory text, the last sentence is editorially corrected by removing the word ''be.''

Section 173.32. We are responding to a petition for reconsideration (see preamble discussion under § 171.14) by adding a clarifying phrase to paragraph (c)(2).

Section 173.150. The misplacement of the word ''and'' in paragraph (d)(2) is corrected.

Section 173.185. We are adding a clarification to paragraph (a). Included in the June 21, 2001, final rule preamble, and based on a comment to the NPRM, we stated that we were revising the definition of ''lithium content'' to make it consistent with a minor editorial clarification adopted by the Committee of Experts in its Report of the 21st Session. The intent of the clarification was to prevent possible confusion regarding the lithium-equivalent content of lithium-ion battery packs currently used in many portable devices. Although the amendment was discussed in the preamble, it was not included in the regulatory text. This document corrects the oversight.

We are also revising paragraph (e)(3). We received a petition for reconsideration concerning paragraphs (e)(3) and (e)(7). Paragraph (e) allows cells and batteries to be transported as Class 9 materials provided they meet the requirements in paragraphs (e)(1) through (e)(7). The requirement in paragraph (e)(3) states batteries containing cells or series of cells connected in parallel must be equipped with diodes to prevent reverse current flow. The petitioner stated that limiting the protective requirement to diodes unnecessarily restricts the use of equally effective alternative protection means as allowed by the UN Recommendations and impedes the transportation of large lithium batteries. We agree with the petitioner's reasoning that many lithium battery manufacturers currently employ other technology to provide equally protective means of protection. Based on the above discussion, we are revising paragraph (e)(3) to reflect the allowance of any effective means of preventing reverse current flow.

The petitioner also requested we remove the prohibition in paragraph (e)(7) to transport cells and batteries if any cell has been discharged to the extent that the open circuit voltage is less than two volts or less than two thirds of the voltage of the fully charged cell, whichever is less. The petitioner's request regarding paragraph (e)(7) is beyond the scope of this rulemaking.

Section 173.242. Paragraph (c) is editorially revised by replacing ''Specification IM'' with ''IM 101 and IM 102.''

Section 173.243. Paragraph (c) is corrected by adding ''IM 101 and IM 102'' to the portable tanks authorized for certain high hazard liquids and dual hazard materials posing a moderate hazard.

Part 174

Section 174.81. The word ''stowed'' in paragraphs (e)(6) and (g)(3)(vi) is corrected to read ''loaded and transported.'' The word ''stowed'' is specific to the corresponding vessel section of the HMR.

Part 176

Section 176.84. In paragraph (c)(2), in the List of Notes, the last note number is corrected to read ''27E.''

Part 178

Section 178.274. In paragraph (a), the wording ''refrigerated liquefied gases,'' which was deleted during the printing process, is added to the definition for test pressure. In paragraph (d)(1)(i), the reference ''through (d)(10)'' is corrected to read ''through (d)(7).''

Part 180

Section 180.605. In paragraph (d), the incorrect reference to paragraph (i) for leakage test requirements is corrected to refer to paragraph (h). Paragraph (e) is revised to clarify the provisions for the exception from the requirement for the internal inspection and hydraulic pressure test. Paragraph (h)(3) is corrected by adding the inadvertently deleted test pressure for refrigerated liquefied gases.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this final rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule was analyzed in accordance with the principles and

criteria in Executive Order 13132 (''Federalism''). This final rule preempts State, local and Indian tribe requirements but does not adopt any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, (49 U.S.C. 5101–5127) contains express preemption provisions at 49 U.S.C. 5125(b) that preempts State, local and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), (3), and (5) above and would preempt State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This final rule is necessary to incorporate corrections to changes already adopted in international standards. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption will be September 30, 2002.

C. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule corrects errors in a final rule published June 21, 2001 under Docket RSPA–00–7702 (HM–215D) and will not have any direct or indirect adverse economic impacts on a substantial number of small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. There are no new information collection requirements in this final rule.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.12 [Amended]

2. In § 171.12, the following changes are made:

a. In paragraph (b)(5), in the first sentence, the wording ''hazardous materials that conform to the requirements of the IMDG Code,'' is removed.

b. In paragraph (b)(5), at the end of the last sentence, following the words ''51 portable tanks'', the wording ''when these portable tanks are authorized in accordance with the requirements of this subchapter'' is added.

c. In paragraph (e)(4), the wording ''paragraph (c)(5)'' is removed and ''paragraph (e)(5)'' is added in its place.

3. In § 171.14, in paragraph (d)(4), a sentence is added at the end of the existing text to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(d) * * *

(4) * * * (See § 173.32(c) of this subchapter for the continued use and manufacture of portable tanks.)

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

4. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 172.101, paragraph (c)(11)(iv)(A) and the Hazardous Materials Table is revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(11) * * *

(iv) * * *

(A) Except when the word ''Sample'' already appears in the proper shipping name, the word ''Sample'' must appear as part of the proper shipping name or in association with the basic description on the shipping paper.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Nos. (4)	PG (5)	Label Codes (6)	Special provisions (7)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions (8A)	Nonbulk (8B)	Bulk (8C)	Passenger aircaft/rail (9A)	Cargo aircraft only (9B)	Location (10A)	Other (10B)
	[REMOVE:]												
	2,5-Norbornadiene, stabilized, *see* Bicyclo 2,2,1 hepta-2,5-diene stabilized												
	Organochlorine, pesticides, solid toxic	6.1	UN2761	I	6.1	IB7, IP1	None	211	242	5 kg	50 kg	A	40
	Pepper spray, see Aerosols, etc. or Self-defense spray, non-pressurized			III	5.1		152	203	241	2.5 L	30 L	B	56, 58, 69, 106
	Phosphoric acid	8	UN1805	III	8	A7, IB3, IP3, N34, T4, TP1	154	203	241	5 L	60 L	A	
	Vinyl chloride, stabilized *or* Vinyl chloride, stabilized	2.1	UN1086		2.1	21, B44, T50	306	304	314, 315	Forbidden	150 kg	B	40
	[ADD:]												
	*		*		*	*		*		*		*	
	Batteries, wet, filled with alkali, *electric storage*	8	UN2795	III	8		159	159	159	30 kg gross	No limit	A	
	*		*		*	*		*		*		*	
	2,5-Norbornadiene, stabilized, *see* Bicyclo 2,2,1 hepta-2,5-diene, stabilized												
	*		*		*	*		*		*		*	
	Organochlorine, pesticides, solid, toxic	6.1	UN2761	I	6.1	IB7, IP1	None	211	242	5 kg	50 kg	A	40
	*		*		*	*		*		*		*	
	Phosphoric acid, *liquid or solid*	8	UN1805	III	8	A7, IB3, IP3, N34, T4, TP1	154	203	241	5 L	60 L	A	
	*		*		*	*		*		*		*	
G	Samples, explosive, *other than initiating explosives.*		UN0190	II		113	None	62	None	Forbidden	Forbidden	14	12E
	*		*		*	*		*		*		*	
	Vinyl chloride, stabilized	2.1	UN1086		2.1	21, B44, T50	306	304	314, 315	Forbidden	150 kg	B	40
	*		*		*	*		*		*		*	
	[REVISE:]												
	*		*		*	*		*		*		*	
	Cyclopentene	3	UN2246	II	3	IB2, T7, TP2	150	202	242	5 L	60L	E	40
	*		*		*	*		*		*		*	
	Dichloromethane	6.1	UN1593	III	6.1	IB3, N36, T7, TP2	153	203	241	60 L	220 L	A	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Nos. (4)	PG (5)	Label Codes (6)	Special provisions (7)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions (8A)	Nonbulk (8B)	Bulk (8C)	Passenger aircaft/rail (9A)	Cargo aircraft only (9B)	Location (10A)	Other (10B)
	*		*		*	*		*		*		*	
	Diethylthiophosphoryl chloride	8	UN2751	II	8	B2, IB2, T7, TP2	None	212	240	15 kg	50 kg	D	12, 40
	*		*		*	*		*		*		*	
	Dimethyl sulfide	3	UN1164	II	3	IB1, T7, TP2	None	202	242	5 L	60 L	E	40
	*		*		*	*		*		*		*	
	Ethyl bromide	6.1	UN1891	II	6.1	IB2, T7, TP2, TP13	None	202	243	5 L	60 L	B	40, 85
	*		*		*	*		*		*		*	
	Glycidaldehyde	3	UN2622	II	3, 6.1	IB2, T7, TP1	150	202	243	1 L	60 L	A	40
	*		*		*	*		*		*		*	
	Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary)*	5.1	UN2014	II	5.1, 8	12, A3, A6, B53, B80, B81, B85, IB2, IP5, T7, TP2, TP6, TP24, TP37	None	202	243	Forbidden	Forbidden	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary)*	5.1	UN2014	II	5.1, 8	A2, A3, A6, B53, IB2, IP5, T7, TP2, TP6, TP24, TP37	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions, *with not less than 8 percent but less than 20 percent hydrogen peroxide, (stabilized as necessary)*	5.1	UN2984	III	5.1	A1, IB2, IP5, T4, TP1, TP6, TP24, TP37	152	203	241	2.5 L	30 L	B	25, 75, 106
	Hydrogen percent stabilized *or* Hydrogen peroxide aqueous solutions, stabilized *with more than 60 percent hydrogen peroxide*	5.1	UN2015	I	5.1, 8	12, A3, A6, B53, B80, B81, B85, T10, TP2, TP6, TP24, TP37	None	201	243	Forbidden	Forbidden	D	25, 66, 75, 106
	*		*		*	*		*		*		*	
	Isohexenes	3	UN2288	II	3	IB2, T11, TP1	150	202	242	5 L	60 L	E	
	*		*		*	*		*		*		*	
	Metal catalyst, dry	4.2	UN2881	I	4.2	N34	None	187	None	Forbidden	Forbidden	C	
	*		*		*	*		*		*		*	
	2-Methyl-2-butene	3	UN2460	II	3	IB2, T7, TP1	None	202	242	5 L	60 L	E	
	*		*		*	*		*		*		*	
	Methyl propyl ether	3	UN2612	II	3	IB2, T7, TP2	150	202	242	5 L	60 L	E	40
	*		*		*	*		*		*		*	
	Methylal	3	UN1234	II	3	IB2, T7, TP2	None	202	242	5 L	60 L	E	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Nos. (4)	PG (5)	Label Codes (6)	Special provisions (7)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions (8A)	Nonbulk (8B)	Bulk (8C)	Passenger aircaft/rail (9A)	Cargo aircraft only (9B)	Location (10A)	Other (10B)
	*		*		*	*		*		*		*	
	Nitromethane	3	UN1261	II	3		150	202	None	Forbidden	60 L	A	
	*		*		*	*		*		*		*	
	[PG II only] Pentanes	3	UN1265	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	E	
	*		*		*	*		*		*		*	
	Polymeric beads, expandable, *evolving flammable vapor*	9	UN2211	III	9	32, IB8, IP6, IP7	155	221	221	100kg	200kg	A	
	*		*		*	*		*		*		*	
	Propyl chloride	3	UN1278	II	3	IB2, N34, T7, TP2	None	202	242	Forbidden	60 L	E	
	*		*		*	*		*		*		*	
D	Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s.	7	UN2912		7	T5, TP4	421, 428	427	427			A	95
	*		*		*	*		*		*		*	
D	Radioactive material, special form, n.o.s.	7	UN2974		7		421, 424	415, 416	415, 416			A	95
D	Radioactive material, surface contaminated object *or* Radioactive material, SCO	7	UN2913		7		421, 424, 426	427	427			A	95
	*		*		*	*		*		*		*	
G	Substances, explosive, n.o.s.	1.4D	UN0480	II	1.4D	101	None	62	None	Forbidden	75 kg	09	
	*		*		*	*		*		*		*	
D	Thorium metal, pyrophoric	7	UN2975		7, 4.2		None	418	None	Forbidden	Forbidden	D	95
D	Thorium nitrate, solid	7	UN2976		7, 5.1		None	419	None	Forbidden	15 kg	A	95
	*		*		*	*		*		*		*	
D	Uranium hexafluoride, fissile (*with more than 1 percent U–235*)	7	UN2977		7, 8		453	417, 420	417, 420			A	95
D	Uranium metal, pyrophoric	7	UN2979		7, 4.2		None	418	None			D	95
D	Uranium nitrate hexahydrate solution	7	UN2980		7, 8		421, 427	415, 416, 417	415, 416, 417			D	95
D	Uranyl nitrate, solid	7	UN2981		7, 5.1		None	419	None	Forbidden	15 kg	A	95
	*		*		*	*		*		*		*	

6. In Appendix B to § 172.101, the List of Marine Pollutants is amended by removing 7 entries as follows:

LIST OF MARINE POLLUTANTS

S.M.P. (1)	Marine pollutant (2)
[Remove:]	Cumene 2,4-D Dimethylphenols, liquid or solid Ethyl acrylate, stabilized 2-Methyl-2-phenylpropane Vinyltoluenes, stabilized

7. In § 172.102:

a. In paragraph (c)(1), in Special Provision 136, the fourth sentence is revised;

b. In paragraph (c)(4), the text preceding Table 1 is revised;

c. In paragraph (c)(7)(i), the first sentence is revised; and

d. In the paragraph (c)(7)(iv) Portable Tank Code T50 Table, the entry for UN No. 1912 entry is revised.

The revisions and addition read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

136 * * * Hazardous materials shipped under this entry are excepted from the labeling requirements of this subchapter unless offered for transportation or transported by aircraft and are not subject to the placarding requirements of part 172, subpart F, of this subchapter. * * *

* * * * *

(4) *Table 1, Table 2, and Table 3—IB Codes, Organic Peroxide IBC Code, and IP Special IBC Packing Provisions.* These provisions apply only to transportation in IBCs. When no IBC packing provision is assigned, or when an IBC is not specifically authorized in the applicable IBC packing provision for a specific material in the § 172.101 Table of this subchapter, alternative IBCs may be approved for use by the Associate Administrator. Tables 1, 2 and 3 follow:

* * * * *

(7) * * *

(i) * * * These provisions apply to the transportation of hazardous materials in UN and IM Specification portable tanks. * * *

* * * * *

(iv) * * *

PORTABLE TANK CODE T50

[Portable tank code T50 applies to liquefied compressed gases.]

UN No.	Non-refrigerated liquefied compressed gases	Max. allowable working pressure (bar) small; bare; sunshield; insulated	Openings below liquid level	Pressure relief requirements (see § 178.27(e))	Maximum filling density (kg/l)
	*	* * *	* * *	*	
1912	Methyl chloride and methylene chloride mixture .	15.2, 13.0, 11.6, 10.1	Allowed	Normal	0.81
	*	* * *	* * *	*	

* * * * *

§ 172.519 [Amended]

8. In § 172.519, in paragraph (b)(4), in the second sentence, the wording ''September 30, 2001'' is removed and ''October 1, 2001'' is added in its place.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

9. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.53.

§ 173.24b [Amended]

10. In § 173.24b, in paragraph (e)(2) introductory text, in the last sentence, the word ''be'' is removed.

§ 173.32 [Amended]

11. In § 173.32, in paragraph (c)(2), in the first sentence, the wording ''(see § 171.14(d)(4) of this subchapter)'' is removed and ''according to the T codes in effect on September 30, 2001 or the new T codes in § 172.102(c)(7)(i) (see § 171.14(d)(4) for transitional provisions applicable to T codes)'' is added in its place.

§ 173.150 [Amended]

12. In § 173.150, in paragraph (d)(2), the wording ''or less for transportation on passenger-carrying aircraft and'' is removed and ''or less, and for transportation on passenger-carrying aircraft'' is added in its place.

13. In § 173.185, the following changes are made:

a. In paragraph (a), in the last sentence, the wording ''or battery'' is removed and a new sentence is added at the end of the paragraph.

b. Paragraph (e)(3) is revised.

The addition and revision read as follows:

§ 173.185 Lithium batteries and cells.

(a) * * * The lithium-equivalent content of a battery equals the sum of the grams of lithium-equivalent content contained in the component cells of the battery.

* * * * *

(e) * * *

(3) Batteries containing cells or series of cells connected in parallel must be equipped with effective means, (such as diodes, fuses, etc.) as necessary to prevent dangerous reverse current flow.

* * * * *

§ 173.242 [Amended]

14. In § 173.242, in paragraph (c) introductory text, the wording ''Specification IM'' is removed and ''Specification IM 101, IM 102,'' is added in its place.

§ 173.243 [Amended]

15. In § 173.243, in paragraph (c), the wording ''UN portable tanks when'' is removed and ''UN portable tanks and IM 101 and IM 102 portable tanks when'' is added in its place.

PART 174—CARRIAGE BY RAIL

16. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

17. In § 174.81, in paragraph (e)(6), in the second sentence, and in paragraph (g)(3)(vi), the word ''stowed'' is removed and ''loaded and transported'' is added in its place.

PART 176—CARRIAGE BY VESSEL

18. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

19. In § 176.84, in paragraph (c)(2), in the List of Notes, the entry 0127E is removed and a new entry is added in numerical order to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(c) * * *

(2) * * *

Notes	Provisions
*	* * * *
27E	For closed cargo transport units, a non-metallic lining is required.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

20. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.274 [Amended]

21. In § 178.274, the following changes are made:

a. In paragraph (a)(3), in the definition for *Test pressure,* in the first sentence, the wording ''for liquefied compressed gases'' is revised to read ''for liquefied compressed gases and refrigerated liquefied gases''.

b. In paragraph (d)(1)(i), the wording ''through (d)(10)'' is revised to read ''through (d)(7)''.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 180.605 [Amended]

23. In § 180.605, the following changes are made:

a. In paragraph (d), in the third sentence, the wording ''in paragraph (i)'' is revised to read ''in paragraph (h)''.

b. In paragraph (e), the last sentence is revised.

c. In paragraph (h)(3), the wording ''inert gas'' is revised to read ''inert gas to a pressure not less than 1.3 times the design pressure''.

In paragraph (e), the last sentence is revised to read as follows:

§ 180.605 Requirements for periodic testing, inspection and repair of portable tanks.

* * * * *

(e) * * * Portable tanks used for the transportation of refrigerated, liquefied gases are excepted from the requirement for internal inspection and the hydraulic pressure test during the 5-year periodic inspection and test, if the portable tanks were pressure tested to a minimum test pressure of 1.3 times the design pressure using an inert gas as prescribed in § 178.338–16(a) and (b) of this subchapter before putting the portable tank into service initially and after any exceptional inspections and tests specified in paragraph (f) of this section.

* * * * *

Issued in Washington, DC, on March 14, 2002, under authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator.

[FR Doc. 02–6645 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–014]

RIN 2115–AA97

Safety Zone; Jennifer Heyman's Wedding Fireworks Display, Greens Farm, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display located in Long Island Sound off Greens Farm, CT. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Long Island Sound.

DATES: This rule is effective from 8:15 p.m. on June 9, 2002, until 9:30 p.m. on June 9, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–014) and are available for inspection or copying at Coast Guard Group/Marine Safety Office, 120 Woodward Ave., New Haven, CT 06512, between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM2 R. L. Peebles, Marine Events Petty Officer, Coast Guard Group/MSO Long Island Sound (203) 468–4408.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. An NPRM was considered unnecessary because the fireworks display is a local event that will have minimal impact on the waterway. The zone is only in effect for 1 hour and 15 minutes and vessels can be given permission to transit the zone during all but about 30 minutes of this time. Vessels may transit around the zone at all times. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Background and Purpose

The Coast Guard is establishing a temporary safety zone in the waters of Long island Sound off Greens Farm, CT. The safety zone encompasses all waters of Long Island Sound within an 800 foot radius of approximate position 41°06′07″ N, 073°18′57″ W (NAD 1983). The safety zone is intended to protect boaters from the hazards associated with fireworks launched from a barge in the area. This safety zone covers only the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels.

Discussion of Rule

The safety zone is for a fireworks display off Greens Farm, CT that will be conducted to commemorate a wedding. The safety zone will be in effect from 8:15 p.m. to 9:30 p.m. on June 9, 2002. The safety zone encompasses all waters of Long Island Sound within an 800 foot radius of approximate position 41°06′07″ N, 073°18′57″ W (NAD 1983).

Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts. Marine traffic will be able to transit around the safety zone at all times. Vessels will not be precluded from mooring at or getting underway from recreational or commercial piers in the vicinity of the zone. No vessel may enter the safety zone without permission from the Captain of the Port, Long Island Sound.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, the opportunity for vessels to transit around the zone during the event, the ability of vessels to moor at or get underway from commercial or recreational piers in the vicinity of the zone, and the advance notifications that will be made.

The size of this safety zone was determined using National Fire Protection Association and the Captain of the Port Long Island Sound Standing Orders for 8 inch mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Long Island Sound during the times this zone is effective.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: it is a local event with minimal impact on the waterway, vessels may still transit around the zone during the event, the zone is only in effect for 1 hour and 15 minutes and vessels can be given permission to transit the zone except for all but about 30 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Before the effective period, public notifications will be made via Local Notice to Mariners and Marine Information Broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BM2 Ryan Peebles, in the Command Center at Coast Guard Group/Marine Safety Office Long Island Sound, CT, at (203) 468–4408.

Collection of Information

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

Federalism

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

Unfunded Mandates

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From 8:15 p.m. through 9:30 p.m. on June 9, 2002, add temporary § 165.T02–014 to read as follows:

§ 165.T02–014 Safety Zone: Jennifer Heyman's Wedding Fireworks Display, Green Farms, CT.

(a) *Location.* The following area is a safety zone: All waters of Long Island Sound within an 800 foot radius of the fireworks barge in approximate position 41°06′07″ N, 073°18′57″ W (NAD 1983).

(b) *Enforcement times and dates.* This section will be enforced from 8:15 p.m. until 9:30 p.m. on June 9, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port, Long Island Sound.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel are commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: February 12, 2002.

J.J. Coccia,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 02–8080 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–15–P

Rules and Regulations

Federal Register
Vol. 67, No. 64
Wednesday, April 3, 2002

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.

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–4 IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2001–02 Crop Natural (sun-dried) Seedless and Other Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes final volume regulation percentages for 2001–02 crop Natural (sun-dried) Seedless (NS) and Other Seedless (OS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 63 percent free and 37 percent reserve for both NS and OS raisins. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

DATES: Effective April 4, 2002. This rule applies to acquisitions of NS and OS raisins from the 2001–02 crop until the reserve raisins from that crop are disposed of under the marketing order. Comments received by June 3, 2002, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for NS and OS raisins for the 2001–02 crop year, which began August 1, 2001, and ends July 31, 2002. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule establishes final volume regulation percentages for 2001–02 crop NS and OS raisins covered under the order. The volume regulation percentages are 63 percent free and 37 percent reserve for both NS and OS raisins. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. Final percentages were recommended by the Committee on February 14, 2002. One Committee member opposed the NS raisin percentages. He believes that the Committee failed to properly consider certain factors in its deliberations, particularly the impact of additional free tonnage on a weakening market. Another Committee member opposed the OS percentages. That handler claims he has developed a specialty market for

OS raisins and indicated that he cannot meet his market needs under the volume regulation percentages.

Computation of Trade Demands

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 14, 2001, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for each varietal type is equal to a 5-year rolling average, dropping the high and low figures, of free tonnage shipments during the months of August, September, and October. In accordance with these provisions, the Committee computed and announced 2001–02 trade demands for NS and OS raisins at 235,850 tons and 1,692 tons, respectively, as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	NS Raisins	OS Raisins
Prior year's shipments	295,477	5,544
Multiplied by 90 percent	0.90	0.90
Equals adjusted base	265,929	4,990
Minus carryin inventory	116,131	4,273
Plus desirable carryout	86,052	975
Equals computed trade demand	235,850	1,692

Computation of Preliminary Volume Regulation Percentages

As required under § 989.54(b) of the order, the Committee met on September 20, 2001, and announced a preliminary crop estimate for NS raisins of 359,341 tons, which is comparable to the 10-year average of 344,303 tons. NS raisins are the major varietal type of California raisin. Adding the carryin inventory of 116,131 tons, plus 32,193 tons of reserve raisins released to handlers for free use in September 2001 through an export program, plus the 359,341-ton crop estimate resulted in a total available supply of 507,665 tons, which was significantly higher (about 115 percent) than the 235,850-ton trade demand. Thus, the Committee determined that volume regulation for NS raisins was warranted. The Committee announced preliminary free and reserve percentages for Naturals, which released 85 percent of the computed trade demand since the field price (price paid by handlers to producers for their free tonnage raisins) had been established. The preliminary percentages were 56 percent free and 44 percent reserve.

Also at its September 20, 2001, meeting, the Committee announced a preliminary crop estimate for OS raisins at 7,073 tons, which is almost double the 10-year average of 3,786 tons. Combining the carry-in inventory of 4,273 tons with the 7,073-ton crop estimate resulted in a total available supply of 11,346 tons. With the estimated supply significantly higher (over 500 percent) than the 1,692-ton trade demand, the Committee determined that volume regulation for OS raisins was warranted. The Committee announced preliminary percentages for OS raisins, which released 85 percent of the computed trade demand since field price had been established. The preliminary percentages were 20 percent free and 80 percent reserve.

In addition, preliminary percentages were also announced for Dipped Seedless, Oleate and Related Seedless, and Zante Currant raisins. The Committee ultimately determined that volume regulation was only warranted for NS and OS raisins. As in past seasons, the Committee submitted its marketing policy to USDA for review.

Modification to Marketing Policy Regarding OS Raisins

Pursuant to § 989.54(f) of the order, the Committee met on December 11, 2001, and revised its marketing policy regarding OS raisins due to a major change in economic conditions. The 7,073-ton crop estimate was reduced to 5,000 tons, and the 1,692-ton trade demand was increased to 2,800 tons. This resulted in volume regulation percentages at 48 percent free and 52 percent reserve to release 85 percent of the 2,800-ton trade demand.

The Committee took this action in response to concerns raised by OS handlers who were facing difficulties under the preliminary percentages of 20 percent free and 80 percent reserve. Volume regulation has not been implemented for OS raisins since the 1994–95 season. Some handlers who developed markets since that time, in the absence of volume regulation, were having difficulties meeting their customers' needs. The merits of suspending volume regulation were deliberated by the Committee. However, the majority of Committee members supported some level of regulation. The Committee ultimately determined that the OS trade demand should be increased to 2,800 tons which resulted in less restrictive volume regulation percentages.

Computation of Final Volume Regulation Percentages

Pursuant to § 989.54(c), the Committee met on February 14, 2002, and recommended interim percentages for NS and OS raisins to release slightly less than their full trade demands. Specifically, interim percentages were announced for both NS and OS raisins at 62.75 percent free and 37.25 percent reserve. The interim percentages were based on revised crop estimates. The NS crop estimate was increased from 359,341 to 372,499 tons, and the OS crop estimate was decreased from 5,000 to 4,416 tons. Pursuant to § 989.54(d), the Committee also recommended final percentages to release the full trade demands for NS and OS raisins. Final percentages compute to 63 percent free and 37 percent reserve for both varietal types. The Committee's calculations to arrive at final percentages for NS and OS raisins are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES

[Natural condition tons]

	NS Raisins	OS Raisins
Trade demand	235,850	2,800
Divided by crop estimate	372,499	4,416
Equals free percentage	63	63
100 minus free percentage equals reserve percentage	37	37

In addition, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal will be met for NS and OS raisins by the establishment of final percentages, which release 100 percent of the trade demands and the offer of additional reserve raisins for sale to handlers under the ''10 plus 10 offers.''

As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins, which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use, or primary markets. Handlers may sell their 10 plus 10 raisins to any market.

The ''10 plus 10 offers'' for NS raisins were held in November 2001. A total of 59,095 tons was made available to raisin handlers, and 4,000 tons of raisins were purchased. Adding the 4,000 tons of 10 plus 10 raisins to the 235,850-ton trade demand figure, plus 116,131 tons of 2000–01 carryin inventory, plus 32,193 tons of reserve raisins released for free use in September 2001 through an export program, equates to about 388,174 tons of natural condition raisins, or about 363,940 tons of packed raisins, that were actually under the control of handlers for free use to primary markets. This is about 131 percent of the quantity of NS raisins shipped during the 2000–01 crop year (295,477 natural condition tons or 277,030 packed tons).

For OS raisins, a total of 1,108 tons were made available to handlers through 10 plus 10 offers in February 2002, and 407 tons were purchased. Adding the 407 tons of 10 plus 10 raisins to the 2,800-ton trade demand figure, plus 4,273 tons of 2000–01 carryin inventory equates to 7,480 tons of natural condition raisins, or about 6,843 tons of packed raisins, that were actually under the control of handlers for free use, or primary markets. This is about 135 percent of the quantity of OS raisins shipped during the 2000–01 crop year (5,544 tons natural condition tons or 5,072 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, the additional offers of reserve raisins make even more raisins available to primary markets which is consistent with the USDA's Guidelines.

Initial Regulatory Flexibility Analysis

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

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

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

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that can be marketed freely in any outlet by raisin handlers. This volume control mechanism is used to stabilize supplies and prices and strengthen market conditions.

Pursuant to § 989.54(d) of the order, this rule establishes final volume regulation percentages for 2001–02 crop NS and OS raisins. The volume regulation percentages are 63 percent free and 37 percent reserve for both NS and OS raisins. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation is warranted this season for NS raisins because the crop estimate of 372,499 tons combined with the carryin inventory of 116,131 tons, plus 32,193 tons of reserve raisins released for free use in September 2001 through an export program, plus 18,439 tons of reserve raisins released to-date for free use through another export program, results in a total available supply of 539,262 tons, which is about 130 percent higher than the 235,850-ton trade demand. Volume regulation is warranted for OS raisins this season because the crop estimate of 4,416 tons combined with the carryin inventory of 4,273 tons results in a total available supply of 8,689 tons, which is significantly higher than the 2,800-ton trade demand.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help reduce the burden of oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, over 60 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970's, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins

remained fairly steady between the 1992–93 through the 1997–98 seasons, although production varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94, or about 42 percent. According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or 16 percent. Total producer prices for the 1998–99 and 1999–2000 seasons increased significantly due to back-to-back short crops during those years. Producer prices dropped dramatically for the 2000–01 season due primarily to record-size production.

NATURAL SEEDLESS PRODUCER PRICES

Crop Year	Deliveries (natural condition tons)	Producer Prices
2000–01	432,616	[1] $570.82
1999–2000	299,910	1,211.25
1998–99	240,469	[2] 1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	928.27
1993–94	387,007	904.60
1992–93	371,516	901.41

[1] Return to date, reserve pool still open.
[2] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. In recent years, both export and domestic shipments have been decreasing. Domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000. In addition, exports decreased from 114,576 packed tons in 1991–92 to a low of 91,600 packed tons in the 1999–2000 crop year.

In addition, the per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.55 pounds in 2000. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit through out the year.

While the overall demand for raisins has been decreasing (as reflected in decline in commercial shipments), production has been increasing. Deliveries of dried raisins from producers to handlers reached an all-time high of 432,616 tons in the 2000–01 crop year. This large crop was preceded by two short crop years; deliveries were 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Deliveries for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields. Estimated production is more moderate at 372,499 tons in 2001–02. However, with 2000–01 carryin inventory totaling 116,131 tons, total available supply is quite large.

The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, grower prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances grower returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been constructed. The model developed is for the purpose of estimating nominal prices under a number of scenarios using the volume control authority under the Federal marketing order. The price growers receive for the harvest and delivery of their crop is largely determined by the level of production and the volume of carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of reserve and free percentages for primary markets, and a reserve pool. The establishment of reserve percentages impacts the production that is marketed in the primary markets.

The reserve percentage limits what handlers can market as free tonnage. Assuming the 37 percent reserve limits the total free tonnage to 234,674 natural condition tons (.63 x 372,499 tons) and carryin is 116,131 natural condition tons, and purchases from reserve total 74,193 natural condition tons (which includes anticipated reserve raisins released through the export program and other purchases), then the total free supply is estimated at 424,998 natural condition tons. The econometric model estimates prices to be $123 per ton higher than under an unregulated scenario. This price increase is beneficial to all growers regardless of size and enhances growers' total revenues in comparison to no volume control. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Regarding OS raisins, OS raisin production is much smaller than NS raisin production. Volume regulation is warranted this season because the available supply significantly exceeds the trade demand. In assessing the impact of OS regulation, the Committee addressed concerns raised by some handlers who were facing difficulties under the initial preliminary percentages of 20 percent free and 80 percent reserve. Volume regulation has not been implemented for OS raisins since the 1994–95 season. Some handlers who developed markets since that time, in the absence of volume regulation, were having difficulties meeting their customers' needs under the preliminary percentages established. The merits of suspending volume regulation were deliberated by the Committee. However, the majority of Committee members supported some level of regulation. The Committee ultimately determined that the OS trade demand should be increased to 2,800 tons which resulted in less restrictive volume regulation percentages.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, the Committee recommended that only two of the nine raisin varietal types defined under the order be subject to volume regulation this season.

The free and reserve percentages established by this rule release the full trade demands and apply uniformly to all handlers in the industry, regardless of size. For NS raisins, with the exception of the 1998–99 crop year, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to

better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action imposes no additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

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

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

This rule invites comments for a 60-day period on the establishment of final volume regulation percentages for 2001–02 crop NS and OS raisins covered under the order. All comments received within the comment period will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 2001–02 crop year apply to all NS and OS raisins acquired from the beginning of that crop year; (2) handlers are currently marketing their 2001–02 crop NS and OS raisins and this action should be taken promptly to achieve the intended purpose of making the full trade demands available to handlers; (3) handlers are aware of this action, which was recommended at a public meeting, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

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

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

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601–674.

2. Section 989.255 is added to Subpart—Supplementary Regulations to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 989.255 Final free and reserve percentages for the 2001–02 crop year.

The final percentages for standard Natural (sun-dried) Seedless and Other Seedless raisins acquired by handlers during the crop year beginning on August 1, 2001, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Varietal type	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	63	37
Other Seedless	63	37

Dated: March 27, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–8141 Filed 4–1–02; 12:11 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 95–066–2]

Viruses, Serums, and Toxins and Analogous Products; Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Virus-Serum-Toxin Act regulations for autogenous biologics by reducing the number of test summaries that manufacturers must submit to the Animal and Plant Health Inspection Service. In addition, we are amending the requirement concerning the submission of containers selected from each serial of autogenous biologic that exceeds 50 containers. Manufacturers will hold these containers, and submission is not required unless requested by the Animal and Plant Health Inspection Service. These actions will result in savings in time and resources for autogenous biologics manufacturers and the Animal and Plant Health Inspection Service without a significant reduction in regulatory oversight.

EFFECTIVE DATE: May 3, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 113 (referred to below as the regulations) contain standard requirements for the preparation of veterinary biological products. Section 113.113 of the regulations sets forth the requirements for autogenous biologics. Autogenous biologics are prepared from cultures of microorganisms that are isolated from sick or dead animals from a particular flock or herd. The cultures are used to produce an autogenous veterinary

biological product that is administered to other animals of the originating flock or herd to prevent them from being infected by the same disease. Autogenous biologics may also be used in adjacent and nonadjacent herds under certain conditions, if approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Autogenous biologics are intended for use in isolated cases of diseases in animals when licensed products are not available or such products are unable to protect the vaccinated animals (e.g., the strain of microorganism in the licensed product differs from the strain associated with the disease outbreak). Autogenous biologics can also be used to respond to emergency outbreaks of animal diseases when the immediate need for the product is such that it precludes the usual route of vaccine development.

Given the special circumstances pertaining to the preparation and use of autogenous biologics, special testing and serial release reporting requirements have been applied. In § 113.113, paragraph (c)(1)(ii) allows first serials or subserials of an autogenous biologic that are satisfactory after the third day of observation of the purity test cultures and safety test animals to be released for shipment to the customer while the purity and safety tests are continued through the required period. Paragraph (c)(1)(iii) of § 113.113 provides that such serials must be immediately recalled if evidence of contamination occurs in the purity test or if any of the test animals used to demonstrate product safety become sick or die during the observation period. However, because autogenous biological products can be shipped prior to the completion of testing, the products, in most cases, have been used in animals prior to the completion of testing. In addition, § 113.113(c)(1)(iv) requires autogenous biologics manufacturers to submit to APHIS the test summaries of the first serial or subserial within 4 days of the completion of the purity and safety tests. The test summaries must be submitted to APHIS in accordance with § 116.7 of 9 CFR part 116, ''Records and Reports.'' (Section 116.7, in short, provides the requirements for maintenance of detailed records of all tests conducted on each serial and subserial and the preparation and submission of summaries of such tests using APHIS Form 2008 or an acceptable equivalent form prior to release of the serial or subserial.

In 1993, the last year for which full data are available, veterinary biologics manufacturers submitted approximately 11,400 autogenous biologics first serial test summaries to APHIS for processing, and the number of reports has increased in succeeding years. However, we believe that the requirement to submit test summaries from the first serial or subserial of an autogenous biologic within 4 days of completion of purity and safety tests for serials that may have already been used in animals is unnecessary. We believe that these reports can be submitted on a quarterly basis without reducing our regulatory oversight.

On March 8, 2000, we published in the **Federal Register** (65 FR 12151–12153, Docket No. 95–066–1) a proposal to amend the regulations for autogenous biologics. We proposed to reduce the number of test summaries that autogenous biologics manufacturers must submit to APHIS, and to amend the requirement concerning the submission to APHIS of containers selected from each serial of autogenous biologic that exceeds 50 containers. Manufacturers would hold these containers and submit them to APHIS when requested.

We solicited comments concerning our proposal for 60 days ending May 8, 2000. We received four comments by that date. They were from two veterinary biologics manufacturers and two trade associations representing veterinary biologics manufacturers. We carefully considered these before reaching a final decision concerning our proposal. Two comments were received after the close of the comment period. However, the issues they raised were not materially different from those contained in the timely comments.

Of the four comments that were received by the May 8, 2000, close of the comment period, three expressed support for the changes set forth in the proposed rule, but suggested additional changes or requested that we clarify points related to reserve samples. Two commenters observed that first serials or subserials of autogenous biologics are frequently not shipped due to contamination, an unsatisfactory test, or for other reasons. Both suggested wording for § 113.3(b)(8) that would make the requirement to select samples for submitting to APHIS applicable to the ''first serial or subserial of autogenous biologic eligible for shipment.'' We agree with the commenters regarding the need to make it clear that this provision is only applicable to the first serials or subserials of autogenous biologics eligible to be shipped and, therefore, in the final rule each reference to first serial or subserial is changed to ''first serial or subserial of autogenous biologic eligible for shipment.''

With regard to reserve samples, one commenter questioned whether the proposed wording of § 113.3(b)(8) requires 10 containers of autogenous biologic selected for submission upon request by APHIS to be held in reserve until 6 months beyond the expiration date. It appears that our use of the term ''reserve'' in § 113.3(b)(8) in the proposed rule could be interpreted as requiring that 10 containers be held in reserve until 6 months beyond the expiration date. Because it was not our intent to change the requirements of § 113.3(e) for reserve samples, the term ''reserve'' has been deleted in this final rule. The second sentence of § 113.3(b)(8) now reads: ''For first serials or subserials of autogenous biologic eligible for shipment with more than 50 containers, 10 samples from each serial or subserial must be selected and held for submission to the Animal and Plant Health Inspection Service upon request in accordance with paragraph (e)(4) of this section.''

In addition, one of the commenters suggested that § 113.3(b)(8) be modified to provide that samples not selected for testing by APHIS could be restocked by the manufacturer and become eligible for distribution. We believe that the disposition of samples not selected for testing by APHIS is beyond the scope of the proposed rule; thus, we are making no changes in this final rule as a result of that comment.

One commenter was opposed to the provisions set forth in the proposed rule. The commenter stated that the proposed changes would result in a weakening of the regulatory oversight that APHIS is expected to provide concerning the regulation of autogenous biologics. We believe that the changes to the regulations contained in the proposed rule and this final rule will not weaken our regulatory oversight. The regulations that we are amending have required samples to be submitted to APHIS when selected and test summaries to be submitted within 4 days of test completion, whereas under this final rule, manufacturers will be required to hold samples for submission when requested by APHIS and to submit test summaries on a quarterly basis. Confirmatory testing of autogenous samples will remain at current levels, and quarterly test summaries will be monitored to ensure that tests are completed satisfactorily and accurately reported. Therefore, we have made no change to this final rule in response to this comment.

The same commenter stated that the proposed special testing and serial

release reporting requirements pertaining to the preparation and use of autogenous biologics would result in preferential treatment for firms producing autogenous biologics that is unavailable to firms that do not prepare those products. The commenter requested that the special testing and serial release reporting requirements proposed for autogenous biologics be extended to all products and all manufacturers. We agree that the regulations, as amended by this final rule, will provide for different treatment of autogenous biologics under certain special circumstances, but we would like to emphasize that this different treatment only applies to the first serial or subserial of autogenous biologic that is produced from an isolate. Thereafter, the preparation of autogenous biologics is subject to the same treatment as other biologics; each serial or subserial of autogenous biologic other than the first serial or subserial prepared from that same isolate must be prepared in accordance with the applicable general requirements for bacterial or viral products specified in the regulations, and any serial or subserial found unsatisfactory by any prescribed test shall not be released. In addition, the preparation of autogenous biologics is not restricted and that all manufacturers may, at their option, choose to produce autogenous biologics and take advantage of the special testing and serial release reporting requirements applicable to first serials or subserials of autogenous biologics. We have made no change in this final rule in response to that comment.

Some comments regarding the regulation of autogenous biologics were not specific to the provisions in the proposal. These comments stated that the preparation and distribution of such products are not in keeping with the intent for autogenous biologics as cited in the preamble to the proposed rule. These commenters were concerned that autogenous biologics may be more widely distributed than should be allowed; may not be adequately evaluated for extraneous agents; may not be effective under certain circumstances; and may not be evaluated adequately for safety. We have also made no changes in this final rule in response to those comments.

One change that had been proposed was an address correction in § 113.113(a)(2). This change does not appear in this final rule because the address in that section is correct.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends the Virus-Serum-Toxin Act regulations for autogenous biologics by reducing the number of test summaries that manufacturers of autogenous veterinary biologics must submit to APHIS. This rule also amends the requirements concerning the submission of containers selected from each serial of autogenous biologic that exceeds 50 containers to provide that manufacturers will hold these containers and not submit them unless requested by APHIS. These actions will result in savings in time and resources for autogenous biologics manufacturers and APHIS without a significant reduction in regulatory oversight.

The entities expected to be affected by this rule are veterinary biologics establishments that produce autogenous biologics. There are currently approximately 135 veterinary biologics establishments that may fit that category. According to the Small Business Administration's criteria, many of those establishments would be classified as small entities.

This rule provides that 10 samples must be selected for submission when requested by APHIS from each serial or subserial of autogenous biologics, with the exception of first serials or subserials, that exceeds 50 containers, and that test summaries of autogenous biologics must be submitted on a quarterly basis as summary reports by the 21st day of January, April, July, and October, or more often as required by the Administrator. These changes to the regulations are not expected to have any adverse economic effects on firms and may provide a benefit, since the amount of time and resources required to complete reports and/or package samples for submission to APHIS should be reduced.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 7 CFR part 3015, subpart V).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It actually reduces the information collection without a disruption to program services.

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR Part 113 as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. In § 113.3, paragraph (b)(8) is revised to read as follows:

§ 113.3 Sampling of biological products.

* * * * *

(b) * * *

(8) *Autogenous biologics:* With the exception of the first serial or subserial, 10 samples must be selected and submitted to the Animal and Plant Health Inspection Service from each serial or subserial of an autogenous biologic eligible to be shipped that consists of more than 50 containers. For first serials or subserials eligible for shipment consisting of more than 50 containers, 10 samples from each serial or subserial must be selected and held for submission to the Animal and Plant Health Inspection Service upon request in accordance with paragraph (e)(4) of this section. For serials or subserials of autogenous biologic with 50 or fewer containers, no samples, other than those required by paragraph (e) of this section, are required.

* * * * *

3. In § 113.113, the introductory text of paragraph (a)(2) and paragraph (c)(1)(iv) are revised to read as follows:

§ 113.113 Autogenous biologics.

* * * * *

(a) * * *

(2) Under normal circumstances, microorganisms from one herd must not be used to prepare an autogenous biologic for another herd. The Administrator, however, may authorize preparation of an autogenous biologic for use in herds adjacent to the herd of origin, when adjacent herds are considered to be at risk. To request authorization to prepare a product for use in herds adjacent to the herd of origin, the establishment seeking authorization must submit to the Administrator (in c/o the Director, Center for Veterinary Biologics, Inspection and Compliance, 510 South 17th Street, Suite 104, Ames, IA 50010–8197) the following information. (If any of the data are unavailable, the applicant for authorization should indicate that such data are unavailable and why.)

* * * * *

(c) * * *

(1) * * *

(iv) Test summaries must be submitted to the Administrator (in c/o the Director, Center for Veterinary Biologics, Inspection and Compliance, 510 South 17th Street, Suite 104, Ames, IA 50010–8197) on a quarterly basis by the 21st day of January, April, July, and October or more often as required by the Administrator.

* * * * *

Done in Washington, DC, this 28th day of March, 2002.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–8058 Filed 4–2–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–42–AD; Amendment 39–12695; AD 2002–07–01]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 series airplanes. This AD requires you to visually inspect certain horizontal stabilizer attachment reinforcement brackets for the existence of seam welds and replace any reinforcement bracket found without seam welds. This AD authorizes the pilot to check the logbooks to determine whether one of the affected horizontal stabilizer attachment reinforcement brackets is installed. This AD is the result of a report that certain parts were manufactured without seam welds. The actions specified by this AD are intended to detect and replace structurally deficient horizontal stabilizer attachment brackets. Continued use of such brackets could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

DATES: This AD becomes effective on May 13, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 13, 2002.

ADDRESSES: You may get the service information referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–42–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Al Phillips, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4116; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD?

Cessna notified FAA of a defect in the manufacturing of the horizontal stabilizer attachment reinforcement brackets. Cessna manufactured reinforcement brackets without seam welds on certain Cessna Model 206H and T206H airplanes. AD 2001–09–06, Amendment 39–12211 (66 FR 21278, April 30, 2001), addresses these airplanes. The seam welds help provide the required structural integrity for the horizontal stabilizer attachment bracket.

Since the issuance of AD 2001–09–06, Cessna determined that certain Model P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 series airplanes may have had horizontal stabilizer attachment reinforcement brackets (part number 1232624–1) without seam welds installed as replacement parts. Cessna shipped these brackets from February 27, 1998, through March 17, 2000.

What is the potential impact if FAA took no action?

This condition, if not corrected, could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

Has FAA taken any action to this point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna P206, TP206, TU206, U206, 207, T207, 210, P210, and T210 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 17, 2001 (66 FR 64925). The NPRM proposed to require you to visually inspect the right and left horizontal stabilizer attachment reinforcement brackets for the existence of seam welds along the lower inboard and outboard wall/flange. The NPRM also proposed to require you to remove and replace any horizontal stabilizer bracket found without seam welds.

Was the public invited to comment?

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

FAA's Determination

What is FAA's final determination on this issue?

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

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

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

What are the differences between the service information and this AD?

Cessna requires you to inspect and, if necessary, replace the horizontal stabilizer attachment reinforcement brackets, part number 1232624–1, within 20 hours time-in-service (TIS), not to exceed 30 days, of operation. We are requiring that you inspect and, if necessary, replace the horizontal stabilizer attachment reinforcement brackets, part number 1232624–1, within 50 hours TIS of operation after the effective date of this AD.

We do not have justification to require this action within 20 hours TIS. Compliance times such as this are utilized when we have identified an urgent safety of flight situation. We believe that 50 hours TIS will give the owners/operators of the affected airplanes enough time to have the actions accomplished without compromising the safety of the airplanes.

Cost Impact

How many airplanes does this AD impact?

We estimate that this AD affects 144 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 = $120.	Not applicable.	$120.	$120 × 144 = $17,280.

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

Labor cost	Parts cost	Total cost per airplane
24 workhours to replace both brackets × $60 = $1,440 .	$135 for both the right and left bracket	$1,440 + $135 = $1,575.

Regulatory Impact

Does this AD impact various entities?

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

Does this AD involve a significant rule or regulatory action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–07–01 Cessna Aircraft Company: Amendment 39–12695; Docket No. 2001–CE–42–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
P206C and TP206C .	P206–0420 through P206–0519
P206D and TP206D .	P206–0520 through P206–0603
P206E and TP206E .	P20600604 through P20600647, and P206–0001
U206C and TU206C .	U206–0915 through U206–1234
U206D and TU206D .	U206–1235 through U206–1444, U20601445 through U20601587
U206E and TU206E .	U20601588 through 20601700
U206F and TU206F .	U20601701 through U20602588, and U20602590 through U20603521
U206G and TU206G .	676, U20602589, and U20603522 through U20607020
207 and T207	20700001 through 20700362
207A and T207A .	20700363 through 20700788
210G	21058819 through 21058936
210H	21058937 through 21059061
210J	21059062 through 21059199
210K and T210K .	21059200 through 21059502
210L and T210L .	21059503 through 21061041, and 21061043 through 21061573
210M and T210M .	21061042, and 21061574 through 21062954
210N and T210N .	21062955 through 21064897
P210N	P21000001 through P21000834
T210G	T210–0198 through T210–0307
T210H	T210–0308 through T210–0392
T210J	T210–0393 through T210–0454, and 21058140

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and replace structurally deficient horizontal stabilizer attachment brackets. Continued use of such brackets could result in structural failure of the horizontal

stabilizer with reduced or loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Maintenance Records Check:	Within the next 50 hours time-in-service (TIS) after May 13, 2002 (the effective date of this AD), unless already accomplished .	No special procedures required to check the logbook.
(i) Check the maintenance records to determine whether a horizontal stabilizer attachment reinforcement bracket, part number (P/N) 1232624–1, shipped by Cessna from February 27, 1998, through March 17, 2000, is installed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check .		
(ii) If, by checking the maintenance records, the owner/operator can positively show that a horizontal stabilizer attachment reinforcement bracket, P/N 1232624–1, shipped by Cessna from February 27, 1998, through March 17, 2000, is not installed, then the inspection requirement of paragraph (d)(2) and the replacement requirement of paragraph (d)(3) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9) .		
(2) Inspection: Visually inspect the right and left horizontal stabilizer attachment reinforcement brackets, part number (P/N) 1232624–1, for the existence of seam welds along both the lower inboard and outboard wall/flange .	Within the next 50 hours TIS after May 13, 2002 (the effective date of this AD), unless already accomplished .	In accordance with the Accomplishment Instructions in Cessna Service Bulletin SEB00-10, dated November 6, 2000, and the applicable maintenance manual.
(3) Replacement:	Accomplish any necessary replacements prior to further flight after the inspection required by paragraph (d)(2) of this AD, unless already accomplished .	In accordance with the Accomplishment Instructions in Cessna Service Bulletin SEB00–10, dated November 6, 2000, and the applicable maintenance manual.
(i) If no seam weld is found along both the lower inboard and outboard wall/flange on the right and left horizontal stabilizer attachment reinforcement bracket during the inspection required in paragraph (d)(2) of this AD, replace with a new or airworthy P/N 1232624–1 horizontal stabilizer attachment reinforcement bracket. .		
(ii) If the right and left horizontal stabilizer attachment reinforcement bracket has seam welds along both the lower inboard and outboard wall/flange, no further action is required .		
(4) Installation Prohibition: Do not install any P/N 1232624–1 horizontal stabilizer attachment reinforcement bracket (or FAA-approved equivalent part) unless the bracket: .	As of May 13, 2002 (the effective date of this AD) .	Not applicable.

(i) is inspected as required in paragraph (d)(2) of this AD; and

(ii) has seam welds along both the lower inboard and outboard wall/flange.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Al Phillips, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4116; facsimile: (316) 946–4407.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Cessna Service Bulletin SEB00–10, dated November 6, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on May 13, 2002.

Issued in Kansas City, Missouri, on March 22, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7645 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–65–AD; Amendment 39–12696; AD 2002–07–02]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Galaxy Airplanes and Model Gulfstream 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model Galaxy airplanes and Model Gulfstream 200 series airplanes. This action requires repetitive inspections of the main landing gear (MLG) actuators for leakage of hydraulic fluid, a one-time inspection of the MLG actuators for internal abrasions or scratches, and replacement of the MLG actuator with a new or serviceable or new, improved actuator, if necessary. This action also provides an optional terminating action for the repetitive inspections. This action is necessary to prevent failure of an MLG actuator to fully extend and retract, which could prevent proper engagement of the downlock mechanism and result in collapse of the MLG during landing. This action is intended to address the identified unsafe condition.

DATES: Effective April 18, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 18, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 3, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–65–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries, Ltd., Model Galaxy airplanes and Model Gulfstream 200 series airplanes. The CAAI advises of an incident in which the main landing gear (MLG) would not lock in the ''up'' or ''down'' position. Although the airplane landed safely, the MLG remained unlocked. Investigation revealed severe internal abrasion of an MLG actuator, which caused metal chips to accumulate in the MLG actuator, preventing full travel of the actuator piston and proper engagement of the downlock mechanism. The severe abrasion has been attributed to metal-to-metal contact between the MLG actuator and piston. Subsequent to the original report, similar conditions have been found on several other airplanes. This condition, if not corrected, could result in failure of an MLG actuator to fully extend and retract, which could prevent proper engagement of the downlock mechanism and result in collapse of the MLG during landing.

Explanation of Relevant Service Information

Israel Aircraft Industries has issued Galaxy Alert Service Bulletin GALAXY–32A–125, Revision 1, dated February 4, 2002, which describes procedures for repetitive visual inspections of the left and right MLG actuators for leakage of hydraulic fluid, and a one-time detailed inspection of the MLG actuators for internal abrasions or scratches. If leakage of hydraulic fluid or internal abrasions or scratches outside certain limits specified in the service bulletin are found on the MLG actuator, the service bulletin specifies that the existing MLG actuator be replaced with either a new, improved actuator, or a new or serviceable actuator that has been inspected for and is without internal abrasions or scratches. Replacement of existing MLG actuators with new, improved actuators eliminates the need for the repetitive inspections. The CAAI classified this service bulletin as mandatory and issued Israeli emergency airworthiness directive 32–02–01–24, dated February 13, 2002, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type designs registered in the United States, this AD is being issued to prevent failure of the MLG actuator to fully extend and retract, which could prevent proper engagement of the downlock mechanism and result in collapse of the MLG during landing. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below. This AD also provides for an optional replacement of the existing MLG actuators with new, improved actuators, which ends the repetitive inspections.

Interim Action

This is considered to be interim action. The FAA is currently

considering requiring the replacement of the existing MLG actuators with new, improved actuators, which will end the repetitive inspections required by this AD. However, the planned compliance time for the replacement is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Differences Between This AD, the Service Bulletin, and the Foreign AD

This AD differs from the service bulletin and the parallel Israeli emergency airworthiness directive described previously in the following ways:

• The service bulletin and Israeli emergency airworthiness directive specify that the initial inspection for hydraulic leakage must be performed before the next flight. However, this AD specifies that the initial inspection must be done within 3 days after the effective date of this AD. In developing an appropriate compliance time for this AD, the FAA considered not only the CAAI's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the average utilization of the affected fleet. In light of these factors, the FAA finds a 3-day compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

• The service bulletin and Israeli emergency airworthiness directive specify that the inspection for leakage of hydraulic fluid must be done before each flight for 100 flights (flight cycles), at which time the MLG actuators must be replaced with new, improved actuators. This AD provides for such replacement as an option that, if accomplished, ends the required repetitive inspections. As explained previously in the ''Interim Action'' section of this AD, the FAA is currently considering requiring the replacement of existing MLG actuators with new, improved actuators. Since this AD does not require such replacement, this AD requires the repetitive inspections for leakage to continue until the replacement with new, improved MLG actuators is done.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the AD is being requested.

• Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–65–AD.'' The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–07–02 Israel Aircraft Industries, Ltd.: Amendment 39–12696. Docket 2002–NM–65–AD.

Applicability: Model Galaxy airplanes and Model Gulfstream 200 series airplanes, certificated in any category, serial numbers 003 through 057 inclusive.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main landing gear (MLG) actuator to fully extend and retract, which could prevent proper engagement of the downlock mechanism and result in collapse of the MLG during landing, accomplish the following:

Inspections

(a) Do the inspections in paragraphs (a)(1) and (a)(2) of this AD, according to Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–32A–125, Revision 1, dated February 4, 2002.

(1) Within 3 days after the effective date of this AD, do a general visual inspection of the left and right MLG actuators for leakage of hydraulic fluid. Repeat this inspection before each flight, until paragraph (c) of this AD is accomplished.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Within 15 flight cycles after the effective date of this AD, do a one-time detailed inspection of the left and right MLG actuators for internal abrasions or scratches.

Note 3: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Replacement

(b) If leakage of hydraulic fluid or an internal abrasion or scratch outside the limits specified in Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–32A–125, Revision 1, dated February 4, 2002, is found on either MLG actuator during any inspection required by paragraph (a) of this AD: Before further flight, replace the discrepant MLG actuator with a new, improved actuator, or with a new or serviceable actuator that has been inspected for and is without internal abrasions or scratches, according to the service bulletin. Replacement of the existing MLG actuator with a new, improved actuator ends the repetitive inspections of that actuator.

Optional Terminating Action

(c) Replacement of the existing left and right MLG actuators with new, improved actuators having part number 4AS2521010–507 (left side) or –508 (right side), as applicable, according to Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–32A–125, Revision 1, dated February 4, 2002, ends the repetitive inspections required by paragraph (a)(1) of this AD.

Spares

(d) As of the effective date of this AD, no person may install an MLG actuator with part number 4AS2521010–505 (left side) or –506 (right side) on any airplane, unless it has been inspected according to paragraph (a)(2) of this AD and found to be without any internal abrasion or scratch outside the limits specified in Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–32A–125, Revision 1, dated February 4, 2002.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(g) The actions shall be done in accordance with Galaxy (Israel Aircraft Industries) Alert Service Bulletin GALAXY–32A–125, Revision 1, dated February 4, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Israeli emergency airworthiness directive 32–02–01–24, dated February 13, 2002.

Effective Date

(h) This amendment becomes effective on April 18, 2002.

Issued in Renton, Washington, on March 25, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7750 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 01F–0233]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent in water applied to processed fruits and vegetables. This action is in response to a petition filed by Alcide Corp.

DATES: This rule is effective April 3, 2002. Submit written objections and requests for a hearing by May 3, 2002.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3074.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 23, 2001 (66 FR 28525), FDA announced that a food additive petition (FAP 1A4729) had been filed by Alcide Corp., 8561 154th Ave., NE., Redmond, WA 98052. The petition proposed to amend the food additive regulations in § 173.325 *Acidified sodium chlorite solution* (21 CFR 173.325) to provide for the safe use of aqueous solutions of acidified sodium chlorite as an antimicrobial agent in processing waters applied to processed fruits and vegetables.

FDA is using the term ''processed'' consistent with the meaning of that term set forth in FDA's Antimicrobial Food Additives—Guidance (64 FR 40612, July 27, 1999) (the 1999 guidance). The 1999 guidance describes FDA's interpretation of its jurisdiction over antimicrobial substances subsequent to the enactment of the Food Quality Protection Act of 1996 and the Antimicrobial Regulation Technical Corrections Act of 1998. The 1999 guidance is consistent with the Environmental Protection Agency's

(EPA's) and FDA's joint legal and policy interpretation of ''processed food'' (63 FR 54532, October 9, 1998). According to the 1999 guidance, processed fruits and vegetables include those that are ground, chopped, sliced, cut or peeled, and do not include fruits and vegetables that simply have leaves, stems, or husks removed. This food additive use of acidified sodium chlorite is for use in water to which processed fruits and vegetables are added (e.g., to which fruits and vegetables that have been ground, chopped, sliced, cut, or peeled are added) in order to mitigate microbiological organisms on the processed fruits and vegetables.

Also, as discussed in the 1999 guidance, antimicrobial substances used to mitigate microbiological organisms on processed food, by adding such substances to water to which processed food is added, are subject to regulation as food additives. The petitioned use of acidified sodium chlorite as an antimicrobial agent in ''processing waters'' is intended to mitigate microbiological organisms only on the processed fruits and vegetables that are added to the water. Thus, the petitioned use is subject to regulation by FDA as a food additive. To the extent that a manufacturer wants to use acidified sodium chlorite in water to mitigate microbiological organisms in the water itself or to include mitigation of microbiological organisms in the water in addition to those on the processed fruits and vegetables that are added to the water, the manufacturer would need to petition FDA for that food additive use, which is outside the scope of this rule. In addition, the manufacturer would need to consult with EPA to determine whether a pesticide registration would be required for such use.

FDA is requiring, as part of this regulation, that the use of the additive be followed by a potable water rinse and a 24-hour holding period to ensure that there are no detectable residue levels from the use of the additive on the treated processed fruits and vegetables.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulation in § 173.325 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

In the notice of filing, FDA gave interested parties an opportunity to submit comments on the petitioner's environmental assessment. FDA received no comments in response to that notice.

The agency has considered carefully the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be affected adversely by this regulation may file with the Dockets Management Branch (address above) written objections by May 3, 2002. Each objection shall be numbered separately, and each numbered objection shall specify with particularity the provisions of the regulation to which the objection is made and the grounds for the objection. Each numbered objection for which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in the brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.325 is amended by redesignating paragraph (g) as paragraph (h) and by adding a new paragraph (g) to read as follows:

§ 173.325 Acidified sodium chlorite solutions.

* * * * *

(g) The additive is used as an antimicrobial agent in the water applied to processed fruits and processed root, tuber, bulb, legume, fruiting (i.e., eggplant, groundcherry, pepino, pepper, tomatillo, and tomato), and cucurbit vegetables in accordance with current industry standards of good manufacturing practices, as a component of a spray or dip solution, provided that such application be followed by a potable water rinse and a 24-hour holding period prior to consumption. However, for processed leafy vegetables (i.e., vegetables other than root, tuber, bulb, legume, fruiting, and cucurbit vegetables) and vegetables in the Brassica [Cole] family, application must be by dip treatment only, and must be preceded by a potable water rinse and followed by a potable water rinse and a 24-hour holding period prior to consumption. When used in a spray or dip solution, the additive is used at levels that result in sodium chlorite concentrations between 500 and 1,200 ppm, in combination with any GRAS acid at a level sufficient to achieve a solution pH of 2.3 to 2.9.

* * * * *

Dated: February 28, 2002.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–7969 Filed 4–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA62

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE; Partial Implementation of Pharmacy Benefits Program; Implementation of National Defense Authorization Act for Fiscal Year 2001

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements several sections of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The rule allows coverage of physical examinations for beneficiaries ages 5 through 11 that are required in connection with school enrollment; provides an additional two-year period for survivors of deceased active-duty members to remain eligible for TRICARE medical and dental benefits at active-duty dependent rates; extends eligibility for medical and dental benefits to Medal of Honor recipients and their immediate dependents in the same manner as if the recipient were entitled to retired pay; partially implements the Pharmacy Benefits Program establishing revised co-pays and cost-shares for the prescription drug benefit; implements the TRICARE Senior Pharmacy Program by establishing a new eligibility for prescription drug benefits for Medicare-eligible retirees; allows a waiver of copayments, cost-shares, and deductibles for all Uniformed Services TRICARE eligible active duty family members residing with their TRICARE Prime Remote eligible Active Duty Service Member Sponsor within a TRICARE Prime Remote designated area until implementation of the TRICARE Prime Remote for Family Member Program or October 30, 2001, whichever is later; provides for the elimination of TRICARE Prime copayments for active duty family members enrolled in TRICARE Prime; provides for the reimbursement of reasonable travel expenses for TRICARE Prime beneficiaries referred by a primary care provider to a specialty care provider who provides services over 100 miles away; and reduces the maximum amount which retirees, their family members and survivors would be liable from $7,500 to $3,000.

EFFECTIVE DATE: April 1, 2001.

ADDRESSES: Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Tariq Shahid, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, Office of the Assistant Secretary of Defense (Health Affairs), telephone (303) 676–3801. Questions regarding payment of specific CHAMPUS claims should be addressed to the appropriate TRICARE/CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

On October 30, 2000, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) was signed into law. On February 9, 2001 (66 FR 9651), DoD published an interim final rule to partially implement the Pharmacy Benefits Program and implement several sections of this Act. On February 15, 2001 (66 FR 10367), March 26, 2001 (66 FR 16400), and March 19, 2002 (67 FR 12472), DoD published administrative corrections to the interim final rule. This final rule is being published as a follow-up to the interim final rule incorporating all three of the administrative corrections. It also makes administrative corrections in Section 199.4(g)(68) and Section 199.22.

The final rule implements provisions of the Act that were effective upon the date of enactment or a date within 180 days thereafter. Specifically, this rule implements the following sections of the Act:

Section 703, school required physicals, which was effective on the date of enactment.

Section 704, two-year extension of benefits for survivors, which was effective on the date of enactment.

Section 706, benefits for Medal of Honor recipients, which was effective on the date of enactment.

Section 711, TRICARE Senior Pharmacy Program, which was effective April 1, 2001.

Section 722, that portion of TRICARE Prime Remote for Family Members that was effective on the date of enactment.

Section 752, elimination of copayments for Active Duty Dependents in TRICARE Prime, which the statute requires be implemented within 180 days.

Section 758, reimbursement of certain travel expenses for TRICARE Prime beneficiaries, which was effective on the date of enactment; and

Section 759, reduction of retiree catastrophic cap, which was effective on the date of enactment.

In addition, because of the effect on the overall pharmacy program of the new TRICARE Senior Pharmacy Program and the change in TRICARE Prime active duty dependent copayments, this rule also partially implements the Pharmacy Benefits Program, as authorized by Section 1074g of title 10, United States Code, as a significant step toward expected implementation in 2002 of the comprehensive Pharmacy Benefits Program.

II. School Required Physicals

This rule implements Section 703 of the National Defense Authorization Act for Fiscal Year 2001 which extends coverage of physical examinations to CHAMPUS eligible beneficiaries ages 5 through 11 that are required in connection with school enrollment. The scope of the legislative provision encompasses all programs and beneficiary categories. These newly covered school physicals will be recognized as preventive services, and as such, subject to the same cost-sharing/copayment and referral/authorization requirements as prescribed under TRICARE Prime and Standard/Extra clinical preventive benefits. TRICARE Prime enrollees will not be required to pay copayments or seek referral/authorization from their primary care managers (PCMs) unless they go to a non-network provider. While Standard and Extra beneficiaries will not require referral and/or authorization, they will have to pay the applicable cost-sharing and deductibles for preventive services as prescribed under their respective plans.

School physicals for TRICARE Prime enrollees ages 5 through 11 will be covered under the enhanced benefit provision of the CHAMPUS administering regulation (32 CFR 199.18(b)(3)), which allows benefit enhancements and waiver or relaxation of benefit restrictions under the Uniform HMO Benefit at the discretion of the Assistant Secretary of Defense (Health Affairs). However, since coverage also extends to both Standard and Extra beneficiaries, an exception is being added to the preventive care general exclusion (32 CFR 199.4(g)(37)) that will allow school physicals for these beneficiary categories (i.e., active duty family members, retirees and their family members that are seeking care under Standard or Extra plans).

III. Two-Year Extension of Benefits for Survivors

This rule implements Section 704 of the National Defense Authorization Act for Fiscal Year 2001 which amended

chapter 55 of title 10, United States Code, by providing a two-year extension to the one-year period for survivors of deceased active-duty members to remain eligible for TRICARE medical and dental benefits at active-duty dependent rate. Before the Authorization Act, survivors of members who die while on active duty were allowed to continue participation in TRICARE Prime, Extra, or Standard as active-duty dependent family members for a period of one year following the date of death of the deceased member. At the end of the one-year period, these family members continued eligibility for care under TRICARE, but faced higher out-of-pocket costs as non-active-duty dependents. With respect to the TRICARE dental insurance benefits, family members enrolled in the TRICARE Dental Program (TDP) at the time of the member's death, continued to receive benefits for one year from the member's date of death, with the Government paying 100 percent of the TDP premiums.

IV. Benefits for Medal of Honor Recipients

This rule implements Section 706 of the National Defense Authorization Act for Fiscal Year 2001 which amended chapter 55 of title 10, United States Code, by adding a new Section 1074h. Section 1074h expands eligibility to Medal of Honor recipients who are not otherwise entitled to medical and dental care including their immediate dependents. The term *immediate dependent* means a dependent described in title 10, United States Code, chapter 55, section 1072, (2)(A), (B), (C), or (D). They are entitled to the same medical and dental benefit that is provided to former members who are entitled to military retired pay and the dependents of those former members. To receive TRICARE/CHAMPUS benefits, they must register in the Defense Enrollment Eligibility Reporting System (DEERS). Eligible beneficiaries are required to obtain an identification card. The Medal of Honor recipients should visit the Uniformed Service identification card issuing facility nearest to them. The address for the closest location may currently be obtained by calling 1–800–538–9552. The recipient should bring a photo identification card and the departmental order or citation for the Medal of Honor. To register family members in DEERS, the following additional documentation is required: marriage license, birth certificates, and death certification or DD Form 1300, Report of Casualty if the Medal of Honor recipient is deceased.

V. Partial Implementation of Pharmacy Benefits Program

The Secretary of Defense is required under title 10, United States Code, Section 1074g, to establish an effective, efficient, and integrated Pharmacy Benefits Program. The Secretary may establish cost-sharing/copayment requirements under the Pharmacy Benefits Program as a percentage and/or fixed dollar amount for generic, formulary (non-generic), and non-formulary pharmaceutical agents. Designation of pharmaceutical agents as non-formulary will be based upon an evaluation of the agent's clinical and cost-effectiveness in comparison to other agents in the therapeutic class by the DoD Pharmacy and Therapeutics Committee and the comments on that evaluation by the Uniform Formulary Beneficiary Advisory Committee. The Department is unable to implement the portion of the Pharmacy Benefits Program that allows classification of a drug as non-formulary as outlined in section 1074g until Proposed and Final Rules fully implementing the Pharmacy Benefits Program have been published and required Committees become operational. Existing Department policies on non-formulary pharmaceutical agents remain in effect at this time. However, partial implementation of the Pharmacy Benefits Program, including reform of cost-sharing/copayment requirements under Section 1074g should proceed in connection with the April 1, 2001, start date of the TRICARE Senior Pharmacy Program and overall reform of TRICARE Prime active duty dependent copayments.

The prescription drug and medicine benefit under CHAMPUS includes the Food and Drug Administration approved drugs and medicines that by United States law require a physician's or other authorized individual professional provider's prescription (acting within the scope of their license) that has been ordered or prescribed by them. The benefit does not include prescription drugs for medical conditions that are expressly excluded from the TRICARE benefit by statute or regulation. Pharmaceutical agents are subject to preauthorization or utilization review requirements to assure medical necessity. Until full implementation of the Pharmacy Benefits Program under which all authorized drugs will be classified as generic, formulary, or non-formulary, during this period of partial implementation, drugs and medicines shall be designated as either generic drugs and medicines, which are those that have the identical chemical composition of a name brand drug or medicine, or non-generic (or brand name) drugs.

Before the effective date of this rule, cost-sharing/copayment requirements were based upon beneficiary status, enrollment or non-enrollment in TRICARE Prime, and the location where the drug or medicine was purchased, i.e., the point of sale, such as a military treatment facility, network or non-network pharmacy, or the National Mail Order Pharmacy (NMOP). This led to a complex set of cost sharing requirements, difficult for beneficiaries to understand, lacking in clear incentives for appropriate use, and inconsistent with evolving industry practice. DoD is implementing new cost sharing requirements in this regulation, consistent with the Congressional direction to modernize the pharmacy program. Cost-sharing/copayment requirements will no longer be based upon beneficiary status, except for active duty members who never pay cost-shares/copays. Cost-sharing/copayment requirements of prescription drugs and medicines based upon their status as generic or non-generic are being implemented through this rule. Cost-sharing/copayment requirements will no longer be based upon a beneficiary's enrollment or non-enrollment in TRICARE Prime (except point of service charges will still apply for beneficiaries enrolled in TRICARE Prime), but will be based upon the drug or medicine's status as generic or non-generic and its point of sale.

The new cost-sharing/copayment structure is based on commercial industry practices in pharmacy benefit design and benefit management. Cost-sharing/copayment amounts were selected to assure that all beneficiaries could obtain a reduction in their current cost-sharing/copayment through use of generic products, and that brand-name cost-sharing/copayment was substantially higher than generic without unduly penalizing beneficiaries in relation to their current cost-sharing/copayment levels.

Active duty members do not pay a cost-share/copayment. Cost-sharing/copayment requirements for pharmaceutical agents for all other beneficiaries will be based upon the generic/non-generic status and the point of sale (i.e., network pharmacy, non-network pharmacy, NMOP) from which the agent was acquired. There is a $9.00 copay per prescription required under the retail pharmacy network program for up to a 30-day supply of a non-generic drug or medicine, and a $3.00 copay for up to a 30-day supply of a generic drug or medicine. There is a $9.00 copay per

prescription required under the NMOP program for up to a 90-day supply of a non-generic drug or medicine, and a $3.00 copay for up to a 90-day supply of a generic drug or medicine. There is a 20 percent or $9.00 (whichever is greater) copay per prescription required for all drugs obtained under the retail pharmacy non-network program for up to a 30-day supply. The TRICARE Standard annual deductible of $150 individual/$300 family (or $50 individual/$100 family for lower grade enlisted families) applies only to services obtained from non-network pharmacies. The TRICARE annual catastrophic cap of $1,000 for active duty families and $3,000 for retiree families (as reduced by the Fiscal Year 2001 National Defense Authorization Act) also applies. TRICARE Prime enrollees generally face higher ''point-of-service'' cost-sharing when they obtain non-network services, as described in § 199.17(n). With regard to pharmacy services, TRICARE Prime beneficiaries who use non-network pharmacies will face point-of-service cost-sharing rather than the 20 percent cost-sharing which applies to TRICARE Standard beneficiaries. This point-of-service cost-sharing includes a deductible of $300 individual or $600 family, and a 50 percent cost-share. No deductibles apply to prescription drugs acquired from network retail pharmacies and NMOP.

The revised co-pay amounts simplify the cost-share structure and are consistent with the best business practices used in the private sector. The co-pay amounts were selected because they provide an equitable adjustment across the current co-pay matrix, will encourage the use of cost effective sources of pharmaceuticals for both the beneficiaries and the government, and will encourage the use of generic products where clinically appropriate. For most beneficiaries and in most circumstances, cost-sharing/copayments will be reduced under the new cost-sharing/copayment structure; in all cases beneficiaries will have lower costs if they use generic products. The pricing structure reflects a reduction for active duty family members using the NMOP. In some cases, beneficiaries will pay more than at present if they obtain brand-name products: active duty family members will pay $4 to $5 more for brand-name products, and retirees and their family members will pay $1.00 more for mail order brand-name products.

VI. TRICARE Senior Pharmacy Program

This rule implements Section 711 of the National Defense Authorization Act for Fiscal Year 2001, which establishes the TRICARE Senior Pharmacy Program for DoD beneficiaries who are 65 years of age and older, effective April 1, 2001. Under the TRICARE Senior Pharmacy Program, the Act requires the same coverage for pharmacy services and the same requirements for cost-sharing and reimbursement as are applicable under Section 1086 of title 10, United States Code.

As specified further in the regulation, to be eligible for the TRICARE Senior Pharmacy Program, a person is required to be a retiree, dependent, or survivor who is Medicare eligible, 65 years of age or older, and enrolled in Medicare Part B (except for a person who attained age 65 prior to April 1, 2001).

To receive benefits under the TRICARE Senior Pharmacy Program, beneficiaries must be registered in DEERS. Currently, the TRICARE Senior Pharmacy Program beneficiaries are not eligible to enroll in TRICARE Prime.

The benefit under the TRICARE Senior Pharmacy Program includes the Basic Program pharmacy benefit as found under 32 CFR 199.4(d)(vi). The senior beneficiaries are entitled to the same pharmacy benefit that was found at 32 CFR 199.17(k), but it is no longer limited to the Base Realignment and Closure (BRAC) sites and access to non-network retail drugstores is included. These beneficiaries will have access to retail network pharmacies, non-network pharmacies, and the National Mail Order Pharmacy (NMOP) program with the associated revised copays and cost-shares as described under Partial Implementation of Pharmacy Benefits Program, above. For prescription drugs acquired from non-network retail pharmacies, the Senior Pharmacy Program beneficiaries are subject to TRICARE Standard annual deductible of $150 individual/$300 family. The catastrophic cap of $3000.00 per federal fiscal year, as reduced by the Fiscal Year 2001 National Defense Authorization Act, will apply to beneficiaries who are eligible under the TRICARE Senior Pharmacy Program.

The double coverage rules in 32 CFR 199.8 are applicable to services provided to all beneficiaries under the retail pharmacy network, retail pharmacy non-network, or NMOP programs. For this purpose, to the extent they provide a prescription drug benefit, Medicare supplemental insurance plans or Medicare HMO plans are double coverage plans and will be the primary payor.

The TRICARE Senior Pharmacy Program replaces the BRAC pharmacy benefit and the Pharmacy Redesign Pilot Program in accordance with Section 711 of the Act.

VII. TRICARE Prime Remote for Family Members

This rule implements Section 722(b)(2) of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) which modified Section 731(b) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). This rule provides a waiver of charges for TRICARE eligible family members residing with their active duty uniformed services TRICARE Prime Remote (TPR) eligible sponsor.

Full implementation of the TPR program for active duty family members will be subject of a proposed rule to be published soon. The TPR program will supplant the waiver of charges described in this rulemaking, effective October 30, 2001 or later. In order to obtain coverage under the follow-on TPR program, it will be proposed that eligible beneficiaries will be required to enroll in TPR and be subject to many of the rules of TRICARE Prime. Full details will be provided in the proposed rule to be published soon.

Some Active Duty Service Members (ADSM) are assigned Permanent Change of Station Orders to locations where Military Treatment Facilities are unavailable. TPR was established by Section 731(b) of the National Defense Authorization Act for Fiscal Year 1998 to provide a TRICARE Prime-like benefit. As defined by 10 U.S.C. 1074(c)(3) the benefit is for ADSM assigned to remote locations, who pursuant to that assignment, work and reside at a location that is more than 50 miles, or approximately one hour of driving time to the nearest military medical treatment facility. ADSM who are TPR eligible are required to enroll in TPR. Starting October 30, 2000, TRICARE eligible Active Duty Family Members residing with TPR eligible ADSM sponsors within a TPR designated area, have copayments, cost-shares, and deductibles waived for CHAMPUS covered benefits, except for pharmacy benefits, until the implementation of TRICARE Prime Remote for Family Members or October 30, 2001 whichever is later. Non-covered CHAMPUS benefits are not waived and shall be processed according to current requirements. The claims processor will pay the waived portion of the claim to the eligible

family member or the provider, as appropriate. If the claims processor is able to determine the eligible family member has already paid the waived portion of the claim, the processor shall reimburse the family member. Retrospective payments of waived charges for dates of service on or after October 30, 2000 are authorized.

Eligible family members will be able to access authorized providers without preauthorization for services covered by TRICARE. However, when accessing care, eligible family members are required to use network providers where and when available within the TRICARE access standards to obtain the waiver of charges. If a network provider cannot be identified within the access standards established under TRICARE, the eligible family member shall use an authorized provider to be eligible for the waiver. Existing specialty care preauthorization requirements remain in affect for eligible family members enrolled in TRICARE Prime. To the greatest extent possible, contractors will assist eligible family members in finding a TRICARE network, participating, or authorized provider.

VIII. Elimination of TRICARE Prime Copayments for Dependents of Active Duty Members

Section 752 of the National Defense Authorization Act for Fiscal Year 2001 provides that no copayment shall be charged for care provided under TRICARE Prime to a dependent of a member of the uniformed services. Copayments for prescriptions and point-of-service (POS) charges are not covered by this provision and will continue to be applied. Copayments for prescriptions will be in accordance with those authorized by 10 U.S.C. 1074g, partially implemented by this rule. This is consistent with the Conference Committee Report statement that ''it is not the intent of the conferees to eliminate copayments for pharmaceutical benefits under the mail order pharmacy program or such similar cost shares.'' (H. Conf. Rept. No 106–945, p. 819–20.) Point-of-service (POS) charges are not covered by Section 752 because they are not for care provided under TRICARE Prime, but rather for care provided outside the TRICARE Prime network structure under the POS option. The POS option allows enrollees to self-refer for non-emergency health care services to any TRICARE authorized civilian provider. The elimination of copayments applies to all CHAMPUS-covered services received by a TRICARE Prime active duty family member on or after April 1, 2001.

IX. Reimbursement of Reasonable Travel Expenses for Distant Referrals of TRICARE Prime Beneficiaries

Section 758 of the National Defense Authorization Act for Fiscal Year 2001 provides reimbursement of reasonable travel expenses for TRICARE Prime beneficiaries referred by their primary care manager to a specialty care provider who provides services more than 100 miles from the primary care manager's office.

X. Reduction of Retiree Catastrophic Cap

Section 759 of the National Defense Authorization Act for Fiscal Year 2001 modified chapter 55 of title 10, United States Code, by amending Section 1086(b)(4) and reducing the catastrophic cap on payments from $7,500 to $3,000 for retirees, their family members and survivors.

XI. Public Comments

We published the interim final rule on February 9, 2001, and provided a 60-day comment period. We received public comments from one commenter who indicated that she was writing on behalf of over 150 recruiting families remotely located in Wisconsin and the upper peninsula of Michigan. This commenter made two recommendations.

The first recommendation pertains to the coverage for school required physicals. While she applauded the addition of coverage for school required physicals for CHAMPUS eligible beneficiaries ages 5 through 11, the commenter raised concerns that the scope of such coverage with regard to age is too limited. The commenter stated that a physical examination in reality is a necessity and recommended to extend coverage for yearly physical examinations to all CHAMPUS eligible dependent children. The recommendation cannot be accommodated since the legislative language was specific regarding the requirements for coverage under the program. Section 703 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398) restricts coverage of school physicals to beneficiaries ages 5 through 11 required in connection with school requirement. Legislative action would be required in order to extend physical examinations to all eligible dependent children.

The second recommendation pertains to the higher cost-shares for TRICARE Prime enrollees under the point-of-service option when they use non-network pharmacies. The point-of-service cost sharing includes a deductible of $300 individual or $600 family, and a 50 percent cost-share. The commenter stated that TRICARE Prime enrollees, located in areas where Military Treatment Faciities are unavailable (remote locations), face an unjust hardship financially with this rule and quite often in remote locations they do not have a choice of pharmacies for filling their prescriptions. She gave an example of a situation where a medication was not available through network pharmacies or the mail order pharmacy but was available through a non-network pharmacy and raised her concerns regarding the higher point-of-service cost sharing in this case when according to her the use of non-network pharmacy was the only choice. With reference to section 199.21(f)(4), regarding application of point-of-service cost-share of 50 percent for Prime enrollees who use non-network pharmacies without proper authorization, she requested clarification of the wording ''without proper authorization.'' The commenter recommended that TRICARE Prime enrollees should face, at most, the same cost-share and deductibles faced by TRICARE Standard beneficiaries when using non-network pharmacies. The Standard beneficiaries pay 20 percent or $9.00 copay, whichever is greater, per prescription from non-network retail pharmacies for a 30-day supply of a drug. We non-concur with the commenter's recommendation. The point-of-service cost sharing for TRICARE Prime enrollees is the same as existing policy and is simply restated in the rule for completeness. The advantages of establishing retail networks is to keep prices down for both the beneficiary and the government. Non-network pharmacies can charge the government and the beneficiary higher prices. Network pharmacies are under contract to provide services at negotiated prices. As with all national health plans, enrollees who do not take advantage of established networks will pay an additional portion of the cost-share that could have been avoided had they used the networks established by their plan sponsor. Regarding the example on availability of drugs, the availability of prescription drugs generally is the same for networks as non-network pharmacies. Normally, if a covered drug is available at a non-network pharmacy, it should also be available at a network pharmacy. If a TRICARE Prime enrollee is encountering availability problems of a specific medication, then the Managed Care Support (MCS) contractor for that TRICARE region should be contacted for

assistance. The term ''proper authorization'' applies to authorization that must be given by the MCS contractor when the enrollee requires the use of non-network source of care. The primary focus of this clause is for extenuating circumstances and situations involving out of region care. With these authorizations, enrollees are not subject to the point-of-service cost sharing. Situations for remote locations are also being addressed in a separate rule on TRICARE Prime Remote for Family Members.

All comments within DoD and from other interested federal agencies have been reviewed and considered.

XII. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule is a significant regulatory action under Executive Order 12866, as it would add over $200 million for DoD in annual healthcare benefit costs. This cost estimate is based on historical TRICARE costs and an assessment of potential users times average benefit costs per person for each of the provisions addressed. Benefits of the rule include an increased level of health care, particularly pharmacy coverage for Medicare-eligible beneficiaries of the Department of Defense military health system. It has been determined to be major under the Congressional Review Act. However, this rule does not require a regulatory flexibility analysis as it would have no significant economic impact on a substantial number of small entities. This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

The interim final rule published on February 9, 2001 (66 FR 9651), and corrected on February 15, 2001 (66 FR 10367), March 26, 2001 (66 FR 16400), and March 19, 2002 (67 FR 12472) is adopted as final with the following changes:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.3 is amended by revising paragraphs (b)(2)(i)(D), (b)(4)(iii), (f)(3)(vi) and the text of paragraph (f)(3)(vii) preceding the note to read as follows:

§ 199.3 Eligibility.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) Must not be eligible for Part A of Title XVIII of the Social Security Act (Medicare) except as provided in paragraphs (b)(3), (f)(3)(vii), (f)(3)(viii) and (f)(3)(ix) of this section; and

* * * * *

(4) * * *

(iii) *Effective date.* The CHAMPUS eligibility established by paragraphs (b)(4)(i) and (ii) of this section is applicable to health care services provided on or after October 30, 2000.

* * * * *

(f) * * *

(3) * * *

(vi) Attainment of entitlement to hospital insurance benefits (Part A) under Medicare except as provided in paragraphs (b)(3), (f)(3)(vii), (f)(3)(viii) and (f)(3)(ix) of this section. (This also applies to individuals living outside the United States where Medicare benefits are not available.)

(vii) Attainment of age 65, except for dependents of active duty members, beneficiaries not eligible for Part A of Medicare, beneficiaries entitled to Part A of Medicare who have enrolled in Part B of Medicare; and as provided in paragraph (b)(3) of this section. For those who do not retain CHAMPUS, CHAMPUS eligibility is lost at 12:01 a.m. on the first day of the month in which the beneficiary becomes entitled to Medicare.

* * * * *

3. Section 199.4 is amended by revising paragraph (g)(68) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) * * *

(68) *Travel.* All travel even though prescribed by a physician and even if its purpose is to obtain medical care, except as specified in paragraph (a)(6) of this section in connection with a CHAMPUS-required physical examination and as specified in § 199.17(n)(2)(vi).

* * * * *

4. Section 199.22 is amended by revising paragraph (d)(1)(i) and adding a Note after paragraph (d)(1)(v) to read as follows:

§ 199.22 TRICARE Retiree Dental Program (TRDP).

* * * * *

(d) * * *

(1) * * *

(i) Members of the Uniformed Services who are entitled to retired pay, or former members of the armed forces who are Medal of Honor recipients and who are not otherwise entitled to dental benefits;

* * * * *

(v) * * *

Note to paragraphs (d)(1)(iii), (d)(1)(iv), and (d)(1)(v): Eligible dependents of Medal of Honor recipients are described in § 199.3(b)(2)(i) (except for former spouses) and § 199.3(b)(2)(ii) (except for a child placed in legal custody of a Medal of Honor recipient under § 199.3(b)(2)(ii)(H)(*4*)).

* * * * *

Dated: March 20, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7862 Filed 4–2–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 659

[FTA–A–2002–11440]

RIN 2132–AA69

Rail Fixed Guideway Systems; State Safety Oversight

AGENCY: Federal Transit Administration, DOT.

ACTION: Direct final rule.

SUMMARY: The Federal Transit Administration (FTA) is revising the definition of ''accident'' as used in the State Safety Oversight regulation to achieve consistency with the reporting requirements of the revised Safety and Security Module of the National Transit Database (NTD), updated February 2002. The term and definition of ''accident'' is removed and replaced with the term and definition ''major incident.''

DATES: This rule is effective July 2, 2002 unless a written adverse comment, or written notice of intent to submit an adverse comment, reaches the Docket Management Facility on or before June 3, 2002. If an adverse comment, or notice of intent to submit an adverse comment, is received, FTA will

withdraw this direct final rule and publish a notice of withdrawal in the **Federal Register**.

ADDRESSES: You may mail your comments to the United States Department of Transportation, Docket Management Facility, PL–401, 400 Seventh Street SW., Washington, DC 20590. Written comments must refer to the above docket number. All comments received will be available for inspection at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Those desiring the agency to acknowledge receipt of their comments should include a self-addressed stamped postcard with their comments. You may also access this docket on the Internet at *http://dms.dot.gov.* The fax number is (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: For questions regarding this rule, contact Jerry Fisher or Roy Field, Office of Safety and Security, FTA, telephone 202–366–2233, fax 202–366–7951. For questions on viewing or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

FTA encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [FTA 2002–11440] and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES** above. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**, but please submit your comments and materials by only one means. FTA will consider all comments and material received during the comment period.

Regulatory Information

The FTA is publishing a direct final rule because it anticipates no adverse comment. If no adverse comment or written notice of intent to submit an adverse comment is received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, FTA will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if FTA receives a written adverse comment or written notice of intent to submit an adverse comment, it will publish a document in the **Federal Register** announcing withdrawal of all or part of this rule. If FTA decides to proceed with a rulemaking following receipt of an adverse comment, FTA will publish a separate Notice of Proposed Rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered ''adverse'' if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change.

Background and Purpose

This rulemaking will remove the term ''accident'' under this section and add in its place the definition and term ''major incident.'' This action is taken because FTA's review of the NTD, as mandated by the Department of Transportation's FY 2000 Appropriations Act, resulted in revisions of the Safety and Security Module of the NTD ''Reporting Manual for 2002.'' Consequently, the definition of ''accident'' in Part 659.5 has been removed and replaced with the definition and term ''major incident'' in this part. The amended reporting criteria include an expanded field of causal events and reporting thresholds. ''Major Incidents'' include both safety and security occurrences that involve fatalities, multiple injuries, property damage and evacuations resulting from both accidents and crimes.

FTA solicited input from NTD stakeholders, which include rail transit agencies reporting to State Oversight Agencies as required by the State Safety Oversight regulations. It was apparent that two accident/incident reporting definitions would cause confusion, generate inconsistent data, and create an additional burden for rail transit reporters.

Although this rule consists of a change in definition and conforms this section with the NTD reporting requirement, it is emphasized that the reporting requirement of § 659.39, which permits the State Oversight Agency to specify the period of time in which an affected agency must report accidents/major incidents, has not been changed.

Regulatory Evaluation

This direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Since the rule is not significant under this Order, it has not been reviewed by the Office of Management and Budget. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Federal Transit Administration (FTA) expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This direct final rule would remove the phrase and definition of ''accident'' in 49 CFR part 659 and add in its place the phrase and definition of ''major incident'' in order to be consistent with the revised reporting requirements of the NTD. Consequently, this rule would not impose any mandatory cost on the agencies it involves. Any incremental costs are negligible, and the policy and economic impact will have no significant effect.

Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FTA considers whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include 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.

FTA expects that this rule would have a minimal economic impact on small entities. It will provide greater clarity and ease of implementation for small entities by conforming FTA's regulatory definition to that of the NTD.

Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act of 1995 (PWRA) (44 U.S.C. 3501, *et. seq.*) The Office of Management and Budget approved FTA's PWRA request for part 659 under OMB 2132–0558. This rule includes the same information collection previously approved by OMB.

Executive Order 13132

FTA has analyzed this rule under the principles and criteria contained in Executive Order 13132, and has determined that this rule does not have sufficient implications for Federalism to

warrant the preparation of a Federalism Assessment. This rulemaking only removes the definition and term accident in part 659 and replaces it with the definition and phrase ''major incident;'' therefore a Federal assessment is unnecessary.

Other Executive Orders

There are a number of other Executive Orders that can affect rulemakings. These include Executive Orders 13084 (Consultation and Coordination with Indian Tribal Governments), 12988 (Civil Justice Reform), 12875 (Enhancing the Intergovernmental Partnership), 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights), 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), 13045 (Protection of Children from Environmental Health Risks and Safety Risks), and 12889 (Implementation of North American Free Trade Agreement). We have considered these Executive Orders in the context of this rule, and we believe that the rule does not directly affect the matters covered by the Executive Orders.

List of Subjects in 49 CFR Part 659

Railroads.

For the reasons discussed in the preamble, FTA amends 49 CFR Part 659 as follows:

PART 659—RAIL FIXED GUIDEWAY SYSTEMS: STATE SAFETY OVERSIGHT

1. The authority citation for Part 659 continues to read as follows:

Authority: 49 U.S.C. 5330.

2. Amend § 659.5 by removing the definition for ''Accident'' and adding in alphabetical order a new definition for ''Major Incident'' and revising the definition for ''Investigation'' as follows:

§ 659.5 Definitions.

Investigation means a process to determine the probable cause of a major incident or an unacceptable hazardous condition; it may involve no more than a review and approval of the transit agency's determination of the probable cause of a major incident or unacceptable hazardous condition.

Major Incident means any event involving a transit vehicle or occurring on a transit-controlled property, involving one or more of the following:

(1) A fatality;

(2) Injuries requiring immediate medical attention away from the scene for two or more persons;

(3) Property damage equal to or exceeding $25,000;

(4) An evacuation due to life safety reasons;

(5) A collision at a grade crossing;

(6) A main-line derailment;

(7) A collision with person(s) on a right-of-way resulting in injuries that require immediate medical attention away from the scene for one or more persons; and

(8) A collision between a rail transit vehicle and other rail transit vehicle or a transit non-revenue vehicle resulting in injuries that require immediate medical attention away from the scene for one or more persons.

* * * * *

§ 659.39 [Amended]

3. Amend § 659.39 by removing the word ''accidents'' from the paragraph and section heading and add in its place the words ''major incidents.''

§ 659.41 [Amended]

4. Amend § 659.41 by removing the word ''accidents'' in paragraphs (a) and (b) and add in its place the word ''major incidents.''

§ 659.45 [Amended]

5. Amend § 659.45 by removing the word ''accidents'' in paragraphs (b) and (c) and add in its place the word ''major incidents.''

Dated: March 28, 2002.

Jennifer L. Dorn,

Administrator, Federal Transit Administration.

[FR Doc. 02–8051 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–57–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301223; FRL–6828–4]

RIN 2070–AB78

Furilazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the inert ingredient (herbicide safener) 3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethyloxazolidine, which is also known as furilazole (CAS Reg. No. 121776–33–8)] in or on corn commodities. Monsanto Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 3, 2002. Objections and requests for hearings, identified by docket control number OPP–301223, must be received by EPA on or before June 3, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI.. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301223 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: 703 305-6304; and e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from

the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm. A frequently updated electronic version of 40 CFR part 180 is available at: http://www.access.gpo.gov/cfr/cfrhtml_00/Title_40/40cfr180_00.html, beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301223. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes thedocuments that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

Time-limited tolerances for 3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethyloxazolidine, also known as furilazole, in or on corn commodities have been established as requested by Monsanto Company under the Federal Food, Drug, and Cosmetic Act (FFDCA).

In the **Federal Register** of October 20, 1999 (64 FR 56502)(FRL–6386– 9), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 1E4031) for tolerance by Monsanto, Suite 1100, 700 14th Street NW. , Washington DC 20005. This notice included a summary of the petition prepared by Monsanto, the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.471 be amended to establish again tolerances for residues of the inert ingredient (herbicide safener) 3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethyloxazolidine, in or on corn commodities at 0.01 part per million (ppm). Time-limited tolerances, expiring February 25, 2002, were established in the **Federal Register** of February 23, 2000, (65 FR 8859) (FRL–6490–3). Permanent tolerances were not established due to an incomplete data base. The following data gaps were identified: Animal metabolism studies, radiovalidation and specificity studies for the analytical enforcement method for plants, field trial data, chronic toxicity study in the dog, developmental toxicity study in the rabbit, general metabolism study, and in vitro cytogenetic assay. These data gaps have now been either fulfilled or addressed in another manner, such as a data waiver.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of furilazole on corn commodities at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the furilazole tolerances follows.

A. Toxicological Profile

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

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 7 mg/kg/day LOAEL = 34/38 mg/kg/day (male/female) based on increased absolute liver weight in males, increased liver-to-body weight ratio in males and females, and increased gamma glutamyltransferase in females.
870.3150	90–Day oral toxicity in nonrodents	NOAEL = 5 mg/kg/day LOAEL = 15 mg/kg/day based on decreased body weight gain and bile duct inflammation in one-fourth of females.

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

Guideline No.	Study Type	Results
870.3200	21–Day dermal toxicity	Systemic NOAEL = 25 mg/kg/day Systemic LOAEL = 250 mg/kg/day based on increased liver weights.
870.3700a	Prenatal developmental in rodents	Maternal NOAEL = 10 mg/kg/day LOAEL = 75 mg/kg/day based on increased liver weight. Developmental NOAEL = 10 mg/kg/day LOAEL = 75 mg/kg/day based on increased number of resorptions.
870.3700b	Prenatal developmental in nonrodents	Maternal NOAEL = 10 mg/kg/day LOAEL = 50 mg/kg/day based on clinical signs of toxicity and reductions in body weight, body weight changes, and food consumption. Developmental NOAEL = greater than or equal to 50 mg/kg/day LOAEL = is not identified, but would be greater than 50 mg/kg/day
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 8.97/10.67 mg/kg/day male/female LOAEL = 92.39/106.42 mg/kg/day male/female based on lower body weight gains and microscopic lesions of the liver, kidneys (females) . Reproductive NOAEL = equal to or greater than 92.39/106.42 mg/kg/day male/female LOAEL = is not identified, but would be greater than 92.39/106.42 mg/kg/day male/female Offspring NOAEL = 8.97/10.67 mg/kg/day male/female LOAEL = 92.39/106.42 mg/kg/day based on decreased body weight gains in both generations and microscopic lesions of the liver and kidneys of F1 males and females.
870.4200	Combined Chronic/Carcinogenicity rats	Chronic NOAEL = 0.26 mg/kg/day (males) LOAEL = 5.05 mg/kg/day (males) based on increased absolute and relative liver and kidney weights in males and females, and kidney nephropathy, increased gamma glutamyl transferase, decreased body weight gain,and moderate increase in non-neoplastic liver lesions in females. Carcinogenic (hepatocellular carcinoma/adenoma) in both sexes.
870.4300	Carcinogenicity mice	Chronic NOAEL = 5.9 mg/kg/day (males) LOAEL = 60.2 mg/kg/day (males) based on increased incidence of mortality and elevated alanine aminotransferase in males and increased liver weights, increased incidence of panlobular hepatocellular hypetrophy and chronic lung inflammation in females. Carcinogenic (hepatocellular carcinoma/adenoma and bronchio-alveolar carcinoma/adenoma) in both sexes
870.5100 and 5300	Gene Mutation	There was a weak positive response for inducing reverse gene mutations at high precipitating doses in *Salmonella typhimurium*, but the response was negative in cultured mammalian cells.
870.5375	Cytogenetics	Induced dose-related chromosomal aberrations over background
870.5385	Cytogenetics	Did not induce chromosomal aberration in bone marrow cells
870.5395	Cytogenetics	Did not yield convincing evidence that the compound was clastogenic or aneugenic in this *in vivo* system; however, the maximum tolerated dose was not achieved.
870.5550	Other Effects	Negative for the induction of unscheduled DNA synthesis in rat primary hepatocytes.
870.7485	Metabolism and pharmacokinetics	The compound undergoes rapid absorption and nearly complete excretion within 48 hours. The total recovery of administered radioactivity was 87.7 - 95.1% for all treatment groups. Primary route of excretion was via the feces which accounted for 58 - 77% of the administered dose; excretinggreater than or equal to 94% within 48 hours. Urinary excretion was minor and accounted for 13 - 24% of the administered dose and most of it (greater than or equal to 84%) was excreted within 24 hours.
870.7600	Dermal penetration	A dermal absorption study is not available. A dermal absorption factor of 30 % was extrapolated from the developmental toxicity study and the 21-day dermal toxicity study, both in the rat.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences. An additional uncertainty factor of 3X was used to account for the lack of a chronic dog study.

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

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

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

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13-50years of age	NOAEL = 10 mg/kg/day UF = 100 Acute RfD = 0.1 mg/kg/day	FQPA SF = 1 aPAD = acute RfD/FQPA SF = 0.1 mg/kg/day	Developmental Toxicity Study in the rat LOAEL = 75 mg/kg/day based on increased number of resorptions.
Chronic Dietary all populations	NOAEL = 0.26 mg/kg/day UF = 300 Chronic RfD = 0.0009 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.0009 mg/kg/day	Combined Chronic/Carcinogenicity Study in the rat LOAEL = 5.05 mg/kg/day based on increased absolute and relative liver and kidney weights in males
Short-Term Incidental Oral (1 to 7 days) (Residential)	oral study NOAEL = 10 mg/kg/day	LOC for MOE = 100 (Residential)	DevelopmentalToxicity Study in the rat LOAEL = 75 mg/kg/day based on increased liver weights, decreased body weights, body weight gains and food consumption.
Intermediate-Term Incidental Oral (1 week toseveral months) (Residential)	oral study NOAEL = 7 mg/kg/day	LOC for MOE = 100 (Residential)	90-Day rat LOAEL = 34 mg/kg/day based on increased absolute and relative liver weights and alterations in clinical chemistry parameters.
Short-Term Dermal (1 to 7 days) (Residential)	dermal study NOAEL = 25 mg/kg/day (dermal absorption rate = N/A%)	LOC for MOE = 100 (Residential)	21-Day Dermal in the rat LOAEL = 250 mg/kg/day based on increased liver weights.
Intermediate-Term Dermal (1 week to several months) (Residential)	dermal study NOAEL = 25 mg/kg/day (dermal absorption rate = N/A%)	LOC for MOE = 100 (Residential)	21-Day Dermal in the rat LOAEL = 250 mg/kg/day based on increased liver weights.
Long-Term Dermal (several months to lifetime) (Residential)	oral study NOAEL = 0.26 mg/kg/day (dermal absorption rate = 30 %	LOC for MOE = 100 (Residential)	Combined Chronic/Carcinogenicity Study in the rat LOAEL = 5.05 mg/kg/day based on increased absolute and relative liver and kidney weights in males
Short-Term Inhalation (1 to 7 days) (Residential)	oral study NOAEL = 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Developmental Toxicity Study in the rat LOAEL = 75 mg/kg/day based on increased liver weights, decreased body weights, body weight gains and food consumption.

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Intermediate-Term Inhalation (1 week to several months) (Residential)	oral study NOAEL = 7 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	90-Day rat LOAEL = 34 mg/kg/day based on increased absolute and relative liver weights and alterations in clinical chemistry parameters.
Long-Term Inhalation (several months to lifetime) (Residential)	oral study NOAEL = 0.26 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Combined Chronic/Carcinogenicity Study in the rat LOAEL = 5.05 mg/kg/day based on increased absolute and relative liver and kidney weights in males
Cancer (oral, dermal, inhalation)	oral study Q1* = 0.0274 (mg/kg/day) [1] (dermal absorption rate = 30 % inhalation absorption rate = 100%)	LOC = the range of 1 x 10^{6}	Classified as likely to be carcinogenic to humans by all routes of exposure based on hepatocellular ademonas and carcinomas in rats and mice, branchio-alveolar adenomas and carcinomas in female mice, testicular interstitial cell tumors in male rats and stomach tumors in female mice.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Time-limited tolerances (expiring February 25, 2002) have been established (40 CFR 180.471) for the residues of furilazole, in or on corn commodities. Risk assessments were conducted by EPA to assess dietary exposures from furilazole in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported byrespondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The Agency made the following assumptions for the acute exposure assessment: that 100% of the entire corn crop received an application of furilazole, i.e. 100% crop treated (PCT), and that all corn commodities contained residues of furilazole at the tolerance level.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The same assumptions were made for the chronic exposureassessments: That 100% of the entire corn crop received an application of furilazole, i.e. 100% crop treated (PCT), and that all corn commodities contained residues of furilazole at the tolerance level.

iii. *Cancer*. In conducting this carcinogenic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The same assumptions were made for the cancer exposure assessments: That 100% of the entire corn crop received an application of furilazole, i.e. 100% crop treated (PCT), and that all corn commodities contained residues of furilazole at the tolerance level.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for furilazole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of furilazole.

The Agency used the Pesticide Root Zone/Exposure Analysis Modeling System(PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir for an Ohio corn crop. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater.

Neither of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage isto provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

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

Based on the PRZM/EXAMS model the estimated environmental concentrations (EECs) of furilazole for acute exposures are estimated to be 1.2 parts per billion (ppb), for chronic (non-

cancer) exposures are estimated to be 0.8 ppb, and for cancer exposures are estimated to be 0.22 ppb for surface water. Based on the SCI-GROW model the estimated environmental concentrations (EECs) of furilazole for acute, chronic and cancer exposures are estimated to be 0.02 ppb for ground water.

3. *From non-dietary exposure*. The term ''residentialexposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Furilazole is not registered for use on any sites that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. No qualitative or quantitative evidence of increased susceptibility in the rat or rabbit fetuses following *in utero* exposure in the developmental toxicity studies nor to the offspring following pre/post natal exposure in the two generation reproduction study.

3. *Conclusion*. With the exception of the chronic dog study, there is a complete toxicity data base for furilazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Taking into account the lack of increased susceptibility and the completeness of the data on toxicity and exposure, EPA determined that the 10X safety factor to protect infants and children should be removed.

E. Aggregate Risks and Determination of Safety

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

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

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

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure (at the 95th percentile) from food to furilazole is less than one percent of the aPAD for females 13 to 50 years. In addition, there is potential for acute dietary exposure to furilazole in drinking water. The acute DWLOC is 3000 ppb. Since, the DWLOC is greater than the EEC for surface or ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to furilazole from food will utilize 1.4 % of the cPAD for the U.S. population, and 3.4 % of the cPAD for all infants less than 1 year old. Percent PADs for all other population subgroups are less than 3.4%. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expectthe aggregate exposure to exceed 100% of the cPAD, as shown in Table 3:

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

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.0009	1.4	0.8	0.02	31
All infants (less than 1 year old)	0.0009	3.4	0.8	0.02	8.7
Children 1-6 years old	0.0009	3.3	0.8	0.02	8.7
Children 7-12 years old	0.0009	2.5	0.8	0.02	8.7

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

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

5. *Aggregate cancer risk for U.S. population*. Using the exposure assumptions discussed in this unit for cancer exposure, the cancer dietary exposure from food to furilazole is 3.5 x 10^{-7}. In addition, there is potential for cancer dietary exposure to furilazole in drinking water. The cancer DWLOC is 1.3 ppb. Since, the DWLOC is greater than the EEC for surface or groundwater, EPA does not expect the aggregate exposure to exceed the range of 1 x 10^{-6}.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (capillary gas chromotography using electron capture detection) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian or Mexican limits for residues of furilazole in corn raw agricultural commodities.

V. Conclusion

Therefore, tolerances are established for residues of furilazole, 3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethyloxazolidine, which is also known as furilazole (CAS Reg. No. 121776–33–8), in or on corn commodities at 0.01 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301223 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 3, 2002.

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

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

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

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

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

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

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301223, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Regulatory Assessment Requirements

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

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: March 19, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.471 is amended by revising paragraph (a) to read as follows:

§ 180.471 Furilazole; tolerances for residues.

(a) *General*. Tolerances are established for residues of furilazole; 3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethyloxazolidine (CAS Reg. No. 121776–33–8) when used as an inert ingredient (safener) in pesticide formulations in or on the following raw agricultural commodities when applied at an annual application rate of 0.1 pound of safener per acre:

Commodity	Parts per million
Corn, field, forage	0.01
Corn, field, grain ...	0.01
Corn, field, stover	0.01
Corn, pop, grain	0.01
Corn, pop, stover ..	0.01

* * * * *

[FR Doc. 02–8060 Filed 4–2–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–712, MM Docket No. 01–162, RM–10183]

Digital Television Broadcast Service; Cocoa, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Good Life Broadcasting, Inc., licensee of station WTGL–TV, substitutes DTV channel 53c for DTV channel 51. *See* 66 FR 39726, August 1, 2001. DTV channel 53c can be allotted to Cocoa, Florida, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (28–35–12 N. and 81–04–58 W.) with a power of 13.0, HAAT of 514 meters and with a DTV service population of 1876 thousand.

With this action, this proceeding is terminated.

DATES: Effective May 16, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–162, adopted March 25, 2002, and released April 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Florida, is amended by removing DTV channel 51 and adding DTV channel 53c at Cocoa.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–7978 Filed 4–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–620; MM Docket No. 99–244; RM–9678, 9873]

Radio Broadcasting Services; Cumberland, KY and Weber City, Glade Spring, Marion, Richlands and Grundy, VA.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Holston Valley Broadcasting Corporation, allots Channel 274A at Glade Spring, Virginia, as the community's first local aural transmission service (RM–9873). To accommodate the allotment, we will (1) substitute Channel 263A for Channel 273A at Marion, Virginia, and modify Station WOLD–FM's license accordingly; (2) substitute Channel 249A for Channel 264A at Richlands, Virginia, and modify Station WRIC–FM's license accordingly; and (3) substitute Channel 2654A for Channel 249A at Grundy, Virginia, and modify Station WMJD(FM)'s license accordingly. We also deny the petition for rule making filed by Cumberland City Broadcasting Company requesting the substitution of Channel 274C3 for Channel 274A at Cumberland, the reallotment of Channel 274C3 from Cumberland to Weber City, Virginia, and the modification of Station WSEH(FM)'s license accordingly (RM–9678). *See* 64 FR 37925, July 14, 1999. *See* Supplementary Information, *infra.*

DATES: Effective May 3, 2002. A window for Channel 274A at Glade Spring, Virginia, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–244, adopted March 6, 2002, and released March 19, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Channel 274A can be allotted to Glade Spring in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.3 kilometers (8.3 miles) east at petitioner's requested site. The coordinates for Channel 274A at Glade Spring are 36–45–15 North Latitude and 81–37–56 West Longitude. Additionally, Channel 263A can be substituted at Marion with a site restriction of 2.2 kilometers (1.3 miles) north at

petitioner's requested site. The coordinates for Channel 263A at Marion are 36–51–23 North Latitude and 81–30–21 West Longitude. Channel 249A can be substituted at Richlands at Station WRIC-FM's presently licensed site. The coordinates for Channel 249A at Richlands are 37–09–04 North Latitude and 81–53–56 West Longitude. Channel 264A can be substituted at Grundy at Station WMJD(FM)'s presently licensed site. The coordinates for Channel 264A at Grundy are 37–18–08 North Latitude and 82–07–04 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Glade Spring, Channel 274A; by removing Channel 273A and adding Channel 263A at Marion; by removing Channel 264A and adding Channel 249A at Richlands; and by removing Channel 249A and adding Channel 264A at Grundy.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7975 Filed 4–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–614; MM Docket No. 00–79; RM–9802]

Radio Broadcasting Services; Jackson and Salyersville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the joint request of Intermountain Broadcasting Company and Wallingford Broadcasting Company, Inc., substitutes Channel 247C2 for Channel 293A at Jackson, Kentucky, and modifies Station WJSN–FM's license accordingly. To accommodate the upgrade, we also substitute Channel 293C3 for Channel 247C3 at Salyersville, Kentucky, and modify Station WRLV–FM's license accordingly. *See* 65 FR 34996, June 1, 2000. Channel 247C2 can be substituted at Jackson in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.1 kilometers (8.2 miles) north at Station WJSN–FM's requested site. The coordinates for Channel 247C2 at Jackson are 37–40–19 North Latitude and 83–24–21 West Longitude. Additionally, Channel 293C3 can be substituted at Salyersville without the imposition of a site restriction at Station WRLV–FM's requested site. The coordinates for Channel 293C3 at Salyersville are 37–49–05 North Latitude and 83–17–01 West Longitude.

DATES: Effective April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–79, adopted March 6, 2002 , and released March 15, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 293A and adding Channel 247C2 at Jackson; and by removing Channel 247C3 and adding Channel 293C3 at Salyersville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7974 Filed 4–2–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 176, 178, 180

[Docket No. RSPA–2000–7702 (HM–215D)]

RIN 2137–AD41

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; corrections and response to petitions for reconsideration.

SUMMARY: On June 21, 2001, RSPA published a final rule under Docket HM–215D amending the Hazardous Materials Regulations (HMR) based on corresponding provisions of international standards. The revisions were made to facilitate the transportation of hazardous materials in international commerce. This final rule corrects errors in the June 21, 2001, final rule and responds to two petitions for reconsideration.

DATES: *Effective Date:* April 3, 2002.

Voluntary Compliance Date: Compliance with the regulations, as amended herein, is authorized as of June 21, 2001.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366–8553, or Shane Kelley, International Standards, telephone (202) 366–0656, Research and

Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 21, 2001, the Research and Special Programs Administration (RSPA, we) published a final rule under Docket HM–215D (66 FR 33316) revising the HMR to maintain alignment with recent changes to corresponding provisions in international standards. Changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) necessitated amendments to domestic regulations to provide consistency and facilitate the transport of hazardous materials in international commerce. This final rule corrects various errors primarily made during the printing process of the June 21, 2001, **Federal Register** and responds to two petitions for reconsideration.

II. Section-by-Section Review

Part 171

Section 171.12. In § 171.12, in paragraph (b)(5), a redundant phrase is removed and in paragraph (e)(4), a nonexistent paragraph reference is corrected.

Section 171.14. We received a petition for reconsideration requesting we revise § 171.14(d)(4) as adopted in the June 21, 2001, final rule. Paragraph (d)(4) reads as follows:

> (4) Until January 1, 2010, a hazardous material may be transported in an IM or IMO portable tank in accordance with the T Codes (Special Provisions) assigned to a hazardous material in Column (7) of the HMT in effect on September 30, 2001.

Specifically, the petitioner seeks reconsideration of the provision as it relates to IM portable tanks, stating the provision is unreasonable by limiting the continued use of IM Specification portable tanks to less than 10 years from the publication date of the final rule. The petitioner reasoned that from a safety perspective we have no reason to impose such a time limitation. The petitioner also cited our authorization for the indefinite continued use of DOT Specification 51 tanks and questioned the omission of the same provision for IM Specification portable tanks.

Paragraph (d)(4) does not limit the continued use of IM portable tanks, rather it authorizes, until January 1, 2010, the use of the ''old'' T code special provisions in effect prior to the effective date of the HM–215D final rule (October 1, 2001). Persons have the option of using the ''old'' or the ''new'' T codes until January 1, 2010 at which time the ''new'' T codes as adopted in the June 21, 2001, final rule become mandatory. Section 173.32(c)(2) of the June 21, 2001 final rule includes the authorization for the continued use of IM portable tanks provided certain requirements are met. No time limitations are imposed. In addition, § 173.32 allows IM portable tanks to be constructed until January 1, 2003. We are responding to the petition for reconsideration by adding a phrase to § 171.14(d)(4) to refer the reader to § 173.32(c) for the continued use of IM portable tanks. Additionally, we are adding a clarifying phrase to § 173.32(c)(2) to describe the reason for referring the reader to § 171.14(d)(4).

Part 172

Section 172.101. In § 172.101, in paragraph (c)(11)(iv)(A), we are correcting the paragraph by adding the authorization for the word ''Sample'' to appear as part of the proper shipping name (for example, ''Flammable liquid, n.o.s., Sample''). This serves as an alternative to the requirement for the word ''Sample'' to appear in association with the basic description on the shipping paper, unless the word ''Sample'' already appears in the proper shipping name. Although we discussed the intent in the preamble of the June 21, 2001, final rule, the phrase was omitted from the regulatory text.

The Hazardous Materials Table (HMT). Following are corrections made to the § 172.101 HMT. Unless otherwise specified, the corrections are due to errors made during the typesetting process.

—The entry ''Batteries, wet, filled with alkali, *electric storage,*'' UN2795, which was inadvertently deleted, is added.

—For the entry, ''Diethylthiophosphoryl chloride,'' UN2751, Columns (8A) through (10B) are corrected to read ''None,'' ''212,'' ''240,'' ''15 kg,'' ''50 kg,'' ''D,'' and ''12, 40,'' respectively.

—For four entries, Special Provision TP37 is added to Column (7) of the HMT. The Special Provision was proposed for the entries in the October 23, 2000, notice of proposed rulemaking (NPRM), however, it was inadvertently omitted in the final rule. The four entries are: ''Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary),*'' UN2014; ''Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary),*'' UN2014; ''Hydrogen peroxide, stabilized *or* Hydrogen peroxide aqueous solutions, stabilized *with more than 60 percent hydrogen peroxide,*'' UN2015; and ''Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary),*'' UN2984.

—For the entry ''Metal catalyst, dry,'' UN2881, Packing Group I, Columns (9A) and (9B) are corrected to read ''Forbidden.''

—For the entry ''Nitromethane,'' UN1261, Column (9B) is corrected to read 60 L.

—The entry ''2,5-Norbornadiene, stabilized, *see* Bicyclo 2,2,1 hepta-2,5-diene, stabilized'' is corrected by adding a comma before ''stabilized.''

—The entry ''Organochlorine, pesticides, solid, toxic,'' UN2761 is corrected by adding a comma after ''solid'' in the proper shipping name.

—The entry ''*Pepper spray, see Aerosols, etc. or Self-defense spray, non-pressurized*'' is removed the second time it appears in the HMT. The ''see'' entry was mistakenly duplicated and erroneously included column entries from the previous entry.

—The entry ''Phosphoric acid, *liquid or solid,*'' UN1805 is revised by adding the optional ''liquid or solid'' wording.

—For the entry ''Polymeric beads, expandable, *evolving flammable vapor,*'' UN2211, ''9'' is added to Column (6) and Special Provision IP7 is added to Column (7).

—For nine Class 7 entries, the vessel stowage code ''95'' is added. The stowage code was inadvertently deleted from Column (10B).

—For 11 entries ''IP8'' is removed as a special provision reference from Column (7) of the HMT. In the NPRM and final rule, the reference was inadvertently included in Column (7). IP8 is consistent with the UN Recommendations special IBC packing provision and gives a vapor pressure limitation for liquids transported in IBCs. This special provision is unnecessary for inclusion into the HMR because the ''Additional Requirements'' in Special Provisions IB1 through IB3 already contain the vapor pressure limits on materials that are authorized to be transported in IBCs and these special provisions are currently assigned to the appropriate entries. The 11 entries are: ''Cyclopentene,'' UN2246; ''Dichloromethane,'' UN1593; ''Dimethyl sulfide,'' UN1164; Ethyl

bromide,'' UN1891; ''Glycidaldehyde,'' UN2622; ''Isohexenes,'' UN2288; ''2-Methyl-2-butene,'' UN2460; ''Methyl propyl ether,'' UN2612; ''Methylal,'' UN1234; ''Pentanes,'' UN1265; and ''Propyl chloride,'' UN1278.

—The entry ''Samples, explosive, *other than initiating explosives*'' which was inadvertently deleted is added.

—The entry ''Substances, explosive, n.o.s.'' is corrected by revising ''6'' to read ''G'' in Column (1).

—The entry ''Vinyl chloride, stabilized'' is corrected by removing the duplicative wording ''*or* Vinyl chloride, stabilized'' from the proper shipping name.

Appendix B to § 172.101. In Appendix B to § 172.101, the List of Marine Pollutants is corrected as follows:

''Cumene'' is removed. ''Cumene'' and ''Isopropylbenzene'' describe the same material. Although ''Isopropylbenzene'' was removed from the List of Marine Pollutants in the June 21, 2001, final rule, ''Cumene'' was overlooked as its synonym.

''2,4-D'' is removed. ''2,4-D'' and ''2,4 Dichlorophenoxyacetic acid'' describe the same material and we overlooked the former when removing ''2,4 Dichlorophenoxyacetic acid.''

''Dimethylphenols, liquid or solid'' is removed. ''Dimethylphenols'' and ''Xylenols'' describe the same material. We removed ''Xylenols'' and overlooked ''Dimethylphenols, liquid or solid'' as its synonym.

''Ethyl acrylate, stabilized,'' ''Methylstyrenes, stabilized'' and ''Vinyltoluenes, stabilized *mixed isomers*'' are removed. ''Ethyl acrylate, inhibited'' and ''Vinyltoluenes, inhibited *mixed isomers*'' were proposed to be removed, but were mistakenly added to the List of Marine Pollutants in the final rule, published on June 1, 2001, with the word ''stabilized'' replacing the word ''inhibited.''

Section 172.102. In § 172.102, the following corrections are made:

—In Special Provision 136, ''part 173'' is corrected to read ''part 172.''

—Paragraph (c)(4) is editorially revised for clarity.

—Paragraph (c)(7)(i) is revised by adding ''IM'' Specification portable tanks to indicate that the ''T'' Codes apply to UN and IM Specification portable tanks.

—In the paragraph (c)(7)(iv) Portable Tank Code T50 table, the maximum filling density (kg/l), 0.811954, for the entry ''UN1912, Methyl chloride and methylene chloride mixture'' is revised to read ''0.81.''

Section 172.519. The date ''September 30, 2001'' is corrected to read ''October 1, 2001'' the second place it appears in paragraph (b)(4).

Part 173

Section 173.24b. In paragraph (e)(2) introductory text, the last sentence is editorially corrected by removing the word ''be.''

Section 173.32. We are responding to a petition for reconsideration (see preamble discussion under § 171.14) by adding a clarifying phrase to paragraph (c)(2).

Section 173.150. The misplacement of the word ''and'' in paragraph (d)(2) is corrected.

Section 173.185. We are adding a clarification to paragraph (a). Included in the June 21, 2001, final rule preamble, and based on a comment to the NPRM, we stated that we were revising the definition of ''lithium content'' to make it consistent with a minor editorial clarification adopted by the Committee of Experts in its Report of the 21st Session. The intent of the clarification was to prevent possible confusion regarding the lithium-equivalent content of lithium-ion battery packs currently used in many portable devices. Although the amendment was discussed in the preamble, it was not included in the regulatory text. This document corrects the oversight.

We are also revising paragraph (e)(3). We received a petition for reconsideration concerning paragraphs (e)(3) and (e)(7). Paragraph (e) allows cells and batteries to be transported as Class 9 materials provided they meet the requirements in paragraphs (e)(1) through (e)(7). The requirement in paragraph (e)(3) states batteries containing cells or series of cells connected in parallel must be equipped with diodes to prevent reverse current flow. The petitioner stated that limiting the protective requirement to diodes unnecessarily restricts the use of equally effective alternative protection means as allowed by the UN Recommendations and impedes the transportation of large lithium batteries. We agree with the petitioner's reasoning that many lithium battery manufacturers currently employ other technology to provide equally protective means of protection. Based on the above discussion, we are revising paragraph (e)(3) to reflect the allowance of any effective means of preventing reverse current flow.

The petitioner also requested we remove the prohibition in paragraph (e)(7) to transport cells and batteries if any cell has been discharged to the extent that the open circuit voltage is less than two volts or less than two thirds of the voltage of the fully charged cell, whichever is less. The petitioner's request regarding paragraph (e)(7) is beyond the scope of this rulemaking.

Section 173.242. Paragraph (c) is editorially revised by replacing ''Specification IM'' with ''IM 101 and IM 102.''

Section 173.243. Paragraph (c) is corrected by adding ''IM 101 and IM 102'' to the portable tanks authorized for certain high hazard liquids and dual hazard materials posing a moderate hazard.

Part 174

Section 174.81. The word ''stowed'' in paragraphs (e)(6) and (g)(3)(vi) is corrected to read ''loaded and transported.'' The word ''stowed'' is specific to the corresponding vessel section of the HMR.

Part 176

Section 176.84. In paragraph (c)(2), in the List of Notes, the last note number is corrected to read ''27E.''

Part 178

Section 178.274. In paragraph (a), the wording ''refrigerated liquefied gases,'' which was deleted during the printing process, is added to the definition for test pressure. In paragraph (d)(1)(i), the reference ''through (d)(10)'' is corrected to read ''through (d)(7).''

Part 180

Section 180.605. In paragraph (d), the incorrect reference to paragraph (i) for leakage test requirements is corrected to refer to paragraph (h). Paragraph (e) is revised to clarify the provisions for the exception from the requirement for the internal inspection and hydraulic pressure test. Paragraph (h)(3) is corrected by adding the inadvertently deleted test pressure for refrigerated liquefied gases.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this final rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule was analyzed in accordance with the principles and

criteria in Executive Order 13132 (''Federalism''). This final rule preempts State, local and Indian tribe requirements but does not adopt any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, (49 U.S.C. 5101–5127) contains express preemption provisions at 49 U.S.C. 5125(b) that preempts State, local and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), (3), and (5) above and would preempt State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This final rule is necessary to incorporate corrections to changes already adopted in international standards. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption will be September 30, 2002.

C. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule corrects errors in a final rule published June 21, 2001 under Docket RSPA–00–7702 (HM–215D) and will not have any direct or indirect adverse economic impacts on a substantial number of small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. There are no new information collection requirements in this final rule.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.12 [Amended]

2. In § 171.12, the following changes are made:

a. In paragraph (b)(5), in the first sentence, the wording ''hazardous materials that conform to the requirements of the IMDG Code,'' is removed.

b. In paragraph (b)(5), at the end of the last sentence, following the words ''51 portable tanks'', the wording ''when these portable tanks are authorized in accordance with the requirements of this subchapter'' is added.

c. In paragraph (e)(4), the wording ''paragraph (c)(5)'' is removed and ''paragraph (e)(5)'' is added in its place.

3. In § 171.14, in paragraph (d)(4), a sentence is added at the end of the existing text to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(d) * * *

(4) * * * (See § 173.32(c) of this subchapter for the continued use and manufacture of portable tanks.)

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

4. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 172.101, paragraph (c)(11)(iv)(A) and the Hazardous Materials Table is revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(11) * * *

(iv) * * *

(A) Except when the word ''Sample'' already appears in the proper shipping name, the word ''Sample'' must appear as part of the proper shipping name or in association with the basic description on the shipping paper.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Nos. (4)	PG (5)	Label Codes (6)	Special provisions (7)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions (8A)	Nonbulk (8B)	Bulk (8C)	Passenger aircaft/rail (9A)	Cargo aircraft only (9B)	Location (10A)	Other (10B)
	[REMOVE:]												
	2,5-Norbornadiene, stabilized, *see* Bicyclo 2,2,1 hepta-2,5-diene stabilized												
	Organochlorine, pesticides, solid toxic	6.1	UN2761	I	6.1	IB7, IP1	None	211	242	5 kg	50 kg	A	40
	Pepper spray, see Aerosols, etc. or Self-defense spray, non-pressurized			III	5.1		152	203	241	2.5 L	30 L	B	56, 58, 69, 106
	Phosphoric acid	8	UN1805	III	8	A7, IB3, IP3, N34, T4, TP1	154	203	241	5 L	60 L	A	
	Vinyl chloride, stabilized *or* Vinyl chloride, stabilized	2.1	UN1086		2.1	21, B44, T50	306	304	314, 315	Forbidden	150 kg	B	40
	[ADD:]												
	*		*		*	*		*		*		*	
	Batteries, wet, filled with alkali, *electric storage*	8	UN2795	III	8		159	159	159	30 kg gross	No limit	A	
	*		*		*	*		*		*		*	
	2,5-Norbornadiene, stabilized, *see* Bicyclo 2,2,1 hepta-2,5-diene, stabilized												
	*		*		*	*		*		*		*	
	Organochlorine, pesticides, solid, toxic	6.1	UN2761	I	6.1	IB7, IP1	None	211	242	5 kg	50 kg	A	40
	*		*		*	*		*		*		*	
	Phosphoric acid, *liquid or solid*	8	UN1805	III	8	A7, IB3, IP3, N34, T4, TP1	154	203	241	5 L	60 L	A	
	*		*		*	*		*		*		*	
G	Samples, explosive, *other than initiating explosives.*		UN0190	II		113	None	62	None	Forbidden	Forbidden	14	12E
	*		*		*	*		*		*		*	
	Vinyl chloride, stabilized	2.1	UN1086		2.1	21, B44, T50	306	304	314, 315	Forbidden	150 kg	B	40
	*		*		*	*		*		*		*	
	[REVISE:]												
	*		*		*	*		*		*		*	
	Cyclopentene	3	UN2246	II	3	IB2, T7, TP2	150	202	242	5 L	60L	E	40
	*		*		*	*		*		*		*	
	Dichloromethane	6.1	UN1593	III	6.1	IB3, N36, T7, TP2	153	203	241	60 L	220 L	A	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Nos. (4)	PG (5)	Label Codes (6)	Special provisions (7)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions (8A)	Nonbulk (8B)	Bulk (8C)	Passenger aircaft/rail (9A)	Cargo aircraft only (9B)	Location (10A)	Other (10B)
	*		*		*	*		*		*		*	
	Diethylthiophosphoryl chloride	8	UN2751	II	8	B2, IB2, T7, TP2	None	212	240	15 kg	50 kg	D	12, 40
	*		*		*	*		*		*		*	
	Dimethyl sulfide	3	UN1164	II	3	IB1, T7, TP2	None	202	242	5 L	60 L	E	40
	*		*		*	*		*		*		*	
	Ethyl bromide	6.1	UN1891	II	6.1	IB2, T7, TP2, TP13	None	202	243	5 L	60 L	B	40, 85
	*		*		*	*		*		*		*	
	Glycidaldehyde	3	UN2622	II	3, 6.1	IB2, T7, TP1	150	202	243	1 L	60 L	A	40
	*		*		*	*		*		*		*	
	Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary)*	5.1	UN2014	II	5.1, 8	12, A3, A6, B53, B80, B81, B85, IB2, IP5, T7, TP2, TP6, TP24, TP37	None	202	243	Forbidden	Forbidden	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary)*	5.1	UN2014	II	5.1, 8	A2, A3, A6, B53, IB2, IP5, T7, TP2, TP6, TP24, TP37	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions, *with not less than 8 percent but less than 20 percent hydrogen peroxide, (stabilized as necessary)*	5.1	UN2984	III	5.1	A1, IB2, IP5, T4, TP1, TP6, TP24, TP37	152	203	241	2.5 L	30 L	B	25, 75, 106
	Hydrogen percent stabilized *or* Hydrogen peroxide aqueous solutions, stabilized *with more than 60 percent hydrogen peroxide*	5.1	UN2015	I	5.1, 8	12, A3, A6, B53, B80, B81, B85, T10, TP2, TP6, TP24, TP37	None	201	243	Forbidden	Forbidden	D	25, 66, 75, 106
	*		*		*	*		*		*		*	
	Isohexenes	3	UN2288	II	3	IB2, T11, TP1	150	202	242	5 L	60 L	E	
	*		*		*	*		*		*		*	
	Metal catalyst, dry	4.2	UN2881	I	4.2	N34	None	187	None	Forbidden	Forbidden	C	
	*		*		*	*		*		*		*	
	2-Methyl-2-butene	3	UN2460	II	3	IB2, T7, TP1	None	202	242	5 L	60 L	E	
	*		*		*	*		*		*		*	
	Methyl propyl ether	3	UN2612	II	3	IB2, T7, TP2	150	202	242	5 L	60 L	E	40
	*		*		*	*		*		*		*	
	Methylal	3	UN1234	II	3	IB2, T7, TP2	None	202	242	5 L	60 L	E	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Nos. (4)	PG (5)	Label Codes (6)	Special provisions (7)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions (8A)	Nonbulk (8B)	Bulk (8C)	Passenger aircaft/rail (9A)	Cargo aircraft only (9B)	Location (10A)	Other (10B)
	*		*		*	*		*		*		*	
	Nitromethane	3	UN1261	II	3		150	202	None	Forbidden	60 L	A	
	*		*		*	*		*		*		*	
	[PG II only] Pentanes	3	UN1265	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	E	
	*		*		*	*		*		*		*	
	Polymeric beads, expandable, *evolving flammable vapor*	9	UN2211	III	9	32, IB8, IP6, IP7	155	221	221	100kg	200kg	A	
	*		*		*	*		*		*		*	
	Propyl chloride	3	UN1278	II	3	IB2, N34, T7, TP2	None	202	242	Forbidden	60 L	E	
	*		*		*	*		*		*		*	
D	Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s.	7	UN2912		7	T5, TP4	421, 428	427	427			A	95
	*		*		*	*		*		*		*	
D	Radioactive material, special form, n.o.s.	7	UN2974		7		421, 424	415, 416	415, 416			A	95
D	Radioactive material, surface contaminated object *or* Radioactive material, SCO	7	UN2913		7		421, 424, 426	427	427			A	95
	*		*		*	*		*		*		*	
G	Substances, explosive, n.o.s.	1.4D	UN0480	II	1.4D	101	None	62	None	Forbidden	75 kg	09	
	*		*		*	*		*		*		*	
D	Thorium metal, pyrophoric	7	UN2975		7, 4.2		None	418	None	Forbidden	Forbidden	D	95
D	Thorium nitrate, solid	7	UN2976		7, 5.1		None	419	None	Forbidden	15 kg	A	95
	*		*		*	*		*		*		*	
D	Uranium hexafluoride, fissile (*with more than 1 percent U–235*)	7	UN2977		7, 8		453	417, 420	417, 420			A	95
D	Uranium metal, pyrophoric	7	UN2979		7, 4.2		None	418	None			D	95
D	Uranium nitrate hexahydrate solution	7	UN2980		7, 8		421, 427	415, 416, 417	415, 416, 417			D	95
D	Uranyl nitrate, solid	7	UN2981		7, 5.1		None	419	None	Forbidden	15 kg	A	95
	*		*		*	*		*		*		*	

6. In Appendix B to § 172.101, the List of Marine Pollutants is amended by removing 7 entries as follows:

LIST OF MARINE POLLUTANTS

S.M.P. (1)	Marine pollutant (2)
[Remove:]	Cumene 2,4-D Dimethylphenols, liquid or solid Ethyl acrylate, stabilized 2-Methyl-2-phenylpropane Vinyltoluenes, stabilized

7. In § 172.102:

a. In paragraph (c)(1), in Special Provision 136, the fourth sentence is revised;

b. In paragraph (c)(4), the text preceding Table 1 is revised;

c. In paragraph (c)(7)(i), the first sentence is revised; and

d. In the paragraph (c)(7)(iv) Portable Tank Code T50 Table, the entry for UN No. 1912 entry is revised.

The revisions and addition read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

136 * * * Hazardous materials shipped under this entry are excepted from the labeling requirements of this subchapter unless offered for transportation or transported by aircraft and are not subject to the placarding requirements of part 172, subpart F, of this subchapter. * * *

* * * * *

(4) *Table 1, Table 2, and Table 3—IB Codes, Organic Peroxide IBC Code, and IP Special IBC Packing Provisions.* These provisions apply only to transportation in IBCs. When no IBC packing provision is assigned, or when an IBC is not specifically authorized in the applicable IBC packing provision for a specific material in the § 172.101 Table of this subchapter, alternative IBCs may be approved for use by the Associate Administrator. Tables 1, 2 and 3 follow:

* * * * *

(7) * * *

(i) * * * These provisions apply to the transportation of hazardous materials in UN and IM Specification portable tanks. * * *

* * * * *

(iv) * * *

PORTABLE TANK CODE T50

[Portable tank code T50 applies to liquefied compressed gases.]

UN No.	Non-refrigerated liquefied compressed gases	Max. allowable working pressure (bar) small; bare; sunshield; insulated	Openings below liquid level	Pressure relief requirements (see § 178.27(e))	Maximum filling density (kg/l)
	*	* * *	* * *	*	
1912	Methyl chloride and methylene chloride mixture .	15.2, 13.0, 11.6, 10.1	Allowed	Normal	0.81
	*	* * *	* * *	*	

* * * * *

§ 172.519 [Amended]

8. In § 172.519, in paragraph (b)(4), in the second sentence, the wording ''September 30, 2001'' is removed and ''October 1, 2001'' is added in its place.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

9. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.53.

§ 173.24b [Amended]

10. In § 173.24b, in paragraph (e)(2) introductory text, in the last sentence, the word ''be'' is removed.

§ 173.32 [Amended]

11. In § 173.32, in paragraph (c)(2), in the first sentence, the wording ''(see § 171.14(d)(4) of this subchapter)'' is removed and ''according to the T codes in effect on September 30, 2001 or the new T codes in § 172.102(c)(7)(i) (see § 171.14(d)(4) for transitional provisions applicable to T codes)'' is added in its place.

§ 173.150 [Amended]

12. In § 173.150, in paragraph (d)(2), the wording ''or less for transportation on passenger-carrying aircraft and'' is removed and ''or less, and for transportation on passenger-carrying aircraft'' is added in its place.

13. In § 173.185, the following changes are made:

a. In paragraph (a), in the last sentence, the wording ''or battery'' is removed and a new sentence is added at the end of the paragraph.

b. Paragraph (e)(3) is revised.

The addition and revision read as follows:

§ 173.185 Lithium batteries and cells.

(a) * * * The lithium-equivalent content of a battery equals the sum of the grams of lithium-equivalent content contained in the component cells of the battery.

* * * * *

(e) * * *

(3) Batteries containing cells or series of cells connected in parallel must be equipped with effective means, (such as diodes, fuses, etc.) as necessary to prevent dangerous reverse current flow.

* * * * *

§ 173.242 [Amended]

14. In § 173.242, in paragraph (c) introductory text, the wording ''Specification IM'' is removed and ''Specification IM 101, IM 102,'' is added in its place.

§ 173.243 [Amended]

15. In § 173.243, in paragraph (c), the wording ''UN portable tanks when'' is removed and ''UN portable tanks and IM 101 and IM 102 portable tanks when'' is added in its place.

PART 174—CARRIAGE BY RAIL

16. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

17. In § 174.81, in paragraph (e)(6), in the second sentence, and in paragraph (g)(3)(vi), the word ''stowed'' is removed and ''loaded and transported'' is added in its place.

PART 176—CARRIAGE BY VESSEL

18. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

19. In § 176.84, in paragraph (c)(2), in the List of Notes, the entry 0127E is removed and a new entry is added in numerical order to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(c) * * *

(2) * * *

Notes	Provisions
*	* * * *
27E	For closed cargo transport units, a non-metallic lining is required.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

20. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.274 [Amended]

21. In § 178.274, the following changes are made:

a. In paragraph (a)(3), in the definition for *Test pressure,* in the first sentence, the wording ''for liquefied compressed gases'' is revised to read ''for liquefied compressed gases and refrigerated liquefied gases''.

b. In paragraph (d)(1)(i), the wording ''through (d)(10)'' is revised to read ''through (d)(7)''.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 180.605 [Amended]

23. In § 180.605, the following changes are made:

a. In paragraph (d), in the third sentence, the wording ''in paragraph (i)'' is revised to read ''in paragraph (h)''.

b. In paragraph (e), the last sentence is revised.

c. In paragraph (h)(3), the wording ''inert gas'' is revised to read ''inert gas to a pressure not less than 1.3 times the design pressure''.

In paragraph (e), the last sentence is revised to read as follows:

§ 180.605 Requirements for periodic testing, inspection and repair of portable tanks.

* * * * *

(e) * * * Portable tanks used for the transportation of refrigerated, liquefied gases are excepted from the requirement for internal inspection and the hydraulic pressure test during the 5-year periodic inspection and test, if the portable tanks were pressure tested to a minimum test pressure of 1.3 times the design pressure using an inert gas as prescribed in § 178.338–16(a) and (b) of this subchapter before putting the portable tank into service initially and after any exceptional inspections and tests specified in paragraph (f) of this section.

* * * * *

Issued in Washington, DC, on March 14, 2002, under authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator.

[FR Doc. 02–6645 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–014]

RIN 2115–AA97

Safety Zone; Jennifer Heyman's Wedding Fireworks Display, Greens Farm, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display located in Long Island Sound off Greens Farm, CT. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Long Island Sound.

DATES: This rule is effective from 8:15 p.m. on June 9, 2002, until 9:30 p.m. on June 9, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–014) and are available for inspection or copying at Coast Guard Group/Marine Safety Office, 120 Woodward Ave., New Haven, CT 06512, between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM2 R. L. Peebles, Marine Events Petty Officer, Coast Guard Group/MSO Long Island Sound (203) 468–4408.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. An NPRM was considered unnecessary because the fireworks display is a local event that will have minimal impact on the waterway. The zone is only in effect for 1 hour and 15 minutes and vessels can be given permission to transit the zone during all but about 30 minutes of this time. Vessels may transit around the zone at all times. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Background and Purpose

The Coast Guard is establishing a temporary safety zone in the waters of Long island Sound off Greens Farm, CT. The safety zone encompasses all waters of Long Island Sound within an 800 foot radius of approximate position 41°06′07″ N, 073°18′57″ W (NAD 1983). The safety zone is intended to protect boaters from the hazards associated with fireworks launched from a barge in the area. This safety zone covers only the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels.

Discussion of Rule

The safety zone is for a fireworks display off Greens Farm, CT that will be conducted to commemorate a wedding. The safety zone will be in effect from 8:15 p.m. to 9:30 p.m. on June 9, 2002. The safety zone encompasses all waters of Long Island Sound within an 800 foot radius of approximate position 41°06′07″ N, 073°18′57″ W (NAD 1983).

Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts. Marine traffic will be able to transit around the safety zone at all times. Vessels will not be precluded from mooring at or getting underway from recreational or commercial piers in the vicinity of the zone. No vessel may enter the safety zone without permission from the Captain of the Port, Long Island Sound.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, the opportunity for vessels to transit around the zone during the event, the ability of vessels to moor at or get underway from commercial or recreational piers in the vicinity of the zone, and the advance notifications that will be made.

The size of this safety zone was determined using National Fire Protection Association and the Captain of the Port Long Island Sound Standing Orders for 8 inch mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Long Island Sound during the times this zone is effective.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: it is a local event with minimal impact on the waterway, vessels may still transit around the zone during the event, the zone is only in effect for 1 hour and 15 minutes and vessels can be given permission to transit the zone except for all but about 30 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Before the effective period, public notifications will be made via Local Notice to Mariners and Marine Information Broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BM2 Ryan Peebles, in the Command Center at Coast Guard Group/Marine Safety Office Long Island Sound, CT, at (203) 468–4408.

Collection of Information

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

Federalism

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

Unfunded Mandates

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From 8:15 p.m. through 9:30 p.m. on June 9, 2002, add temporary § 165.T02–014 to read as follows:

§ 165.T02–014 Safety Zone: Jennifer Heyman's Wedding Fireworks Display, Green Farms, CT.

(a) *Location.* The following area is a safety zone: All waters of Long Island Sound within an 800 foot radius of the fireworks barge in approximate position 41°06′07″ N, 073°18′57″ W (NAD 1983).

(b) *Enforcement times and dates.* This section will be enforced from 8:15 p.m. until 9:30 p.m. on June 9, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port, Long Island Sound.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel are commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: February 12, 2002.

J.J. Coccia,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 02–8080 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–15–P

Proposed Rules

Federal Register
Vol. 67, No. 64
Wednesday, April 3, 2002

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV00–927–3]

Winter Pears Grown in Oregon and Washington; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement and Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for winter pears grown in Oregon and Washington (order). The amendments are based on those proposed by the Winter Pear Control Committee (Committee), which is responsible for local administration of the order. The amendments include: authorizing the Committee to recommend maturity regulations; authorizing the Committee to recommend container or marking requirements; and changing provisions related to alternate Committee members serving for absent members at Committee meetings. The proposed amendments are intended to improve the operation and functioning of the winter pear marketing order program.

DATES: Written exceptions must be filed by May 3, 2002.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket number and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Stop 0237, room 2522–S, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on compliance with this proposed regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Stop 0237, room 2525–S, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 2, 2000, and published in the November 8, 2000, issue of the **Federal Register** (65 FR 66935).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement and Order No. 927 regulating the handling of winter pears grown in Oregon and Washington, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick whose address is listed above.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The proposed amendments of the order are based on the record of a public hearing held in Portland, Oregon, on November 29, 2000. Notice of this hearing was published in the **Federal Register** on November 8, 2000. The notice of hearing contained proposals submitted by the Committee and AMS.

The Committee's proposed amendments included: Authorizing the Committee to recommend maturity regulations; authorizing the Committee to recommend container and marking requirements; and changing provisions related to alternate Committee members serving for absent members at Committee meetings.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's provisions conform with the effectuated amendments.

Seven witnesses testified at the hearing. These witnesses represented winter pear growers and handlers throughout the production area. All witnesses supported the Committee's recommended changes. Most witnesses addressed the need for maturity requirements and the perceived impact those requirements could have on market returns. Witnesses also spoke to the need for the Committee to have container and marking regulatory authority, and the effect uniform regulations would have on marketing practices and costs of production. In conjunction with this proposed amendment, it was put forth by witnesses at the hearing that definitions for pack and container be added to the order's list of definitions. Another amendment that was supported at the hearing was the proposal to allow additional alternates to serve at Committee meetings when both a member and his or her alternates are unable to attend.

At the conclusion of the hearing, the Administrative Law Judge fixed January 12, 2001, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. None were filed.

Material Issues

The material issues of record addressed in this decision are as follows:

(1) Whether to add ''maturity'' to the list of attributes that may be regulated under the order;

(2) Whether to add authority to the order to allow the Committee to recommend container and marking requirements; and

(3) Whether to amend the order to authorize additional alternates to serve

in the place of absent Committee members.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1: The Authority To Recommend Maturity Regulation

The order should be amended to include maturity among the characteristics of winter pears which may be regulated by USDA based on recommendation of the Committee.

The order currently provides for regulation to limit the grade, size, quality or combination thereof, of any variety of pears grown in the production area. Whenever such regulations are in effect, pears are required to be inspected and certified as meeting those requirements as provided in § 927.60 of the order. The Committee proposes adding specific authority to set maturity regulations.

According to testimony given during the hearing, ''maturity'', as it is commonly used in the winter pear industry, describes a characteristic or phase of senescence in the cycle of a pear when it reaches its ideal time for harvest based primarily upon a pressure index. Testing for maturity can be accomplished through the use of pressure testing devices and inspection.

In the winter pear industry, maturity is a characteristic, and partial consideration, in determining the ripening ability of the fruit. Ripeness is not a precursor criteria for maturity. Rather, adequate maturity in terms of the growth process of the pear is a necessary element to the successful ripening of the fruit after harvest. One witness during the hearing described the relationship between maturity and ripeness by explaining immaturity, which can be detected by a high pressure test result, results in a pear's inability to ripen after harvest. A maturity test would indicate whether a pear is fully mature at the time of harvest, therefore also indicating the pear's ability to ripen after harvest and in the hands of the consumer.

Maturity of pears is tracked throughout the season through pressure indices. As pressure indices reduce from their initial harvest level to lower pressures, pears approach that stage of senescence known as maturity. Maturity indices are used to harvest winter pear varieties at the optimum time that accommodates eventual ripening, as well as long-term cold storage and full season marketability. Because of differences in varietal growing patterns, maturity criteria would most likely vary by variety.

While the current method for measuring maturity is via pressure test, witnesses testifying understood that, by adding the authority to define maturity regulations, testing methods would be allowed to evolve with advances in industry technology. As one witness stated, the authority to regulate maturity would give the Committee not only the ability to set maturity regulations based on current research, but to update and revise those regulations as maturity testing methods evolve over time.

According to record testimony, the proposed amendment to add maturity to the list of regulated attributes would allow the Committee to set uniform regulations within the industry. This would assure that pears will physiologically have the ability to ripen properly at any stage of the marketing season. It was considered by witnesses that this additional quality definition is imperative to the industry's future ability to uniformly address and set regulations for ripen ability.

By establishing maturity regulations, the Winter Pear industry also aims to present a more consumer-friendly product to the market. Historically, the winter pear industry has not directly concerned itself with the ripening process of pears once they reach the retail sector or the consumer. The task of ripening prior to consumption has generally been left to the end buyer, while the Committee provided basic education about how a pear can be ripened at home.

One witness stated that the proposed authority to regulate maturity would enable the industry to ensure that winter pears have the best opportunity to either ripen or be ripe at time of purchase. Under the current system without maturity regulations, it can take up to seven days for a winter pear to ripen at room temperature. The witness further added that in today's modern lifestyle, convenience is often the greatest consideration for consumers when selecting food products. For this reason, maturity requirements are needed in order for the industry to better meet consumer needs and satisfaction.

In addition, increasing competition from imported fruit in the domestic market has caused the Oregon and Washington winter pear industry to market its harvest much earlier than in previous years. However, selling too early in the harvest season places the Oregon and Washington winter pear industry at a disadvantage as without careful monitoring of maturity indices to ensure timely picking, ripening is more difficult to achieve. Traditionally, the industry has relied upon the late Spring and early Summer sales to profitably move the crop as, under these conditions, winter pears are more inclined to ripen naturally and maturity indices are not as much of a concern.

Another witness testifying at the hearing explained that geometrically increasing imported pears from outside the production area have seriously disrupted the traditional marketing scheme for Oregon and Washington pears. According to his testimony, imported pears currently approach five million boxes per marketing season, directly competing with Northwest product in the late Winter and Spring months. One of the main competitors, Bartlett pears imported from the Southern Hemisphere, poses a particularly difficult challenge, as Bartletts ripen more easily than winter pears and are considered more consumer friendly by announcing their edibility through a color change. Winter pears from Oregon and Washington are considered by some to be less user friendly, remaining green throughout the process of senescence.

The dramatically increasing imports are altering Oregon and Washington winter pear marketing schemes, forcing more sales early in the season when pears are less inclined to ripen naturally. In order to meet consumer requirements and expectations, the Committee has identified maturity indices as a method to improve harvesting techniques earlier in the growing and harvest process. By having the authority to establish maturity regulations, the Committee envisions being able to market a more salable, more desirable product earlier in the market season.

The authority to consider maturity in the regulatory criteria could feasibly enhance product quality throughout the industry harvest and storage regimen by establishing pressure regulations, shorten the consumer's waiting period for the fruit to ripen, and provide greater assurance to the consumer that the product will properly ripen at the time of purchase.

The Oregon and Washington winter pear grower community has also recently demonstrated their support for pressure testing by recommending to the USDA the establishment of a maximum pressure limit for all D'Anjou pears entering the marketplace in 2000. While this standard was established through the informal rulemaking process under the authority to establish quality regulations, witnesses attending the hearing expressed the importance of including specific authority in the order

to regulate maturity regulations for any or all varieties of winter pears grown in the production area.

Record evidence supports amending the marketing order to authorize the Committee to recommend maturity regulations for any or all varieties of pears grown in the winter pear industry. This would allow the Committee to recommend, and USDA to implement, minimum maturity requirements through informal rulemaking procedures. Furthermore, there was no opposition to the above proposal, described as Material Issue Number 1 in this recommended decision, voiced at the hearing.

The Department is proposing that § 927.51 of the order be amended to include the authority to establish maturity requirements.

Material Issue Number 2: The Authority To Fix the Size, Capacity, Weight, Dimensions, Markings, or Pack of Winter Pear Packaging or Handling Containers

The order should be amended to add authority to fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of winter pears. The definition of ''Size'' should also be amended to remove the currently defined dimensions of a standard pear box.

Currently, the Winter Pear Control Committee, under the order, has no authority to implement container regulations. The Committee believes that adding this authority to the marketing order is necessary to engender coherency and consistency in the Washington and Oregon winter pear industry. The primary reasons to allow container regulations are: to eliminate confusion in the marketplace, standardize containers, provide for compliance, and, most importantly, to level the playing field, in terms of calculating the cost per unit of carton sales, among all suppliers to the market. The Committee believes that this authority would help reduce instances of confusion in the marketplace.

The Committee also believes that any additional costs to the industry would be minimal and outweighed by the gains outlined above. Growers would benefit because their returns would be measurable against other industry returns, and production/packing systems would become more streamlined and efficient.

Record testimony stated that widespread retail consolidation in the domestic market has resulted in a shrinking number of terminal market sellers. As such, Oregon and Washington winter pear growers and handlers have come under increasing pressure to compete against growers and handlers from outside the production area for retailer business. This pressure has been compounded by an influx of imported pears into the domestic market. The net result has been an oversupply of product in the market, and downward pressure on producer prices.

In addition to competition with imported product, the Washington and Oregon winter pear industry is facing international marketing disadvantages associated with a strong U.S. dollar and lower demand for U.S. products abroad. The combination of increased supply and limited market outlets has presented ever-increasing challenges to the winter pear industry, causing it to consider competition and efficiency gaining techniques, such as container regulations.

While the standard container used in the Washington and Oregon pear industry has historically been the ''Pakcart'', a 44-pound net weight box, retailer demand for new and innovative packaging of pears has resulted in a proliferation of new packages in the marketplace. While many packers have conformed to new packaging demands, maintaining competitiveness has become increasingly difficult due to the increase in container variety and the cost of maintaining inventories.

Maintaining a varied inventory of package types, especially for smaller handlers, is costly and inefficient in warehouse packing systems. The majority of the increased container related production costs are passed on to the producer in the form of a lower net return on his or her product. As one witness testifying at the hearing stated, ''Unfortunately, the way the industry works is all of the costs are accumulated and deducted from the (free on board) FOB price, and then the grower gets what's left.''

A witness testifying at the hearing noted that due to consolidation of retail supermarkets, one of the main sources of distribution for winter pears, substantial pressure is placed on individual growers, packers and shippers to conform to container shipment demands. The witness indicated that it was not unusual for retail supermarkets to request special packaging, including special carton sizes, weights and other characteristics. With each special request for a unique package type, handling costs increase due to the need to keep a variety of containers in inventory and special packing requirements for each type of container. Uniform regulations for packaging would assist the handlers in not only avoiding additional costs but gaining increased operational efficiencies. Moreover, increased handling costs are more often than not passed on to the grower in the form of reduced payment for their product. Thus, it was argued that uniform packing requirements would also benefit the grower in the form of potentially higher returns.

Witnesses also indicated that it is in the industry's best interest to work with its customers, specifically retail supermarkets, to provide efficient packaging for the mutual benefit of all parties, including growers, customers and consumers. As a representative of the industry and local administrative body of the order, it was suggested that the Winter Pear Control Committee is in the best position to work with the industry and customers to develop the correct regulations relating to container size, capacity, weight, and dimensions.

Witnesses demonstrated the need for uniformity in container size and dimensions by describing some of the various container varieties currently at use in the market. It was explained that cartons not only differ in dimension, but also in the number of stacking tabs, container material and liners. One type of container described was the ''Defore carton,'' also referred to as the ''Euro carton.'' This container, measuring 60 x 40 centimeters, is smaller and generally has a lighter net weight than the traditional container used in the production area. In addition to being a smaller box, some retailers differentiate their requests by specifying the number of desired tabs for stacking. The number of stacking tabs requested per Euro carton can vary from four to six to eight.

Another type of carton requested by retailers is known as a corrugated ''Kraft carton'' (similar to the Packart, described above), while others request the Kraft carton with a black inside liner.

In addition to differing container dimensions and other physical characteristics, containers of varying weight have become prevalent in the market. One witness used as an example the California Bartlett industry, which has implemented a system in which some fruit is at a 40-pound net weight, and some at a 44-pound net weight. Moreover, imported South American pears are packed in an 18-kilogram carton, or a 40-pound net weight box, while pears imported from New Zealand and South Africa are generally packed in the Euro 60 x 40 carton.

Witnesses testifying on the need for the authority to establish container regulation argued that a market supplied

with a proliferation of container types and weights leads to confusion among buyers and sellers, inevitably resulting in inequitable net returns to producers. Packages that are not consistent in size or weight across the market make it difficult for retailers to easily conduct cost per unit comparisons among packers. The authority to regulate container regulations would level the playing field by standardizing transaction units between all sellers and buyers. One witness reasoned that with uniform container and packing regulations, a buyer would know exactly what he or she is purchasing regardless of where or from what source it is purchased. Packers would have the same size, weight, marking and pack requirements, assuring that the buyer is getting the same product. Growers would know exactly what amount of product is being sold and promoted at what return. Furthermore, the witness stated that, ''Presently it is not uncommon for us to be comparing 'pears to apples' because of the lack of standardization within our industry. The proposal will eliminate confusion in the market and I believe help streamline the process.'' It was further argued that the adoption of this proposal would allow buyers, consumers, packers and growers of winter pears to compare ''pears to pears,'' regardless of the source.

Without a consistent standard developed by the industry, individual growers and packers will attempt to respond to each individual customer's demand, adding confusion in the marketplace. A packer may have multiple inventories of the same package, once again increasing costs to the parties involved.

Moreover, without enforced container regulations, buyers of winter pears are not always aware of the net weight of the container that they are being quoted. As winter pear sales are typically negotiated in numbers of cartons, markedly different carton weights result in pears being purchased at differing prices per pound.

The authority to establish container regulations, and to adjust those regulations in step with changing retailer demand, would enable the Committee to maintain coherency within the winter pear market packaging regulations.

Historically, the size of winter pears is determined by the number of pears contained in a standard 44-pound container. This concept is also commonly referred to as ''Pack.'' As one witness explained at the hearing, ''Pack'' refers to the amount of product that is put in each box and describes to the purchaser the size of the product that they are buying. For example, if purchaser is buying size 100 pears, the pack definition indicates that there are 100 pears in a standard 44-pound box. However, with non-traditional boxes entering the marketplace, the term pack has lost some significance in that the standard 44-pound box is no longer the industry point of reference.

As one witness testified, retail price calculations, which have traditionally been based on the number of pears per standard 44-pound box, are no longer uniform throughout the marketplace as industry packing material is not standardized. If a retailer is in error on what the actual poundage of a box is, he or she may be computing higher or lower retail prices, which ultimately affects the volume of product sold.

Members of the Committee attending the hearing testified that the proposal to grant authority to fix the size, capacity, weight, dimensions, markings, or pack of a container, or containers, used in the packaging or handling of winter pears has been widely discussed within the grower community. Among the witnesses testifying, it was widely stated that implementing this authority would equally benefit small and large producers by standardizing containers and packing requirements and enhancing uniformity in the market.

It was also requested by witnesses at the hearing that definitions for ''pack'' and ''container'' be added to the list of definitions in the order to further clarify Proposal No. 2. Adding these two definitions would assist in clarifying future requirements established under the above proposed authority. Proposed definitions of both terms were presented at the hearing and are supported by the hearing record.

Record evidence supports amending the marketing order to authorize the Committee to recommend size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of winter pears. This would allow the Committee to recommend, and USDA to implement, such pack and container requirements through informal rulemaking procedures. Furthermore, there was no opposition to the above proposal, described as Material Issue Number 2 in this recommended decision, voiced at the hearing.

Accordingly, the Department is proposing that § 927.51 be amended by adding a new subparagraph (a)(3), which would provide the authority to fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of winter pears. The Department is also proposing that § 927.5 be amended to remove the currently defined dimensions of a standard pear box. This would allow the flexibility to establish, and revise as needed, new container dimensions, and would be consistent with this amendment.

The Department is also proposing that definitions for ''pack'' and ''container'' be added to the order. Adding these two definitions would assist in defining future requirements established under the above proposed authority.

Material Issue Number 3: Designation of a Temporary Alternate To Act for an Absent Committee Member

The order should be amended to include the authority for a Committee member, when that Committee member and his or her alternates are unable to attend a Committee meeting, to designate any alternate from the same group (handler or grower) to serve in their stead. However, the Department believes that this discretion should not be given to the Committee or its chairperson in the event the member in question chooses not to designate another alternate to serve in his or her place.

The Committee is composed of 12 members, with the industry members allocated among four geographic districts. Each Committee member has two alternates who have the same qualifications as the member. Committee members and alternates are nominated by their peers in the district they represent.

Section 927.28 of the order provides that if a Committee member is absent from a meeting, one of his or her alternates shall act in that member's place. There is no provision for a situation in which both the member and that member's alternates are unavailable.

The Committee proposed changing § 927.28 as follows. If both a member and his or her alternates cannot attend a Committee meeting, the member or the alternates (in that order) could designate another alternate member to act in their stead. The temporary alternate would be chosen from the group of other Committee member alternates and would represent both the same district and group (grower or handler) as the Committee member needing an alternate. If neither the Committee member nor that Committee member's alternates choose to make such a designation, the Committee chairperson would be free to do so with the concurrence of a majority of the present members.

In support of the Committee's proposal, witnesses testifying at the hearing felt strongly about the need to ensure grower and handler representation at all meetings. One witness stated, ''Being denied an important vote because of a technicality of succession, and thus not being represented, is not fair to the growers who pay the assessment to the Winter Pear Control Committee.''

Witnesses testifying believed that the authority to temporarily appoint additional alternates was justifiable for many reasons. Most importantly, the small size of grower districts, and the proximity of growers and handlers in their local communities, makes for a tight-knit group who are generally savvy of their community's needs and opinions. Thus, testimony strongly supported the idea that district positions could be accurately represented by appointing temporary alternates from the same district and group (grower or handler). As one witness pointed out, ''We're not strangers to each other, and our views on pear marketing are generally well known.''

According to the record, it was recommended that the selection process of temporary alternates would be somewhat of an ''informal'' process, whereby a temporary alternate would be recommended to the Control Committee by the absent Committee member, or one of his or her alternates. Selection of the temporary alternate would ultimately be overseen and rely on the discretion of the Control Committee.

An example presented at the hearing is as follows. In the Hood River district, there are four Committee members (two growers and two handlers), each having two alternates. In the event that one of the Hood River Committee members and both his or her alternates were unable to attend a Committee meeting, a temporary alternate would be selected from the second (grower or handler) Hood River Committee member's two alternates. As described above, the selection would be recommended by the absent Committee member and approved by the Control Committee. If the Committee member was absent, then the selection would be made by one of his or her alternates and approved by the Control Committee.

The Department agrees that full participation at Committee meetings should be encouraged. The Department also believes that there is merit in allocating membership among districts because the conditions in one district may vary considerably from those in another. However, if a member chooses not to name someone to fill his or her seat and cast votes on his or her behalf, the choice should neither revert to the Committee or its chairperson nor the absent member's alternates. Committee members are nominated by their grower and handler peers to represent them at Committee meetings. The absent Committee member's charge to represent, or provide alternate representation for, his or her peers is an important part of fulfilling his or her responsibilities as a Committee member for that district. In light of the above, should a situation arise where neither a Committee member nor his or her alternates are able to attend a meeting, the Committee member should arrange for a temporary alternate. For these reasons, we believe that only a Committee member should be able to choose a temporary alternate to serve in his or her place when that member and that member's alternates are unavailable.

With regard to the language suggested by the Committee that would only apply to two out of the four winter pear production area districts, the proposed language does not take into consideration a selection process for districts having only one grower or one handler Committee member.

Only the Hood River-White Salmon-Underwood and Wenatchee districts have four Committee members (two growers and two handlers), hence a total of four alternate members for each group meeting the proposed district and group criteria. However, the Medford and Yakima districts only have two Committee members (one grower and one handler) each. In the event that a Medford or Yakima Committee member and both of that member's alternates could not attend a Committee meeting, their ability to find a temporary alternate who would meet both the district and group criteria would be restricted under the Committee's proposal.

In order to make the proposed amendment more practicable, the Committee's proposed language has been modified to provide that a temporary alternate may be selected from the collective pool of all Committee member alternates, but must represent the same group (grower or handler) as the absent member. Thus, in the event that all alternates for Committee members in the same group representing a given district are unavailable, selection of a temporary alternate would rely on the availability of other Committee members' alternates from the remaining districts, provided that the selected temporary alternate represented the same group (grower or handler).

Drawing from the Hood River district example given above, in the event that one of the Hood River grower Committee members and both his or her alternates were unable to attend a Committee meeting, the selection process of a temporary alternate for that meeting would begin with the second Hood River grower Committee member's two alternates. If neither of those two alternates were available, the selection process would proceed to the availability of other, non-Hood River grower Committee members' alternates until a temporary alternate was found.

In the case of districts having only two Committee members, a temporary alternate would be selected by the absent Committee member from the collective pool of alternates from all districts and would represent the same group (grower or handler).

Given these considerations, the Department proposes the following language be added to § 927.28: In the event that both a member of the Control Committee and that member's alternates are unable to attend a Control Committee meeting, the member may designate any other alternate member from the same group (handler or grower) to serve in that member's place and stead.

The Regulatory Flexibility Act and Effects on Small Businesses

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

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

According to the Small Business Administration (13 CFR 121.201) small handlers are those having annual receipts of less than $5,000,000 and small agricultural producers are defined as those with annual receipts of less than $750,000. Based on testimony presented at the hearing, a majority of the winter pear producers are considered small under the SBA definition. Of the 1,800 winter pear growers, 80 to 85 percent are estimated to have sales equal to or less than $750,000. There are 90 handlers

operating in the production area. The majority of these handlers fit the SBA definition of a small handler. Thus, this action will apply primarily to small entities.

This recommended decision proposes making the following amendments to the winter pear marketing order: (1) To amend § 927.51(a)(1) of the order to specifically authorize the establishment of maturity regulations; (2) To amend § 927.51 of the order to authorize the establishment of container requirements which would encompass capacity, weight, dimensions, and packing of the container, or containers, which may be used in packaging or handling of pears; and (3) To amend § 927.28 of the order to authorize additional alternates to serve for a Committee member in the event that both that member and that member's alternates are unable to attend a Committee meeting.

These actions are designed to enhance the quality of winter pears at consumer outlets through the regulation of maturity regulations, to create more orderly marketing conditions for winter pears through the implementation of container uniformity, to improve grower returns through these combined actions, and to ensure grower and handler representation at all Committee meetings.

Members of the Winter Pear Control Committee attending the hearing testified that the proposal to grant authority to establish maturity regulations has been widely discussed within the grower community, an estimated 80 to 85 percent of which qualify as small producers. Moreover, among the witnesses testifying, it was often stated that implementing maturity requirements would equally benefit small and large producers by standardizing industry requirements and enhancing overall product quality in the market.

Small handlers from both Oregon and Washington were present and participated in the hearing, and indicated their support for this proposal. When asked if such regulations would increase handler costs, one small handler responded that while some additional inspection costs would be incurred, those costs are expected to be offset with the increase in consumption. Ultimately, witnesses testifying at the hearing indicated that net returns to both handlers and producers would increase.

Testimony also indicated that the proposal to grant authority to fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, used in the packaging or handling of winter pears has been widely discussed within the winter pear industry. The proposed provisions in this recommended decision also include definitions of ''pack'' and ''container'' that are added based upon testimony at the hearing. Among the witnesses testifying, it was widely stated that implementing this authority would equally benefit both small and large handlers and growers. By standardizing container and packing requirements, handling costs would decrease through reduced inventories and more efficient packing procedures. Uniformity in the market would also facilitate standardized transactions by ensuring more equitable cost per unit comparisons and producer returns on product.

Small handlers testifying at the hearing indicated their support for this proposal. When asked if such regulations would increase handler costs, one small handler explained that the costs of new containers are likely to be offset by gains in packing efficiency and a more transparent cost per unit comparisons in handler to retailer transactions. Small producers testifying to this issue realized that increased costs in packing material would more than likely be passed from the handler to the grower, but the net gain from container standardization will ultimately benefit the industry as a whole, including the small producer. It was stated that by removing confusion related to container size in the marketplace, growers should get a fairer return on their product.

In the case of districts having only two Committee members, a temporary alternate will be selected by the absent Committee member from the collective pool of alternates from all districts and will represent the same group (grower or handler). The proposed provisions in this recommended decision represents a modification to the Committee's proposal in order to better effectuate its terms. This method of selecting a temporary alternate would ensure representation of all growers and handlers (both large and small) at Committee meetings while having little or no increase in Committee administrative costs. Moreover, testimony demonstrated that the authority to temporarily assign alternates would improve representation of the small producers and handlers.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings held to discuss these proposals, as well as the hearing, were widely publicized throughout the Oregon and Washington winter pear production area. All interested persons were invited to attend the meetings and the hearing, and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues. The Committee itself is composed of 12 members, of whom six are handlers and six are producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 30-day comment period is deemed to allow interested persons to respond to this proposal and facilitate the completion of this proceeding.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of winter pears grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of winter pears cherries grown in the production area; and

(5) All handling of winter pears grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and record keeping requirements.

Recommended Amendment of the Marketing Agreement and Order

For the reasons set out in the preamble, 7 CFR part 927 is proposed to be amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

* * * * *

2. Revise § 927.5 to read as follows:

§ 927.5 Size

Size means the number of pears which can be packed in a standard pear box when packed in accordance with the packing requirements of the U.S. Standards for Pears (part 51 of this title), or as such regulations hereafter may be modified or as ''size'' may be more specifically defined in a regulation issued under this part.

3. Add new §§ 927.14 and 927.15 under the undesignated center heading ''Definitions'' to read as follows:

§ 927.14 Pack.

Pack means the specific arrangement, size, weight, count, or grade of a quantity of pears in a particular type and size of container, or any combination thereof.

§ 927.15 Container.

Container means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of pears.

5. Revise § 927.28 to read as follows:

§ 927.28 Alternates for members of the Control Committee.

The first alternate for a member shall act in the place and stead of the member for whom he or she is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his or her first alternate shall act as a member until a successor for the member is selected and has qualified. The second alternate for a member shall serve in the place and stead of the member for whom he or she is an alternate whenever both the member and his or her first alternate are unable to serve. In the event that both a member of the Control Committee and that member's alternates are unable to attend a Control Committee meeting, the member may designate any other alternate member from the same group (handler or grower) to serve in that member's place and stead.

4. Amend § 927.51 by revising paragraph (a) to read as follows:

§ 927.51 Issuance of regulations; and modification suspension, or termination thereof.

(a) Whenever the Secretary finds, from the recommendations and information submitted by the Control Committee, or from other available information, that regulation, in the manner specified in the section, of the shipment of pears would tend to effectuate the declared policy of the act, he or she shall so limit the shipment of pears during a specified period or periods. Such regulation:

(1) May limit the total quantity of any grade, size, quality, maturity, or combination thereof, of any variety of pears grown in any district and may prescribe different requirements applicable to shipments to different export markets; or

(2) May prescribe minimum standards of quality for any variety of pears and limit the shipment thereof to those meeting such minimum standards; or

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in packaging or handling of pears.

Dated: March 27, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–7918 Filed 4–2–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS No. 2180–01]

RIN 1115–AG47

Establishment of a $3 Immigration User Fee for Certain Commercial Vessel Passengers Previously Exempt

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations in accordance with section 109 of the Department of Justice Appropriations Act, 2002 (Title I of Public Law 107–77), signed November 28, 2001. This law authorizes the collection of a $3 fee for certain commercial vessel passengers previously exempt under section 286(e)(1) of the Immigration and Nationality Act (Act). This proposed rule would amend the Service regulations to require certain commercial vessel operators and/or their ticketing agents to charge and collect a $3 user fee from every commercial vessel passenger whose journey originated in the U.S., Canada, Mexico, a territory or possession of the United States, or an adjacent island

except those individuals exempted under section 286(e) of the Act or under 8 CFR part 286. This action is necessary to implement section 109 of the Department of Justice Appropriations Act, 2002.

DATES: Written comments must be submitted on or before May 3, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2180–01 on your correspondence. You may also submit comments electronically to the Service at *insregs@usdoj.gov.* When submitting comments electronically please include the INS No. 2180–01 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Georgia Mayers, Chief of Cash Management, Office of Finance, Immigration and Naturalization Service, 425 I Street, NW., Room 6034, Washington, DC 20536, telephone (202) 305–1200.

SUPPLEMENTARY INFORMATION:

What Is the Immigration User Fee?

Beginning in Fiscal Year 1987, the Service was mandated by Congress via the 1987 Appropriations Act for the Department of Justice, Public Law 99–591, to collect (with limited exceptions) an immigration user fee for each passenger arriving in the United States by commercial air or sea conveyance. Immigration user fee funds are used to operate air and sea inspection services and to fund other related activities.

How Will the Service Use the Fees That Are Collected?

As provided by law, the user fees that are collected may be used, among other things to:

- Provide immigration inspection and preinspection services for commercial aircraft and vessels;
- Provide overtime immigration inspection services for commercial aircraft or vessels;
- Administer debt recovery, including the establishment and operation of a national collections office;
- Expand, operate, and maintain information systems for nonimmigrant control and debt collection;
- Detect fraudulent documents used by passengers traveling to the United States, including training of, and technical assistance to, commercial airline personnel regarding such detection;
- Provide detention and removal services for inadmissible aliens arriving on commercial aircraft and vessels and for any inadmissible alien who has attempted illegal entry into the United States through avoidance of immigration inspection at air or sea ports-of-entry; and,
- Administer removal and asylum screening proceedings at air or sea ports-of-entry for inadmissible aliens arriving on commercial aircraft and vessels, including immigration removal proceedings resulting from the presentation of fraudulent documents and the failure to present documentation and for any inadmissible alien who has attempted illegal entry into the United States by avoiding immigration inspection at air or sea ports-of-entry.

Why Is the Service Proposing To Apply a $3 Inspection Fee To Certain Previously Exempt Commercial Vessel Passengers?

The authorization to charge and collect a user fee from certain previously exempt commercial vessel passengers is provided in section 109 of the Department of Justice Appropriations Act, 2002 which was enacted on November 28, 2001. Prior to the enactment of this law, Commercial vessel passengers, whose journeys originated in Canada, Mexico, a state, territory or possession of the United States, or an adjacent island, were statutorily exempt from paying the Immigration User Fee prescribed by section 286(d) of the Act. While these vessel passengers were exempt from paying the fee, the Service was still required to provide inspection services. This exemption resulted in the Service's inability to invest in necessary staffing and technology resources. The new fee will begin to provide for the recovery of inspection operations and related inspection activities that support seaport immigration inspection.

Did the Department of Justice Appropriation Act, 2002 Specify Any Other Changes to Section 286 of the Act?

The Department of Justice Appropriations Act, 2002 also directed the Attorney General to increase the immigration user fee prescribed in section 286(d) of the Act by $1 from $6 to $7 for all passengers previously required to pay the $6 fee. This change has been published in the **Federal Register** as a final rule.

What Changes Are Proposed in This Rule?

This rule proposes to add 8 CFR 286.2(b) and revise 8 CFR 286.3(a) to provide for the collection of the $3 commercial vessel fee and removes the exemption of commercial vessel passengers whose journeys originated in Canada, Mexico, a state, territory or possession of the United States, or an adjacent island. In accordance with the Department of Justice Appropriations Act, 2002, the rule would also include an exemption from the $3 fee for passengers arriving by way of Great Lakes international ferries or Great Lakes vessels on the Great Lakes and connecting waterways when operating on a regular schedule.

How Is the $3 Fee Proposed To Be Collected?

Affected commercial vessel carriers and ticket-selling agents would be subject to the same fee collection responsibilities, remittance and statement procedures, maintenance of records, and penalties as stated in 8 CFR 286.2, 286.4, 286.5, 268.6 and 286.7 and that are currently required of other non-exempt immigration user fee remittances.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. Immigration user fees are already being collected by commercial vessel carriers and/or their ticketing agents in connection with voyages originating in previously non-exempt areas. Since the passengers rather than the carriers ultimately pay the immigration inspection user fee, these passengers are not considered small entities as that term is defined in 5 U.S.C. 601(6), this rule does not bear an impact on small entities.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

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

Executive Order 13132

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

Executive Order 12988 Civil Justice Reform

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

List of Subjects in 8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, part 286 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 286—IMMIGRATION USER FEE

1. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

2. Section 286.2 is amended by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b), to read as follows:

§ 286.2 Fee for arrival of passengers aboard commercial aircraft or commercial vessels.

* * * * *

(b) A fee, in the amount prescribed in section 286(e)(3) of the Act, per individual is charged and collected by the Service for the immigration inspection at a port-of-entry in the United States, or for the preinspection in a place outside the United States of each commercial vessel passenger whose journey originated in the U.S., Canada, Mexico, a state, territory or possession of the United States, and adjacent islands, except as provided in § 286.3.

* * * * *

3. Section 286.3 is amended by revising the introductory text, and by revising paragraph (a) to read as follows:

§ 286.3 Exceptions.

The fees set forth in §§ 286.2(a) and 286.2(b) shall not be charged or collected from passengers who fall within any one of the following categories:

(a) Persons arriving at designated ports-of-entry of passengers arriving by the following vessels, when operating on a regular schedule: Great Lakes international ferries or Great Lakes vessels on the Great Lakes and connecting waterways;

* * * * *

Dated: March 28, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–8011 Filed 4–2–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–22–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B, –300, –400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200B, –300, –400, –400D, and –400F series airplanes, that currently requires repetitive inspections to detect cracking of fire extinguisher discharge tubes in certain engine struts, and corrective action, if necessary. For certain airplanes, that AD also provides for an optional modification of the fire extinguisher discharge tubes, which constitutes terminating action for the repetitive inspections. This action would make the previously optional modification of the fire extinguisher discharge tubes mandatory for all affected airplanes and would add one airplane to the applicability. This proposal is prompted by a report that the check tee valve at the top of an engine strut can be damaged such that no extinguishing agent can get to the engine. The actions specified by the proposed AD are intended to prevent blockage of the check tee valve and cracks in the fire extinguisher discharge tubes in the engine struts, which could prevent the fire extinguishing agent from being delivered to the engine or reduce the amount delivered to the engine, which could permit a fire to spread from the engine to the wing of the airplane.

DATES: Comments must be received by May 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–22–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received. Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–22–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 30, 2000, the FAA issued AD 2000–07–10, amendment 39–11664 (65 FR 18881, April 10, 2000), applicable to certain Boeing Model 747–200B, –300, –400, –400D, and –400F series airplanes, to require repetitive inspections to detect cracking of fire extinguisher discharge tubes in certain engine struts, and corrective action, if necessary. For certain airplanes, that action also provides for a modification of the fire extinguisher discharge tubes, which constitutes terminating action for the repetitive inspections. That action was prompted by reports that cracked fire extinguisher discharge tubes have been found in the engine struts on certain airplanes. The requirements of that AD are intended to detect and correct cracked fire extinguishing tubes in the engine struts. In the event of an engine fire, such cracked tubes could prevent the fire extinguishing agent from being delivered to the engine or reduce the amount that could be delivered to the engine, and could permit a fire to spread from the engine to the wing of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, there has been a report that the check tee valve at the top of the engine strut can be damaged such that no extinguishing agent can reach the engine. The check tee valve contains a ball that directs the extinguishing agent to the engine. It was determined that the ball of the check tee valve could cause a blockage of the downstream part of the check tee valve. Wear between the ball and the housing and the position of the valve would allow the ball to block the outlet port of the check tee valve. The blockage at the check tee valve, if not corrected, could also prevent the fire extinguishing agent from being delivered to the engine or reduce the amount delivered to the engine, and could permit a fire to spread from the engine to the wing of the airplane.

Explanation of Relevant Service Information

Since the issuance of that AD, the FAA has reviewed and approved two service bulletins which describe procedures for modifying the route of the fire extinguisher discharge tubes between the inboard fire bottles and the inboard engines. Boeing Alert Service Bulletin 747–26A2233, Revision 1, dated November 16, 2000, applies to Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines. Boeing Alert Service Bulletin 747–26A2267, dated December 20, 2000, applies to Model 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 series engines. The modification moves the check tee valve from the top of the strut to a position adjacent to the front spar, and precludes the ball from obstructing the outlet port of the valve. The modification constitutes terminating action for the repetitive inspections required by AD 2000–07–10. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

The FAA has determined that the repetitive inspections of the fire extinguisher discharge tubes, required by AD 2000–07–10, are insufficient to address the unsafe condition which has been identified. The proposed AD would supersede AD 2000–07–10 to continue to require the repetitive inspections but would mandate modification of the routing of the fire extinguisher discharge tubes, terminating the need for repetitive inspections. (That modification was included in AD 2000–07–10 as an optional terminating action for certain airplanes.) In addition, the proposed AD would add an airplane to the applicability to parallel the effectivity specified in Boeing Alert Service Bulletin 747–26A2233, Revision 1, dated November 16, 2000. The proposed AD would require the actions to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Service Bulletins and Proposed AD

Operators should note that, although the service bulletins do not provide a compliance time for accomplishing the modification, the proposed AD would require that the modification be accomplished within 24 months after the effective date of this AD. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, the FAA finds a 24-month compliance time for completing the required modification to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 268 airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 2000–07–10, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost

impact of the currently required inspections on U.S. operators is estimated to be $2,820, or $60 per airplane, per inspection cycle.

The modification that is proposed in this AD action would take approximately 32 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,488 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $348,176, or $7,408 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11664 (65 FR 18881, April 10, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–22–AD. Supersedes AD 2000–07–10, Amendment 39–11664.

Applicability: Model 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 series engines, line number 679 through 1060 inclusive; and Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines, line numbers 696 through 1062 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent blockage of the check tee valve and cracks in the fire extinguisher discharge tubes in the engine struts, which could prevent the fire extinguishing agent from being delivered to the engine or reduce the amount delivered to the engine, which could permit a fire to spread from the engine to the wing of the airplane, accomplish the following:

Restatement of Requirements of AD 2000–07–10

Repetitive Inspections and Corrective Actions

(a) For Model 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 series engines, line number 679 through 1060 inclusive; and Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines, line numbers 696 through 1061 inclusive: Within 30 days after April 25, 2000 (the effective date of AD 2000–07–10, amendment 39–11664), perform a detailed visual inspection to detect cracking of the fire extinguisher discharge tubes in the number 2 and number 3 engine struts, in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000.

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

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 18 months.

(2) If any cracking is detected, prior to further flight, replace the cracked tube with a new or serviceable part, in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000. Repeat the inspection required by paragraph (a) of this AD within 18 months after the replacement and thereafter at intervals not to exceed 18 months.

New Requirements of This AD

Modification

(b) For Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines: Within 24 months after the effective date of this AD, modify the routing of the fire extinguishing tubes between the inboard fire bottles and the inboard engines in accordance with Boeing Alert Service Bulletin 747–26A2233, Revision 1, dated November 16, 2000. Accomplishment of the requirements of this paragraph constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD for Model 747–400 and 747–400F airplanes equipped with Pratt & Whitney PW4000 engines.

(c) For 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 series engines: Within 24 months after the effective date of this AD, modify the routing of the fire extinguishing tubes between the inboard fire bottles and the inboard engines in accordance with Boeing Alert Service Bulletin 747–26A2267, dated December 20, 2000. Accomplishment of the requirements of this paragraph constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD for Model 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 engines.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on March 27, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7993 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–420–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

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

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A series airplanes, that would have required replacement of certain air recirculation fans in the flight compartment and the passenger compartment. These fans may be replaced with either upgraded fans with new brushes having insulation on the brush leads or with modified fans having new, brushless motors. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule by requiring modification of the fan support structure prior to installation of the upgraded fans. The actions specified by this new proposed AD are intended to prevent incidents of smoke or a burning smell in the cabin during flight, caused by incorrect brush insulation in the motors of the air recirculation fans in the flight compartment and the passenger compartment.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–420–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–420–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–420–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–420–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to Saab Model SAAB SF340A series airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on June 29, 2001 (66 FR 34589). That NPRM would have required replacement of the air recirculation fans in the flight compartment and the passenger compartment with either upgraded fans with new brushes having insulation on the brush leads or with modified fans having new, brushless motors. That NPRM was prompted by information from the Luftfartsverket (LFV), which is the airworthiness authority for Sweden, that incorrect brush insulation used in the motors of the air recirculation fans for the flight compartment and the passenger compartment has produced smoke or a burning smell in the cabin on a number of occasions. Such incorrect brush insulation in the motors of the air recirculation fans in the flight compartment and the passenger compartment could result in additional incidents of smoke or a burning smell in the cabin during flight.

Actions Since Issuance of Previous Proposal

Shortly after the FAA issued NPRM Docket No. 2000–NM–420–AD, the FAA received notification that the LFV had issued Swedish airworthiness directive SAD No. 1–160 R1, dated June 13, 2001, which cancelled SAD No. 1–160, dated August 24, 2000. The revised Swedish airworthiness directive required performance of actions in accordance

with SAAB Service Bulletin 340–21–039, Revision 01, dated April 18, 2001. In addition to describing procedures for removing the air recirculation fans and replacing them with upgraded air recirculation fans with new brushes having insulation on the brush leads, the service bulletin describes procedures for a modification to the support structure for the flight compartment air recirculation fan. The fan support structure must be modified because the new brushes on the upgraded fans make the fan housing slightly longer. The longer housing interferes with the existing fan support structure. Therefore, the existing support structure must be modified by making a small cut-out in the structure prior to installing the upgraded fan.

Conclusion

Since this change expands the scope of the originally proposed rule by proposing additional work for the operators, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD and that the average labor rate is $60 per work hour.

It would take approximately 4 work hours per airplane to accomplish the proposed removal of the two air recirculation fans having part number (P/N) C209–690B, C209–690B1, or C209–690C and their replacement with two upgraded air recirculation fans having P/N C209–690D. Based on this figure, the cost impact of the proposed replacement on U.S. operators is estimated to be $8,400, or $240 per airplane.

It would take approximately another 3 work hours per airplane to accomplish the proposed modification of the fan support structure. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $6,300, or $180 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed optional modification of the two air recirculation fans by installing new, brushless motors. The cost of the brushless motors is $38,000 per airplane. Based on this figure, the cost impact of the proposed optional modification on U.S. operators is estimated to be $38,120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket 2000–NM–420–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers -004 through—108, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent incidents of smoke or a burning smell in the cabin during flight caused by incorrect brush insulation in the motors of the air recirculation fans in the flight compartment and the passenger compartment, accomplish the following:

Replacement

(a) Within 1,000 flight hours after the effective date of this AD: Perform either paragraph (a)(1) or (a)(2) of this AD.

(1) Remove the two air recirculation fans having part number (P/N) C209–690B, C209–690B1, or C209–690C, modify the structure of the fan support, and replace the fans with two upgraded air recirculation fans having P/N C209–690D, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–21–039, Revision 01, dated April 18, 2001.

Note 2: The upgraded fans are larger than the original fans and will interfere with the structure of the fan support. A modification to the structure of the fan support to include a small cutout is contained in Paragraph 2.C. of Saab Service Bulletin 340–21–039, Revision 01.

Note 3: The modification to the structure of the fan support to include a small cutout is also described in Saab Service Bulletin 340–21–001, Revision 1, dated February 20, 1985. For those airplanes on which the requirements of paragraph (a)(1) have been performed prior to the effective date of this AD, modification of the structure of the fan support to include a small cutout in accordance with that service bulletin is acceptable as a means of compliance with the applicable requirements of paragraph (a)(1) of this AD.

(2) Remove the two air recirculation fans having P/N C209–690B, C209–690B1, or C209–690C, and replace the fans with two modified air recirculation fans with brushless motors having P/N 9302882–002, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–21–018, Revision 02, dated June 21, 2000.

Spares

(b) As of the effective date of this AD, no air recirculation fans having P/N C209–690B, C209–690B1, or C209–690C may be installed on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 5: The subject of this AD is addressed in Swedish airworthiness directive 1–160 R1, dated June 13, 2001.

Issued in Renton, Washington, on March 27, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7992 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

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

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes, that would have required replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors. That proposal was prompted by mandatory continuing airworthiness information from a foreign airworthiness authority. This new action revises the proposed rule by specifying compliance per corrected service information. The actions specified by this new proposed AD are intended to prevent false smoke warnings from the smoke detectors in the cargo compartment. A false smoke warning prompts the flightcrew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire. Repeated false smoke warnings create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–250–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–250–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 4, 2001 (66 FR 50582). That NPRM would have required replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors. That NPRM was prompted by mandatory continuing airworthiness information from a foreign airworthiness authority. A false smoke warning prompts the flightcrew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire. That condition, if not corrected, could result in repeated false smoke warnings that create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted.

Comments

Due consideration has been given to the single comment received in response to the NPRM.

Request To Reference Latest Service Bulletin Revisions

One commenter points out that, since the issuance of the NPRM, the manufacturer has issued Bombardier Service Bulletin 601R–26–016, Revision ''B,'' dated August 10, 2001, and Revision ''C,'' dated August 17, 2001. Revision ''B'' of the service bulletin was issued to: correct a wire change referenced in Revision ''A;'' revise the figure reference and the positioner part number; and provide a compliance statement. Revision ''C'' retains the corrections specified by Revision ''B'' and adds certain administrative information, which specifies that purchase orders should be submitted in order to obtain kit(s) referenced in the service bulletin. Therefore, the commenter requests that the NPRM be revised to specify the new service information.

The FAA agrees that the service bulletin revisions describing the corrected wiring changes should be referenced in the AD to ensure that the wiring procedures are accomplished correctly. Therefore, we have revised paragraph (a) of the AD to specify Revision ''B'' or Revision ''C'' as the correct reference for replacement of the existing smoke detectors having part number (P/N) 473052.

Conclusion

This change expands the scope of the originally proposed rule by removing reference Revision ''A'' of Bombardier Service Bulletin 601R–26–016, which contains incorrect wiring instructions. Accordingly, this supplemental NPRM proposes to require accomplishment of the proposed actions per Revision ''B'' or ''C'' of the service bulletin. Therefore, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 281 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors, and that the average labor rate is $60 per work hour. The cost of required parts is approximately $4,136 ($876 for one smoke detector kit and $1,630 each for two smoke detectors). Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,195,936, or $4,256 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket 2001–NM–250–AD.

Applicability: Model CL–600–2B19 series airplanes, serial numbers 7003 through 7480 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent false smoke warnings from the smoke detectors in the cargo compartment, which prompt the flightcrew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire, or which create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD: Replace the existing smoke detectors having part number (P/N) 473052, which are located in the cargo compartment, with new, improved smoke detectors having P/N 473597–19, in accordance with Bombardier Service Bulletin 601R–26–016, Revision ''B,'' dated August 10, 2001, or Revision ''C,'' dated August 17, 2001.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–21, dated May 23, 2001.

Issued in Renton, Washington, on March 27, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7994 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–348–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 and A310 series airplanes. This proposal would require replacement of certain symbol generator units (SGUs) in the electronic flight instrument system with new, improved SGUs, and modification of associated equipment and wiring. This action is necessary to ensure that the flightcrew has adequate flight information by preventing temporary loss of data from the primary flight and navigation displays. Inadequate flight information could result in reduced situational awareness for the flight crew, which could contribute to loss of control or impact with obstacles or terrain. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 3, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–348–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–348–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–348–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–348–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes. The DGAC advises that, in one incident, all data on both primary flight displays and both navigation displays were lost for a few seconds during high-rate maneuvering following an event of heavy turbulence. This loss of data has been attributed to monitor exceedance by the symbol generator units (SGUs) in the electronic flight instrument system. Temporary loss of data from the primary flight displays and navigation displays could cause the flightcrew to have inadequate flight information. Inadequate flight information could result in reduced situational awareness for the flight crew, which could contribute to loss of control or impact with obstacles or terrain.

Explanation of Relevant Service Information

Airbus Industrie has issued Service Bulletins A300–34–6132 (for Model A300–600 series airplanes) and A310–34–2157 (for Model A310 series airplanes), both dated May 17, 2001. Those service bulletins describe procedures for replacement of certain SGUs in the electronic flight instrument system with new, improved SGUs, and modification of associated equipment and wiring. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2001–467(B), dated October 3, 2001, in order to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 142 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed replacement and associated modifications, and that the average labor rate is $60 per work hour. Required parts would cost approximately $470 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $100,820, or $710 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 2001–NM–348–AD.

Applicability: Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes; certificated in any category; except those on which Airbus Service Bulletin A300–34–6132 or A310–34–2157, both dated May 17, 2001 (Airbus Industrie Modification 12100 or 12291), has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew has adequate flight information by preventing temporary loss of data from the primary flight and navigation displays, accomplish the following:

Replacement and Modification

(a) Within 3 years after the effective date of this AD, replace all symbol generator units (SGUs), part number (P/N) 9612660319, in the electronic flight instrument system, with new, improved SGUs, P/N 9612660321, and modify associated equipment and wiring, according to Airbus Service Bulletin A300–34–6132 (for Model A300–600 series airplanes) or A310–34–2157 (for Model A310 series airplanes), both dated May 17, 2001, as applicable.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–467(B), dated October 3, 2001.

Issued in Renton, Washington, on March 27, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7995 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–45–AD]

RIN 2120–AA64

Airworthiness Directives; Univair Aircraft Corporation Alon A–2 and A2–A, ERCO 415–C, 415–CD, 415–D, E, and G, Forney F–1 and F–1A, and Mooney M10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Univair Aircraft Corporation (Univair) Alon A–2 and A2–A, ERCO 415–C, 415–CD, 415–D, E, and G, Forney F–1 and F–1A, and Mooney M10 airplanes. This proposed AD would require you to repetitively inspect the wing center section for evidence of corrosion by installing inspection openings or by the use of a scope and light source, *e.g.,* fiberscope borescope or an endoscope, that meets specified criteria. This proposed AD would also require you to repair or replace any parts where corrosion or corrosion damage was found, install cover plates where inspection openings were made, and send inspection results to Federal Aviation Administration (FAA). This proposed AD is the result of several reports of corrosion being found throughout the wing center section structure. The actions specified by this proposed AD are intended to detect and correct corrosion in the wing center section which could result in failure of the wing center section structure during flight. Such failure could lead to loss of control of the airplane.

DATES: The FAA must receive any comments on this proposed rule on or before June 3, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–45–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2001–CE–45–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011, telephone: (303) 375–8882; facsimile: (303) 375–8888. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–45–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received several reports of severe corrosion being found throughout the wing center section of the affected model airplanes. We have determined that the original design configuration of these airplanes does not provide adequate means for routine visual inspection of the wing center section wing walkway boxes. The inability to inspect this area has resulted in corrosion being undetected on these airplanes.

What Are the Consequences if the Condition Is Not Corrected?

If not detected and corrected, the wing center section structure could fail during flight. Such failure could lead to loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Univair has issued Univair Aircraft Corporation Service Bulletin No. 31, date January 29, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—installing inspection openings and cover plate assemblies;

—repetitively inspecting for corrosion and corrosion damage using the inspection openings or a specified scope and light source, e.g., fiberscope borescope or an endoscope; and

—repairing or replacing any parts where corrosion or corrosion damage was found.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—the unsafe condition referenced in this document exists or could develop on other Univair Alon A–2 and A2–A, ERCO 415–C, 415–CD, 415–D, E, and G, Forney F–1 and F–1A, and Mooney M10 airplanes of the same type design;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin and report any damage found to FAA.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 2,600 airplanes in the U.S. registry.

What Would be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed installation of the inspection openings:

Labor cost	Parts cost	Total cost per airplane
10 workhours × $60 per hour = $600	$175	$775

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120.	$450 for purchase of a borescope or an endoscope, if applicable.	$120 or $570	$120 × 2,600 = $312,000 or $570 × 2,600 = $1,482,000.

The FAA has no method of determining the number of repetitive inspections each owner/operator would incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs or replacements each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Compliance Time of This Proposed AD

What Would be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is ''within the next 12 calendar months after the effective date of this AD and thereafter at intervals not to exceed 12 calendar months or 100 hours time-in-service (TIS), whichever occurs first''.

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

The unsafe condition specified by this proposed AD is caused by corrosion. Corrosion can occur regardless of whether the airplane is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this proposed AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours TIS.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Univair Aircraft Corporation: Docket No. 2001–CE–45–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
Alon A–2 and A2–A	All
ERCO 415–C, 415–CD, 415–D, E, and G.	All
Forney F–1 and F–1A	All
Mooney M10	All

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion in the wing center section which could result in failure of the wing center section structure during flight. Such failure could lead to loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the wing center section for corrosion or corrosion damage by accomplishing one of the following methods:	Within the next 12 calendar months after the effective date of this AD and thereafter at intervals not to exceed 12 calendar months or 100 hours time-in-service (TIS), whichever occurs first .	In accordance with the Procedures section of Univair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002, and Advisory Circulary 43–4A, Corrosion Control for Aircraft.
(i) Install inspection openings to gain access to the wing walkway box structure and inspect the wing center structure for corrosion or corrosion damage; or		
(ii) Use a scope and light source, *e.g.,* fiberscope borescope or an endoscope (as specified in Appendix 1 of this AD) to inspect the wing center structure for corrosion or corrosion damage.		
(2) If corrosion or corrosion damage is found during any inspection required in paragraph (d)(1) of this AD, repair of replace components of the wing center section	Prior to further flight after any inspection in which the corrosion or corrosion damage is found .	In accordance with the Procedures section of Univair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002, the applicable maintenance manual, and Advisory Circular 43–4A, Corrosion Control for Aircraft.
(3) If inspection openings were installed in accordance with paragraph (d)(1)(i) of this AD, install cover plate assemblies.	Prior to further flight after each inspection or repair required in paragraphs (d)(1) and (d)(2) of this AD .	In accordance with the Procedures section of Unvair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002.
(4) If any damage is found during any inspection required by this AD, submit a Malfunction or Defect Report (M or D), FAA Form 8010–4, to the FAA.	Within 10 days after the inspection in which the corrosion or damage was found or within 10 days after the effective date of this AD, whichever occurs later .	Send the report to Roger Caldwell, FAA, at the address in paragraph (f) of this AD. You may also file electronically as discussed in this AD.
(i) Include the airplane model and serial number, the extent of the damage (location and type), and the total number of hours TIS on the damaged wing.		
(ii) You may submit M or D reports electronically by accessing the FAA AFS–600 web page at http://av-info.faa.gov/isdr/. You will lose access to the report once electronically submitted. We recommend you print two copies prior to submitting the report. Forward one copy to the Denver Aircraft Certification Office (ACO) and keep the one copy for your records. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.		

Note 1: We have determined that Olympus OSF Endoscope (sigmoidoscope) with a Fujinon FIL–150 light source is acceptable for this inspection. Other scopes and light sources meeting the minimum characteristics stated in Appendix 1 of this AD are also acceptable.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

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

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011, telephone: (303) 375–8882; facsimile: (303) 375–8888. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Appendix 1 to Docket No. 2001–CE–45–AD

Minimum characteristic requirements for the scope and light source, *e.g.,* fiberscope boroscope or endoscope.

(1) Must be a remote high intensity light source of 150 Watts halogen or better.

(2) The optical system must be of a quality such that it remains constantly in focus from about 4 millimeters (0.16 inch) to infinity.

(3) When the tip is approximately 4 millimeters from the inspected surface, a magnification of about 10X must be achieved.

(4) The image guide and protective sheath length must be at least 2 feet for more, and the distal tip diameter must be 0.450 inch or larger.

(5) There must be control handles for four-way tip articulation of the last 4 to 5 inches for a minimum of 100 degrees for each direction.

Issued in Kansas City, Missouri, on March 27, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7996 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule; Notice of 15-Day Extension in Comment Period

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Federal Trade Commission (''the Commission'' or ''FTC'') has extended the comment period by which comments must be submitted concerning the proposed changes to its Telemarketing Sales Rule (''the Rule'' or ''TSR''). This document informs prospective commenters of the change and sets a new date of April 15, 2002, for the end of the comment period.[1]

DATES: Written comments will be received until the close of business on April 15, 2002.

ADDRESSES: Six paper copies of each paper and/or written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, comments should also be submitted in electronic form. To encourage prompt and efficient review and dissemination of the comments to the public, all comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individual members of the public filing comments need not submit multiple copies or comments in electronic form. Alternatively, the Commission will accept papers and comments submitted to the following email address: *tsr@ftc.gov,* provided the content of any papers or comments submitted by email is organized in sequentially numbered paragraphs. All submissions should be identified as ''Telemarketing Sales Rule Review—Comment. FTC File No. R411001.''

Papers and written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission Regulations, 16 CFR 4.9, on normal business days between the hours of 8:30 a.m. and 5 p.m. in Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission will make this notice and, to the extent possible, all papers or comments received in response to this notice available to the public through the Internet at the following address: *www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine Harrington-McBride (202) 326–2452, email *cmcbride@ftc.gov;* Karen Leonard (202) 326–3597, email *kleonard@ftc.gov;* or Carole Danielson (202) 326–3115, email *cdanielson@ftc.gov,* Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On January 30, 2002, the Commission published a request for comment on proposed changes to its Telemarketing Sales Rule.[2] The Telemarketing and Consumer Fraud and Abuse Prevention Act (''the Telemarketing Act'' or ''the Act'') directed the Commission to promulgate rules to protect consumers from deceptive telemarketing practices and other abusive telemarketing activities. In response to this directive, the Commission adopted the TSR, which requires telemarketers to make specific disclosures of material information; prohibits misrepresentations; sets limits on the times telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services. The comment period for proposed changes to the TSR is currently scheduled to close on March 29, 2002.

Several stakeholders that participated in the original rulemaking proceeding, in the rule review public workshop, and in the public forum focusing on the Rule's do-not-call provision have expressed concern that there will not be sufficient time before March 29 to complete their responses to the Commission's Request for Comment on the proposed amendments. They have asked that the comment period be extended to enable them to complete their data collection. The Commission is mindful of the need to deal with this matter expeditiously. However, the Commission also is aware that the issues raised are complex and believes that the enhancement of the record that will be achieved by extending the comment period far outweighs any harm that might be caused by the delay.

Therefore, the Commission has decided to extend the comment period to April 15, 2002. This extension will provide sufficient time for commenters to prepare useful comments. This extension will not affect the date of the public forum to discuss the proposed changes to the TSR's provisions, but the Commission has determined to also extend the date by which applications to participate in the forum must be received. Accordingly, the public forum will be held, as originally scheduled, on June 5–7, 2002, and notification of interest in participating in the forum must be submitted in writing, but separate from public comments, on or before April 15, 2002, to Carole I. Danielson, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

Authority: 15 U.S.C. 1601–1608.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–8016 Filed 4–2–02; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[Petition IV–2000–1; FRL–7167–5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Kerr-McGee Chemicals, LLC; Mobile County, AL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: This document announces that the EPA Administrator has denied a petition to object to a state operating permit issued by the Alabama

[1] This document was received at the Office of the Federal Register on March 29, 2002.

[2] 67 FR 4492 (January 30, 2002).

Department of Environmental Management to Kerr-McGee Chemicals, LLC, Mobile County, Alabama. Pursuant to section 505(b)(2) of the Clean Air Act (Act), petitioners may seek judicial review of the petition in the United States Court of Appeals for the appropriate circuit within 60 days of this decision under section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303–8960. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/kerrmcgee_decision2000.pdf.*

FOR FURTHER INFORMATION CONTACT: Joel Huey, Air Permits Section, EPA Region 4, at (404) 562–9104 or *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to state operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. Mobile Bay Watch, Inc., submitted a petition to the Administrator on May 22, 2000, seeking EPA's objection to the operating permit issued to Kerr-McGee Chemicals, LLC. The petitioner maintains that the Kerr-McGee Chemicals operating permit is inconsistent with the Act because the permit fails to: (1) Require adequate periodic monitoring of facility emissions; (2) require the facility to prepare a Risk Management Plan as well as Worst Case Scenario and Planning Case Scenario; and (3) reflect the comments submitted by Mobile Bay Watch during the 30-day draft permit period. Mobile Bay Watch also bases its petition on the following statements: (1) Kerr-McGee requested in its permit application that the number of federally enforceable limitations in the operating permit be minimized; (2) Kerr-McGee requested in its permit application that the permit include a permit shield; (3) the period between the date of the permit application and the issuance of the draft permit was excessive; and (4) EPA failed to fully review the Kerr-McGee Chemicals permit. On February 1, 2002, the Administrator issued an order denying the petition. The order explains the reasons behind EPA's conclusion that the petitioner has failed to demonstrate that the Kerr-McGee Chemicals permit does not assure compliance with the Act on the grounds raised.

Dated: March 18, 2002.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 02–8063 Filed 4–2–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–711, MB Docket No. 02–66, RM–10252]

Digital Television Broadcast Service; Rutland, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Vermont ETV, Inc., licensee of noncommercial educational station WVER(TV), NTSC channel *28, Rutland, Vermont, requesting the substitution of DTV channel *9 for station WVER(TV)'s assigned DTV channel *56. DTV Channel *9 can be allotted to Rutland, Vermont, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (43–39–32 N. and 73–06–25 W.). However, since the community of Rutland is located 400 kilometers from the U.S.-Canadian border, concurrence from the Canadian must be obtained for this allotment. As requested, we propose to allot DTV Channel *9 to Rutland with a power of 30 and a height above average terrain (HAAT) of 411 meters.

DATES: Comments must be filed on or before May 23, 2002, and reply comments on or before June 7, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jonathan D. Blake, Covington & Burling, 1201 Pennsylvania Avenue, NW, P.O. Box 7566, Washington, DC 20044–7566 (Counsel for Vermont ETV, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–66, adopted March 25, 2002, and released April 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Vermont is amended by removing DTV Channel *56 and adding DTV Channel *9 at Rutland.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–7977 Filed 4–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–710, MB Docket No. 02–65, RM–10370]

Digital Television Broadcast Service and Television Broadcast Service; Georgetown, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Community Television, Inc., an applicant for a construction permit for a new noncommercial educational television station to operate on NTSC channel *41 at Georgetown. Community Television requests the replacement of DTV channel *38 for NTSC channel *41 at Georgetown. DTV channel *38 can be allotted to Georgetown, South Carolina, in compliance with Sections 73.622(a) and 73.623(c) of the Commission's criteria as set forth in the Public Notice, released November 22, 1999, DA 99–2605. DTV channel *38 can be allotted at reference coordinates 33–25–58 N. and 79–16–16 W. with a power of 500, a height above average terrain HAAT of 144 meters.

DATES: Comments must be filed on or before May 23, 2002, and reply comments on or before June 7, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gene A. Bechtel, Bechtel & Cole, Chartered, 1901 L Street, NW., Suite 250, Washington, DC 20036 (Counsel for Community Television, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–65, adopted March 25, 2002, and released April 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under South Carolina, is amended by removing Channel *41 at Georgetown.

3. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

4. Section 73.622(b), the Table of Digital Television Allotments under South Carolina, is amended by adding Georgetown, DTV channel *38.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–7976 Filed 4–2–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 571, 574 and 575

[Docket No. NHTSA–00–8011]

RIN 2127–AI54

Federal Motor Vehicle Safety Standards; Tires

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

ACTION: Correction to notice of proposed rulemaking (NPRM).

SUMMARY: This document contains corrections to the proposal which was published on Tuesday, March 5, 2002 (67 FR 10050).

DATES: Written comments may be submitted to this agency and must be received by May 6, 2002.

FOR FURTHER INFORMATION CONTACT:

For technical and policy issues: Mr. George Soodoo or Mr. Joseph Scott, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC, 20590. Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC, 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

Background

The proposal that is the subject of this correction was published in response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. It proposed to establish new and more stringent tire performance requirements in a new Federal motor vehicle safety standard that would apply to all new tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less. The proposal sought comment on the proposed new standard, including its applicability and test procedures, modifications to related existing standards, and lead time provided for manufacturers to achieve compliance.

Need for Correction

As published, the proposal inadvertently omits items which are in need of addition.

Correction of Publication

Accordingly, the publication on March 5, 2002 (67 FR 10050) is corrected as follows:

On page 10071, in the first column, following the second full paragraph, the following paragraph is added: ''Additionally, all light vehicles manufactured on or after September 1, 2004 would have to comply with the final rule. This proposed lead time would be consistent with the lead time proposed for the two-year phase-in discussed above.''

On page 10077, amendment 3a is added to read as follows: ''Table 1 to § 571.110 is revised to read as follows:

* * * * *

TABLE 1.—OCCUPANT LOADING AND DISTRIBUTION FOR VEHICLE NORMAL LOAD FOR VARIOUS DESIGNATED SEATING CAPACITIES

Designated seating capacity, number of occupants	Vehicle normal load, number of occupants	Occupant distribution in a normally loaded vehicle
2 through 4	2	2 in front
5 through 10	3	2 in front, 1 in second seat
11 through 15	5	2 in front, 1 in second seat, 1 in third seat, 1 in fourth seat
16 through 22	7	2 in front, 2 in second seat, 2 in third seat, 1 in fourth seat

Issued: March 28, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–8078 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 67, No. 64
Wednesday, April 3, 2002

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV00–927–3]

Winter Pears Grown in Oregon and Washington; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement and Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for winter pears grown in Oregon and Washington (order). The amendments are based on those proposed by the Winter Pear Control Committee (Committee), which is responsible for local administration of the order. The amendments include: authorizing the Committee to recommend maturity regulations; authorizing the Committee to recommend container or marking requirements; and changing provisions related to alternate Committee members serving for absent members at Committee meetings. The proposed amendments are intended to improve the operation and functioning of the winter pear marketing order program.

DATES: Written exceptions must be filed by May 3, 2002.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket number and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Stop 0237, room 2522–S, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on compliance with this proposed regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Stop 0237, room 2525–S, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 2, 2000, and published in the November 8, 2000, issue of the **Federal Register** (65 FR 66935).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement and Order No. 927 regulating the handling of winter pears grown in Oregon and Washington, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick whose address is listed above.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The proposed amendments of the order are based on the record of a public hearing held in Portland, Oregon, on November 29, 2000. Notice of this hearing was published in the **Federal Register** on November 8, 2000. The notice of hearing contained proposals submitted by the Committee and AMS.

The Committee's proposed amendments included: Authorizing the Committee to recommend maturity regulations; authorizing the Committee to recommend container and marking requirements; and changing provisions related to alternate Committee members serving for absent members at Committee meetings.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's provisions conform with the effectuated amendments.

Seven witnesses testified at the hearing. These witnesses represented winter pear growers and handlers throughout the production area. All witnesses supported the Committee's recommended changes. Most witnesses addressed the need for maturity requirements and the perceived impact those requirements could have on market returns. Witnesses also spoke to the need for the Committee to have container and marking regulatory authority, and the effect uniform regulations would have on marketing practices and costs of production. In conjunction with this proposed amendment, it was put forth by witnesses at the hearing that definitions for pack and container be added to the order's list of definitions. Another amendment that was supported at the hearing was the proposal to allow additional alternates to serve at Committee meetings when both a member and his or her alternates are unable to attend.

At the conclusion of the hearing, the Administrative Law Judge fixed January 12, 2001, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. None were filed.

Material Issues

The material issues of record addressed in this decision are as follows:

(1) Whether to add ''maturity'' to the list of attributes that may be regulated under the order;

(2) Whether to add authority to the order to allow the Committee to recommend container and marking requirements; and

(3) Whether to amend the order to authorize additional alternates to serve

in the place of absent Committee members.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1: The Authority To Recommend Maturity Regulation

The order should be amended to include maturity among the characteristics of winter pears which may be regulated by USDA based on recommendation of the Committee.

The order currently provides for regulation to limit the grade, size, quality or combination thereof, of any variety of pears grown in the production area. Whenever such regulations are in effect, pears are required to be inspected and certified as meeting those requirements as provided in § 927.60 of the order. The Committee proposes adding specific authority to set maturity regulations.

According to testimony given during the hearing, ''maturity'', as it is commonly used in the winter pear industry, describes a characteristic or phase of senescence in the cycle of a pear when it reaches its ideal time for harvest based primarily upon a pressure index. Testing for maturity can be accomplished through the use of pressure testing devices and inspection.

In the winter pear industry, maturity is a characteristic, and partial consideration, in determining the ripening ability of the fruit. Ripeness is not a precursor criteria for maturity. Rather, adequate maturity in terms of the growth process of the pear is a necessary element to the successful ripening of the fruit after harvest. One witness during the hearing described the relationship between maturity and ripeness by explaining immaturity, which can be detected by a high pressure test result, results in a pear's inability to ripen after harvest. A maturity test would indicate whether a pear is fully mature at the time of harvest, therefore also indicating the pear's ability to ripen after harvest and in the hands of the consumer.

Maturity of pears is tracked throughout the season through pressure indices. As pressure indices reduce from their initial harvest level to lower pressures, pears approach that stage of senescence known as maturity. Maturity indices are used to harvest winter pear varieties at the optimum time that accommodates eventual ripening, as well as long-term cold storage and full season marketability. Because of differences in varietal growing patterns, maturity criteria would most likely vary by variety.

While the current method for measuring maturity is via pressure test, witnesses testifying understood that, by adding the authority to define maturity regulations, testing methods would be allowed to evolve with advances in industry technology. As one witness stated, the authority to regulate maturity would give the Committee not only the ability to set maturity regulations based on current research, but to update and revise those regulations as maturity testing methods evolve over time.

According to record testimony, the proposed amendment to add maturity to the list of regulated attributes would allow the Committee to set uniform regulations within the industry. This would assure that pears will physiologically have the ability to ripen properly at any stage of the marketing season. It was considered by witnesses that this additional quality definition is imperative to the industry's future ability to uniformly address and set regulations for ripen ability.

By establishing maturity regulations, the Winter Pear industry also aims to present a more consumer-friendly product to the market. Historically, the winter pear industry has not directly concerned itself with the ripening process of pears once they reach the retail sector or the consumer. The task of ripening prior to consumption has generally been left to the end buyer, while the Committee provided basic education about how a pear can be ripened at home.

One witness stated that the proposed authority to regulate maturity would enable the industry to ensure that winter pears have the best opportunity to either ripen or be ripe at time of purchase. Under the current system without maturity regulations, it can take up to seven days for a winter pear to ripen at room temperature. The witness further added that in today's modern lifestyle, convenience is often the greatest consideration for consumers when selecting food products. For this reason, maturity requirements are needed in order for the industry to better meet consumer needs and satisfaction.

In addition, increasing competition from imported fruit in the domestic market has caused the Oregon and Washington winter pear industry to market its harvest much earlier than in previous years. However, selling too early in the harvest season places the Oregon and Washington winter pear industry at a disadvantage as without careful monitoring of maturity indices to ensure timely picking, ripening is more difficult to achieve. Traditionally, the industry has relied upon the late Spring and early Summer sales to profitably move the crop as, under these conditions, winter pears are more inclined to ripen naturally and maturity indices are not as much of a concern.

Another witness testifying at the hearing explained that geometrically increasing imported pears from outside the production area have seriously disrupted the traditional marketing scheme for Oregon and Washington pears. According to his testimony, imported pears currently approach five million boxes per marketing season, directly competing with Northwest product in the late Winter and Spring months. One of the main competitors, Bartlett pears imported from the Southern Hemisphere, poses a particularly difficult challenge, as Bartletts ripen more easily than winter pears and are considered more consumer friendly by announcing their edibility through a color change. Winter pears from Oregon and Washington are considered by some to be less user friendly, remaining green throughout the process of senescence.

The dramatically increasing imports are altering Oregon and Washington winter pear marketing schemes, forcing more sales early in the season when pears are less inclined to ripen naturally. In order to meet consumer requirements and expectations, the Committee has identified maturity indices as a method to improve harvesting techniques earlier in the growing and harvest process. By having the authority to establish maturity regulations, the Committee envisions being able to market a more salable, more desirable product earlier in the market season.

The authority to consider maturity in the regulatory criteria could feasibly enhance product quality throughout the industry harvest and storage regimen by establishing pressure regulations, shorten the consumer's waiting period for the fruit to ripen, and provide greater assurance to the consumer that the product will properly ripen at the time of purchase.

The Oregon and Washington winter pear grower community has also recently demonstrated their support for pressure testing by recommending to the USDA the establishment of a maximum pressure limit for all D'Anjou pears entering the marketplace in 2000. While this standard was established through the informal rulemaking process under the authority to establish quality regulations, witnesses attending the hearing expressed the importance of including specific authority in the order

to regulate maturity regulations for any or all varieties of winter pears grown in the production area.

Record evidence supports amending the marketing order to authorize the Committee to recommend maturity regulations for any or all varieties of pears grown in the winter pear industry. This would allow the Committee to recommend, and USDA to implement, minimum maturity requirements through informal rulemaking procedures. Furthermore, there was no opposition to the above proposal, described as Material Issue Number 1 in this recommended decision, voiced at the hearing.

The Department is proposing that § 927.51 of the order be amended to include the authority to establish maturity requirements.

Material Issue Number 2: The Authority To Fix the Size, Capacity, Weight, Dimensions, Markings, or Pack of Winter Pear Packaging or Handling Containers

The order should be amended to add authority to fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of winter pears. The definition of ''Size'' should also be amended to remove the currently defined dimensions of a standard pear box.

Currently, the Winter Pear Control Committee, under the order, has no authority to implement container regulations. The Committee believes that adding this authority to the marketing order is necessary to engender coherency and consistency in the Washington and Oregon winter pear industry. The primary reasons to allow container regulations are: to eliminate confusion in the marketplace, standardize containers, provide for compliance, and, most importantly, to level the playing field, in terms of calculating the cost per unit of carton sales, among all suppliers to the market. The Committee believes that this authority would help reduce instances of confusion in the marketplace.

The Committee also believes that any additional costs to the industry would be minimal and outweighed by the gains outlined above. Growers would benefit because their returns would be measurable against other industry returns, and production/packing systems would become more streamlined and efficient.

Record testimony stated that widespread retail consolidation in the domestic market has resulted in a shrinking number of terminal market sellers. As such, Oregon and Washington winter pear growers and handlers have come under increasing pressure to compete against growers and handlers from outside the production area for retailer business. This pressure has been compounded by an influx of imported pears into the domestic market. The net result has been an oversupply of product in the market, and downward pressure on producer prices.

In addition to competition with imported product, the Washington and Oregon winter pear industry is facing international marketing disadvantages associated with a strong U.S. dollar and lower demand for U.S. products abroad. The combination of increased supply and limited market outlets has presented ever-increasing challenges to the winter pear industry, causing it to consider competition and efficiency gaining techniques, such as container regulations.

While the standard container used in the Washington and Oregon pear industry has historically been the ''Pakcart'', a 44-pound net weight box, retailer demand for new and innovative packaging of pears has resulted in a proliferation of new packages in the marketplace. While many packers have conformed to new packaging demands, maintaining competitiveness has become increasingly difficult due to the increase in container variety and the cost of maintaining inventories.

Maintaining a varied inventory of package types, especially for smaller handlers, is costly and inefficient in warehouse packing systems. The majority of the increased container related production costs are passed on to the producer in the form of a lower net return on his or her product. As one witness testifying at the hearing stated, ''Unfortunately, the way the industry works is all of the costs are accumulated and deducted from the (free on board) FOB price, and then the grower gets what's left.''

A witness testifying at the hearing noted that due to consolidation of retail supermarkets, one of the main sources of distribution for winter pears, substantial pressure is placed on individual growers, packers and shippers to conform to container shipment demands. The witness indicated that it was not unusual for retail supermarkets to request special packaging, including special carton sizes, weights and other characteristics. With each special request for a unique package type, handling costs increase due to the need to keep a variety of containers in inventory and special packing requirements for each type of container. Uniform regulations for packaging would assist the handlers in not only avoiding additional costs but gaining increased operational efficiencies. Moreover, increased handling costs are more often than not passed on to the grower in the form of reduced payment for their product. Thus, it was argued that uniform packing requirements would also benefit the grower in the form of potentially higher returns.

Witnesses also indicated that it is in the industry's best interest to work with its customers, specifically retail supermarkets, to provide efficient packaging for the mutual benefit of all parties, including growers, customers and consumers. As a representative of the industry and local administrative body of the order, it was suggested that the Winter Pear Control Committee is in the best position to work with the industry and customers to develop the correct regulations relating to container size, capacity, weight, and dimensions.

Witnesses demonstrated the need for uniformity in container size and dimensions by describing some of the various container varieties currently at use in the market. It was explained that cartons not only differ in dimension, but also in the number of stacking tabs, container material and liners. One type of container described was the ''Defore carton,'' also referred to as the ''Euro carton.'' This container, measuring 60 x 40 centimeters, is smaller and generally has a lighter net weight than the traditional container used in the production area. In addition to being a smaller box, some retailers differentiate their requests by specifying the number of desired tabs for stacking. The number of stacking tabs requested per Euro carton can vary from four to six to eight.

Another type of carton requested by retailers is known as a corrugated ''Kraft carton'' (similar to the Packart, described above), while others request the Kraft carton with a black inside liner.

In addition to differing container dimensions and other physical characteristics, containers of varying weight have become prevalent in the market. One witness used as an example the California Bartlett industry, which has implemented a system in which some fruit is at a 40-pound net weight, and some at a 44-pound net weight. Moreover, imported South American pears are packed in an 18-kilogram carton, or a 40-pound net weight box, while pears imported from New Zealand and South Africa are generally packed in the Euro 60 x 40 carton.

Witnesses testifying on the need for the authority to establish container regulation argued that a market supplied

with a proliferation of container types and weights leads to confusion among buyers and sellers, inevitably resulting in inequitable net returns to producers. Packages that are not consistent in size or weight across the market make it difficult for retailers to easily conduct cost per unit comparisons among packers. The authority to regulate container regulations would level the playing field by standardizing transaction units between all sellers and buyers. One witness reasoned that with uniform container and packing regulations, a buyer would know exactly what he or she is purchasing regardless of where or from what source it is purchased. Packers would have the same size, weight, marking and pack requirements, assuring that the buyer is getting the same product. Growers would know exactly what amount of product is being sold and promoted at what return. Furthermore, the witness stated that, ''Presently it is not uncommon for us to be comparing 'pears to apples' because of the lack of standardization within our industry. The proposal will eliminate confusion in the market and I believe help streamline the process.'' It was further argued that the adoption of this proposal would allow buyers, consumers, packers and growers of winter pears to compare ''pears to pears,'' regardless of the source.

Without a consistent standard developed by the industry, individual growers and packers will attempt to respond to each individual customer's demand, adding confusion in the marketplace. A packer may have multiple inventories of the same package, once again increasing costs to the parties involved.

Moreover, without enforced container regulations, buyers of winter pears are not always aware of the net weight of the container that they are being quoted. As winter pear sales are typically negotiated in numbers of cartons, markedly different carton weights result in pears being purchased at differing prices per pound.

The authority to establish container regulations, and to adjust those regulations in step with changing retailer demand, would enable the Committee to maintain coherency within the winter pear market packaging regulations.

Historically, the size of winter pears is determined by the number of pears contained in a standard 44-pound container. This concept is also commonly referred to as ''Pack.'' As one witness explained at the hearing, ''Pack'' refers to the amount of product that is put in each box and describes to the purchaser the size of the product that they are buying. For example, if purchaser is buying size 100 pears, the pack definition indicates that there are 100 pears in a standard 44-pound box. However, with non-traditional boxes entering the marketplace, the term pack has lost some significance in that the standard 44-pound box is no longer the industry point of reference.

As one witness testified, retail price calculations, which have traditionally been based on the number of pears per standard 44-pound box, are no longer uniform throughout the marketplace as industry packing material is not standardized. If a retailer is in error on what the actual poundage of a box is, he or she may be computing higher or lower retail prices, which ultimately affects the volume of product sold.

Members of the Committee attending the hearing testified that the proposal to grant authority to fix the size, capacity, weight, dimensions, markings, or pack of a container, or containers, used in the packaging or handling of winter pears has been widely discussed within the grower community. Among the witnesses testifying, it was widely stated that implementing this authority would equally benefit small and large producers by standardizing containers and packing requirements and enhancing uniformity in the market.

It was also requested by witnesses at the hearing that definitions for ''pack'' and ''container'' be added to the list of definitions in the order to further clarify Proposal No. 2. Adding these two definitions would assist in clarifying future requirements established under the above proposed authority. Proposed definitions of both terms were presented at the hearing and are supported by the hearing record.

Record evidence supports amending the marketing order to authorize the Committee to recommend size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of winter pears. This would allow the Committee to recommend, and USDA to implement, such pack and container requirements through informal rulemaking procedures. Furthermore, there was no opposition to the above proposal, described as Material Issue Number 2 in this recommended decision, voiced at the hearing.

Accordingly, the Department is proposing that § 927.51 be amended by adding a new subparagraph (a)(3), which would provide the authority to fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of winter pears. The Department is also proposing that § 927.5 be amended to remove the currently defined dimensions of a standard pear box. This would allow the flexibility to establish, and revise as needed, new container dimensions, and would be consistent with this amendment.

The Department is also proposing that definitions for ''pack'' and ''container'' be added to the order. Adding these two definitions would assist in defining future requirements established under the above proposed authority.

Material Issue Number 3: Designation of a Temporary Alternate To Act for an Absent Committee Member

The order should be amended to include the authority for a Committee member, when that Committee member and his or her alternates are unable to attend a Committee meeting, to designate any alternate from the same group (handler or grower) to serve in their stead. However, the Department believes that this discretion should not be given to the Committee or its chairperson in the event the member in question chooses not to designate another alternate to serve in his or her place.

The Committee is composed of 12 members, with the industry members allocated among four geographic districts. Each Committee member has two alternates who have the same qualifications as the member. Committee members and alternates are nominated by their peers in the district they represent.

Section 927.28 of the order provides that if a Committee member is absent from a meeting, one of his or her alternates shall act in that member's place. There is no provision for a situation in which both the member and that member's alternates are unavailable.

The Committee proposed changing § 927.28 as follows. If both a member and his or her alternates cannot attend a Committee meeting, the member or the alternates (in that order) could designate another alternate member to act in their stead. The temporary alternate would be chosen from the group of other Committee member alternates and would represent both the same district and group (grower or handler) as the Committee member needing an alternate. If neither the Committee member nor that Committee member's alternates choose to make such a designation, the Committee chairperson would be free to do so with the concurrence of a majority of the present members.

In support of the Committee's proposal, witnesses testifying at the hearing felt strongly about the need to ensure grower and handler representation at all meetings. One witness stated, ''Being denied an important vote because of a technicality of succession, and thus not being represented, is not fair to the growers who pay the assessment to the Winter Pear Control Committee.''

Witnesses testifying believed that the authority to temporarily appoint additional alternates was justifiable for many reasons. Most importantly, the small size of grower districts, and the proximity of growers and handlers in their local communities, makes for a tight-knit group who are generally savvy of their community's needs and opinions. Thus, testimony strongly supported the idea that district positions could be accurately represented by appointing temporary alternates from the same district and group (grower or handler). As one witness pointed out, ''We're not strangers to each other, and our views on pear marketing are generally well known.''

According to the record, it was recommended that the selection process of temporary alternates would be somewhat of an ''informal'' process, whereby a temporary alternate would be recommended to the Control Committee by the absent Committee member, or one of his or her alternates. Selection of the temporary alternate would ultimately be overseen and rely on the discretion of the Control Committee.

An example presented at the hearing is as follows. In the Hood River district, there are four Committee members (two growers and two handlers), each having two alternates. In the event that one of the Hood River Committee members and both his or her alternates were unable to attend a Committee meeting, a temporary alternate would be selected from the second (grower or handler) Hood River Committee member's two alternates. As described above, the selection would be recommended by the absent Committee member and approved by the Control Committee. If the Committee member was absent, then the selection would be made by one of his or her alternates and approved by the Control Committee.

The Department agrees that full participation at Committee meetings should be encouraged. The Department also believes that there is merit in allocating membership among districts because the conditions in one district may vary considerably from those in another. However, if a member chooses not to name someone to fill his or her seat and cast votes on his or her behalf, the choice should neither revert to the Committee or its chairperson nor the absent member's alternates. Committee members are nominated by their grower and handler peers to represent them at Committee meetings. The absent Committee member's charge to represent, or provide alternate representation for, his or her peers is an important part of fulfilling his or her responsibilities as a Committee member for that district. In light of the above, should a situation arise where neither a Committee member nor his or her alternates are able to attend a meeting, the Committee member should arrange for a temporary alternate. For these reasons, we believe that only a Committee member should be able to choose a temporary alternate to serve in his or her place when that member and that member's alternates are unavailable.

With regard to the language suggested by the Committee that would only apply to two out of the four winter pear production area districts, the proposed language does not take into consideration a selection process for districts having only one grower or one handler Committee member.

Only the Hood River-White Salmon-Underwood and Wenatchee districts have four Committee members (two growers and two handlers), hence a total of four alternate members for each group meeting the proposed district and group criteria. However, the Medford and Yakima districts only have two Committee members (one grower and one handler) each. In the event that a Medford or Yakima Committee member and both of that member's alternates could not attend a Committee meeting, their ability to find a temporary alternate who would meet both the district and group criteria would be restricted under the Committee's proposal.

In order to make the proposed amendment more practicable, the Committee's proposed language has been modified to provide that a temporary alternate may be selected from the collective pool of all Committee member alternates, but must represent the same group (grower or handler) as the absent member. Thus, in the event that all alternates for Committee members in the same group representing a given district are unavailable, selection of a temporary alternate would rely on the availability of other Committee members' alternates from the remaining districts, provided that the selected temporary alternate represented the same group (grower or handler).

Drawing from the Hood River district example given above, in the event that one of the Hood River grower Committee members and both his or her alternates were unable to attend a Committee meeting, the selection process of a temporary alternate for that meeting would begin with the second Hood River grower Committee member's two alternates. If neither of those two alternates were available, the selection process would proceed to the availability of other, non-Hood River grower Committee members' alternates until a temporary alternate was found.

In the case of districts having only two Committee members, a temporary alternate would be selected by the absent Committee member from the collective pool of alternates from all districts and would represent the same group (grower or handler).

Given these considerations, the Department proposes the following language be added to § 927.28: In the event that both a member of the Control Committee and that member's alternates are unable to attend a Control Committee meeting, the member may designate any other alternate member from the same group (handler or grower) to serve in that member's place and stead.

The Regulatory Flexibility Act and Effects on Small Businesses

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

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

According to the Small Business Administration (13 CFR 121.201) small handlers are those having annual receipts of less than $5,000,000 and small agricultural producers are defined as those with annual receipts of less than $750,000. Based on testimony presented at the hearing, a majority of the winter pear producers are considered small under the SBA definition. Of the 1,800 winter pear growers, 80 to 85 percent are estimated to have sales equal to or less than $750,000. There are 90 handlers

operating in the production area. The majority of these handlers fit the SBA definition of a small handler. Thus, this action will apply primarily to small entities.

This recommended decision proposes making the following amendments to the winter pear marketing order: (1) To amend § 927.51(a)(1) of the order to specifically authorize the establishment of maturity regulations; (2) To amend § 927.51 of the order to authorize the establishment of container requirements which would encompass capacity, weight, dimensions, and packing of the container, or containers, which may be used in packaging or handling of pears; and (3) To amend § 927.28 of the order to authorize additional alternates to serve for a Committee member in the event that both that member and that member's alternates are unable to attend a Committee meeting.

These actions are designed to enhance the quality of winter pears at consumer outlets through the regulation of maturity regulations, to create more orderly marketing conditions for winter pears through the implementation of container uniformity, to improve grower returns through these combined actions, and to ensure grower and handler representation at all Committee meetings.

Members of the Winter Pear Control Committee attending the hearing testified that the proposal to grant authority to establish maturity regulations has been widely discussed within the grower community, an estimated 80 to 85 percent of which qualify as small producers. Moreover, among the witnesses testifying, it was often stated that implementing maturity requirements would equally benefit small and large producers by standardizing industry requirements and enhancing overall product quality in the market.

Small handlers from both Oregon and Washington were present and participated in the hearing, and indicated their support for this proposal. When asked if such regulations would increase handler costs, one small handler responded that while some additional inspection costs would be incurred, those costs are expected to be offset with the increase in consumption. Ultimately, witnesses testifying at the hearing indicated that net returns to both handlers and producers would increase.

Testimony also indicated that the proposal to grant authority to fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, used in the packaging or handling of winter pears has been widely discussed within the winter pear industry. The proposed provisions in this recommended decision also include definitions of ''pack'' and ''container'' that are added based upon testimony at the hearing. Among the witnesses testifying, it was widely stated that implementing this authority would equally benefit both small and large handlers and growers. By standardizing container and packing requirements, handling costs would decrease through reduced inventories and more efficient packing procedures. Uniformity in the market would also facilitate standardized transactions by ensuring more equitable cost per unit comparisons and producer returns on product.

Small handlers testifying at the hearing indicated their support for this proposal. When asked if such regulations would increase handler costs, one small handler explained that the costs of new containers are likely to be offset by gains in packing efficiency and a more transparent cost per unit comparisons in handler to retailer transactions. Small producers testifying to this issue realized that increased costs in packing material would more than likely be passed from the handler to the grower, but the net gain from container standardization will ultimately benefit the industry as a whole, including the small producer. It was stated that by removing confusion related to container size in the marketplace, growers should get a fairer return on their product.

In the case of districts having only two Committee members, a temporary alternate will be selected by the absent Committee member from the collective pool of alternates from all districts and will represent the same group (grower or handler). The proposed provisions in this recommended decision represents a modification to the Committee's proposal in order to better effectuate its terms. This method of selecting a temporary alternate would ensure representation of all growers and handlers (both large and small) at Committee meetings while having little or no increase in Committee administrative costs. Moreover, testimony demonstrated that the authority to temporarily assign alternates would improve representation of the small producers and handlers.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings held to discuss these proposals, as well as the hearing, were widely publicized throughout the Oregon and Washington winter pear production area. All interested persons were invited to attend the meetings and the hearing, and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues. The Committee itself is composed of 12 members, of whom six are handlers and six are producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 30-day comment period is deemed to allow interested persons to respond to this proposal and facilitate the completion of this proceeding.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of winter pears grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of winter pears cherries grown in the production area; and

(5) All handling of winter pears grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and record keeping requirements.

Recommended Amendment of the Marketing Agreement and Order

For the reasons set out in the preamble, 7 CFR part 927 is proposed to be amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

* * * * *

2. Revise § 927.5 to read as follows:

§ 927.5 Size

Size means the number of pears which can be packed in a standard pear box when packed in accordance with the packing requirements of the U.S. Standards for Pears (part 51 of this title), or as such regulations hereafter may be modified or as ''size'' may be more specifically defined in a regulation issued under this part.

3. Add new §§ 927.14 and 927.15 under the undesignated center heading ''Definitions'' to read as follows:

§ 927.14 Pack.

Pack means the specific arrangement, size, weight, count, or grade of a quantity of pears in a particular type and size of container, or any combination thereof.

§ 927.15 Container.

Container means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of pears.

5. Revise § 927.28 to read as follows:

§ 927.28 Alternates for members of the Control Committee.

The first alternate for a member shall act in the place and stead of the member for whom he or she is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his or her first alternate shall act as a member until a successor for the member is selected and has qualified. The second alternate for a member shall serve in the place and stead of the member for whom he or she is an alternate whenever both the member and his or her first alternate are unable to serve. In the event that both a member of the Control Committee and that member's alternates are unable to attend a Control Committee meeting, the member may designate any other alternate member from the same group (handler or grower) to serve in that member's place and stead.

4. Amend § 927.51 by revising paragraph (a) to read as follows:

§ 927.51 Issuance of regulations; and modification suspension, or termination thereof.

(a) Whenever the Secretary finds, from the recommendations and information submitted by the Control Committee, or from other available information, that regulation, in the manner specified in the section, of the shipment of pears would tend to effectuate the declared policy of the act, he or she shall so limit the shipment of pears during a specified period or periods. Such regulation:

(1) May limit the total quantity of any grade, size, quality, maturity, or combination thereof, of any variety of pears grown in any district and may prescribe different requirements applicable to shipments to different export markets; or

(2) May prescribe minimum standards of quality for any variety of pears and limit the shipment thereof to those meeting such minimum standards; or

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in packaging or handling of pears.

Dated: March 27, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–7918 Filed 4–2–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS No. 2180–01]

RIN 1115–AG47

Establishment of a $3 Immigration User Fee for Certain Commercial Vessel Passengers Previously Exempt

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations in accordance with section 109 of the Department of Justice Appropriations Act, 2002 (Title I of Public Law 107–77), signed November 28, 2001. This law authorizes the collection of a $3 fee for certain commercial vessel passengers previously exempt under section 286(e)(1) of the Immigration and Nationality Act (Act). This proposed rule would amend the Service regulations to require certain commercial vessel operators and/or their ticketing agents to charge and collect a $3 user fee from every commercial vessel passenger whose journey originated in the U.S., Canada, Mexico, a territory or possession of the United States, or an adjacent island

except those individuals exempted under section 286(e) of the Act or under 8 CFR part 286. This action is necessary to implement section 109 of the Department of Justice Appropriations Act, 2002.

DATES: Written comments must be submitted on or before May 3, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2180–01 on your correspondence. You may also submit comments electronically to the Service at *insregs@usdoj.gov.* When submitting comments electronically please include the INS No. 2180–01 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Georgia Mayers, Chief of Cash Management, Office of Finance, Immigration and Naturalization Service, 425 I Street, NW., Room 6034, Washington, DC 20536, telephone (202) 305–1200.

SUPPLEMENTARY INFORMATION:

What Is the Immigration User Fee?

Beginning in Fiscal Year 1987, the Service was mandated by Congress via the 1987 Appropriations Act for the Department of Justice, Public Law 99–591, to collect (with limited exceptions) an immigration user fee for each passenger arriving in the United States by commercial air or sea conveyance. Immigration user fee funds are used to operate air and sea inspection services and to fund other related activities.

How Will the Service Use the Fees That Are Collected?

As provided by law, the user fees that are collected may be used, among other things to:

- Provide immigration inspection and preinspection services for commercial aircraft and vessels;
- Provide overtime immigration inspection services for commercial aircraft or vessels;
- Administer debt recovery, including the establishment and operation of a national collections office;
- Expand, operate, and maintain information systems for nonimmigrant control and debt collection;
- Detect fraudulent documents used by passengers traveling to the United States, including training of, and technical assistance to, commercial airline personnel regarding such detection;
- Provide detention and removal services for inadmissible aliens arriving on commercial aircraft and vessels and for any inadmissible alien who has attempted illegal entry into the United States through avoidance of immigration inspection at air or sea ports-of-entry; and,
- Administer removal and asylum screening proceedings at air or sea ports-of-entry for inadmissible aliens arriving on commercial aircraft and vessels, including immigration removal proceedings resulting from the presentation of fraudulent documents and the failure to present documentation and for any inadmissible alien who has attempted illegal entry into the United States by avoiding immigration inspection at air or sea ports-of-entry.

Why Is the Service Proposing To Apply a $3 Inspection Fee To Certain Previously Exempt Commercial Vessel Passengers?

The authorization to charge and collect a user fee from certain previously exempt commercial vessel passengers is provided in section 109 of the Department of Justice Appropriations Act, 2002 which was enacted on November 28, 2001. Prior to the enactment of this law, Commercial vessel passengers, whose journeys originated in Canada, Mexico, a state, territory or possession of the United States, or an adjacent island, were statutorily exempt from paying the Immigration User Fee prescribed by section 286(d) of the Act. While these vessel passengers were exempt from paying the fee, the Service was still required to provide inspection services. This exemption resulted in the Service's inability to invest in necessary staffing and technology resources. The new fee will begin to provide for the recovery of inspection operations and related inspection activities that support seaport immigration inspection.

Did the Department of Justice Appropriation Act, 2002 Specify Any Other Changes to Section 286 of the Act?

The Department of Justice Appropriations Act, 2002 also directed the Attorney General to increase the immigration user fee prescribed in section 286(d) of the Act by $1 from $6 to $7 for all passengers previously required to pay the $6 fee. This change has been published in the **Federal Register** as a final rule.

What Changes Are Proposed in This Rule?

This rule proposes to add 8 CFR 286.2(b) and revise 8 CFR 286.3(a) to provide for the collection of the $3 commercial vessel fee and removes the exemption of commercial vessel passengers whose journeys originated in Canada, Mexico, a state, territory or possession of the United States, or an adjacent island. In accordance with the Department of Justice Appropriations Act, 2002, the rule would also include an exemption from the $3 fee for passengers arriving by way of Great Lakes international ferries or Great Lakes vessels on the Great Lakes and connecting waterways when operating on a regular schedule.

How Is the $3 Fee Proposed To Be Collected?

Affected commercial vessel carriers and ticket-selling agents would be subject to the same fee collection responsibilities, remittance and statement procedures, maintenance of records, and penalties as stated in 8 CFR 286.2, 286.4, 286.5, 268.6 and 286.7 and that are currently required of other non-exempt immigration user fee remittances.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. Immigration user fees are already being collected by commercial vessel carriers and/or their ticketing agents in connection with voyages originating in previously non-exempt areas. Since the passengers rather than the carriers ultimately pay the immigration inspection user fee, these passengers are not considered small entities as that term is defined in 5 U.S.C. 601(6), this rule does not bear an impact on small entities.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

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

Executive Order 13132

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

Executive Order 12988 Civil Justice Reform

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

List of Subjects in 8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, part 286 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 286—IMMIGRATION USER FEE

1. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

2. Section 286.2 is amended by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b), to read as follows:

§ 286.2 Fee for arrival of passengers aboard commercial aircraft or commercial vessels.

* * * * *

(b) A fee, in the amount prescribed in section 286(e)(3) of the Act, per individual is charged and collected by the Service for the immigration inspection at a port-of-entry in the United States, or for the preinspection in a place outside the United States of each commercial vessel passenger whose journey originated in the U.S., Canada, Mexico, a state, territory or possession of the United States, and adjacent islands, except as provided in § 286.3.

* * * * *

3. Section 286.3 is amended by revising the introductory text, and by revising paragraph (a) to read as follows:

§ 286.3 Exceptions.

The fees set forth in §§ 286.2(a) and 286.2(b) shall not be charged or collected from passengers who fall within any one of the following categories:

(a) Persons arriving at designated ports-of-entry of passengers arriving by the following vessels, when operating on a regular schedule: Great Lakes international ferries or Great Lakes vessels on the Great Lakes and connecting waterways;

* * * * *

Dated: March 28, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–8011 Filed 4–2–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–22–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B, –300, –400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200B, –300, –400, –400D, and –400F series airplanes, that currently requires repetitive inspections to detect cracking of fire extinguisher discharge tubes in certain engine struts, and corrective action, if necessary. For certain airplanes, that AD also provides for an optional modification of the fire extinguisher discharge tubes, which constitutes terminating action for the repetitive inspections. This action would make the previously optional modification of the fire extinguisher discharge tubes mandatory for all affected airplanes and would add one airplane to the applicability. This proposal is prompted by a report that the check tee valve at the top of an engine strut can be damaged such that no extinguishing agent can get to the engine. The actions specified by the proposed AD are intended to prevent blockage of the check tee valve and cracks in the fire extinguisher discharge tubes in the engine struts, which could prevent the fire extinguishing agent from being delivered to the engine or reduce the amount delivered to the engine, which could permit a fire to spread from the engine to the wing of the airplane.

DATES: Comments must be received by May 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–22–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received. Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–22–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 30, 2000, the FAA issued AD 2000–07–10, amendment 39–11664 (65 FR 18881, April 10, 2000), applicable to certain Boeing Model 747–200B, –300, –400, –400D, and –400F series airplanes, to require repetitive inspections to detect cracking of fire extinguisher discharge tubes in certain engine struts, and corrective action, if necessary. For certain airplanes, that action also provides for a modification of the fire extinguisher discharge tubes, which constitutes terminating action for the repetitive inspections. That action was prompted by reports that cracked fire extinguisher discharge tubes have been found in the engine struts on certain airplanes. The requirements of that AD are intended to detect and correct cracked fire extinguishing tubes in the engine struts. In the event of an engine fire, such cracked tubes could prevent the fire extinguishing agent from being delivered to the engine or reduce the amount that could be delivered to the engine, and could permit a fire to spread from the engine to the wing of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, there has been a report that the check tee valve at the top of the engine strut can be damaged such that no extinguishing agent can reach the engine. The check tee valve contains a ball that directs the extinguishing agent to the engine. It was determined that the ball of the check tee valve could cause a blockage of the downstream part of the check tee valve. Wear between the ball and the housing and the position of the valve would allow the ball to block the outlet port of the check tee valve. The blockage at the check tee valve, if not corrected, could also prevent the fire extinguishing agent from being delivered to the engine or reduce the amount delivered to the engine, and could permit a fire to spread from the engine to the wing of the airplane.

Explanation of Relevant Service Information

Since the issuance of that AD, the FAA has reviewed and approved two service bulletins which describe procedures for modifying the route of the fire extinguisher discharge tubes between the inboard fire bottles and the inboard engines. Boeing Alert Service Bulletin 747–26A2233, Revision 1, dated November 16, 2000, applies to Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines. Boeing Alert Service Bulletin 747–26A2267, dated December 20, 2000, applies to Model 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 series engines. The modification moves the check tee valve from the top of the strut to a position adjacent to the front spar, and precludes the ball from obstructing the outlet port of the valve. The modification constitutes terminating action for the repetitive inspections required by AD 2000–07–10. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

The FAA has determined that the repetitive inspections of the fire extinguisher discharge tubes, required by AD 2000–07–10, are insufficient to address the unsafe condition which has been identified. The proposed AD would supersede AD 2000–07–10 to continue to require the repetitive inspections but would mandate modification of the routing of the fire extinguisher discharge tubes, terminating the need for repetitive inspections. (That modification was included in AD 2000–07–10 as an optional terminating action for certain airplanes.) In addition, the proposed AD would add an airplane to the applicability to parallel the effectivity specified in Boeing Alert Service Bulletin 747–26A2233, Revision 1, dated November 16, 2000. The proposed AD would require the actions to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Service Bulletins and Proposed AD

Operators should note that, although the service bulletins do not provide a compliance time for accomplishing the modification, the proposed AD would require that the modification be accomplished within 24 months after the effective date of this AD. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, the FAA finds a 24-month compliance time for completing the required modification to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 268 airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 2000–07–10, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost

impact of the currently required inspections on U.S. operators is estimated to be $2,820, or $60 per airplane, per inspection cycle.

The modification that is proposed in this AD action would take approximately 32 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,488 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $348,176, or $7,408 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11664 (65 FR 18881, April 10, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–22–AD. Supersedes AD 2000–07–10, Amendment 39–11664.

Applicability: Model 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 series engines, line number 679 through 1060 inclusive; and Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines, line numbers 696 through 1062 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent blockage of the check tee valve and cracks in the fire extinguisher discharge tubes in the engine struts, which could prevent the fire extinguishing agent from being delivered to the engine or reduce the amount delivered to the engine, which could permit a fire to spread from the engine to the wing of the airplane, accomplish the following:

Restatement of Requirements of AD 2000–07–10

Repetitive Inspections and Corrective Actions

(a) For Model 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 series engines, line number 679 through 1060 inclusive; and Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines, line numbers 696 through 1061 inclusive: Within 30 days after April 25, 2000 (the effective date of AD 2000–07–10, amendment 39–11664), perform a detailed visual inspection to detect cracking of the fire extinguisher discharge tubes in the number 2 and number 3 engine struts, in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000.

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

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 18 months.

(2) If any cracking is detected, prior to further flight, replace the cracked tube with a new or serviceable part, in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000. Repeat the inspection required by paragraph (a) of this AD within 18 months after the replacement and thereafter at intervals not to exceed 18 months.

New Requirements of This AD

Modification

(b) For Model 747–400 and 747–400F series airplanes equipped with Pratt & Whitney PW4000 engines: Within 24 months after the effective date of this AD, modify the routing of the fire extinguishing tubes between the inboard fire bottles and the inboard engines in accordance with Boeing Alert Service Bulletin 747–26A2233, Revision 1, dated November 16, 2000. Accomplishment of the requirements of this paragraph constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD for Model 747–400 and 747–400F airplanes equipped with Pratt & Whitney PW4000 engines.

(c) For 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 series engines: Within 24 months after the effective date of this AD, modify the routing of the fire extinguishing tubes between the inboard fire bottles and the inboard engines in accordance with Boeing Alert Service Bulletin 747–26A2267, dated December 20, 2000. Accomplishment of the requirements of this paragraph constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD for Model 747–200B, –300, –400, –400D, and –400F series airplanes equipped with General Electric CF6–80C2 engines.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on March 27, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7993 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–420–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

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

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A series airplanes, that would have required replacement of certain air recirculation fans in the flight compartment and the passenger compartment. These fans may be replaced with either upgraded fans with new brushes having insulation on the brush leads or with modified fans having new, brushless motors. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule by requiring modification of the fan support structure prior to installation of the upgraded fans. The actions specified by this new proposed AD are intended to prevent incidents of smoke or a burning smell in the cabin during flight, caused by incorrect brush insulation in the motors of the air recirculation fans in the flight compartment and the passenger compartment.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–420–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–420–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–420–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–420–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to Saab Model SAAB SF340A series airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on June 29, 2001 (66 FR 34589). That NPRM would have required replacement of the air recirculation fans in the flight compartment and the passenger compartment with either upgraded fans with new brushes having insulation on the brush leads or with modified fans having new, brushless motors. That NPRM was prompted by information from the Luftfartsverket (LFV), which is the airworthiness authority for Sweden, that incorrect brush insulation used in the motors of the air recirculation fans for the flight compartment and the passenger compartment has produced smoke or a burning smell in the cabin on a number of occasions. Such incorrect brush insulation in the motors of the air recirculation fans in the flight compartment and the passenger compartment could result in additional incidents of smoke or a burning smell in the cabin during flight.

Actions Since Issuance of Previous Proposal

Shortly after the FAA issued NPRM Docket No. 2000–NM–420–AD, the FAA received notification that the LFV had issued Swedish airworthiness directive SAD No. 1–160 R1, dated June 13, 2001, which cancelled SAD No. 1–160, dated August 24, 2000. The revised Swedish airworthiness directive required performance of actions in accordance

with SAAB Service Bulletin 340–21–039, Revision 01, dated April 18, 2001. In addition to describing procedures for removing the air recirculation fans and replacing them with upgraded air recirculation fans with new brushes having insulation on the brush leads, the service bulletin describes procedures for a modification to the support structure for the flight compartment air recirculation fan. The fan support structure must be modified because the new brushes on the upgraded fans make the fan housing slightly longer. The longer housing interferes with the existing fan support structure. Therefore, the existing support structure must be modified by making a small cut-out in the structure prior to installing the upgraded fan.

Conclusion

Since this change expands the scope of the originally proposed rule by proposing additional work for the operators, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD and that the average labor rate is $60 per work hour.

It would take approximately 4 work hours per airplane to accomplish the proposed removal of the two air recirculation fans having part number (P/N) C209–690B, C209–690B1, or C209–690C and their replacement with two upgraded air recirculation fans having P/N C209–690D. Based on this figure, the cost impact of the proposed replacement on U.S. operators is estimated to be $8,400, or $240 per airplane.

It would take approximately another 3 work hours per airplane to accomplish the proposed modification of the fan support structure. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $6,300, or $180 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed optional modification of the two air recirculation fans by installing new, brushless motors. The cost of the brushless motors is $38,000 per airplane. Based on this figure, the cost impact of the proposed optional modification on U.S. operators is estimated to be $38,120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket 2000–NM–420–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers -004 through—108, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent incidents of smoke or a burning smell in the cabin during flight caused by incorrect brush insulation in the motors of the air recirculation fans in the flight compartment and the passenger compartment, accomplish the following:

Replacement

(a) Within 1,000 flight hours after the effective date of this AD: Perform either paragraph (a)(1) or (a)(2) of this AD.

(1) Remove the two air recirculation fans having part number (P/N) C209–690B, C209–690B1, or C209–690C, modify the structure of the fan support, and replace the fans with two upgraded air recirculation fans having P/N C209–690D, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–21–039, Revision 01, dated April 18, 2001.

Note 2: The upgraded fans are larger than the original fans and will interfere with the structure of the fan support. A modification to the structure of the fan support to include a small cutout is contained in Paragraph 2.C. of Saab Service Bulletin 340–21–039, Revision 01.

Note 3: The modification to the structure of the fan support to include a small cutout is also described in Saab Service Bulletin 340–21–001, Revision 1, dated February 20, 1985. For those airplanes on which the requirements of paragraph (a)(1) have been performed prior to the effective date of this AD, modification of the structure of the fan support to include a small cutout in accordance with that service bulletin is acceptable as a means of compliance with the applicable requirements of paragraph (a)(1) of this AD.

(2) Remove the two air recirculation fans having P/N C209–690B, C209–690B1, or C209–690C, and replace the fans with two modified air recirculation fans with brushless motors having P/N 9302882–002, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–21–018, Revision 02, dated June 21, 2000.

Spares

(b) As of the effective date of this AD, no air recirculation fans having P/N C209–690B, C209–690B1, or C209–690C may be installed on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 5: The subject of this AD is addressed in Swedish airworthiness directive 1–160 R1, dated June 13, 2001.

Issued in Renton, Washington, on March 27, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7992 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

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

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes, that would have required replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors. That proposal was prompted by mandatory continuing airworthiness information from a foreign airworthiness authority. This new action revises the proposed rule by specifying compliance per corrected service information. The actions specified by this new proposed AD are intended to prevent false smoke warnings from the smoke detectors in the cargo compartment. A false smoke warning prompts the flightcrew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire. Repeated false smoke warnings create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–250–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–250–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 4, 2001 (66 FR 50582). That NPRM would have required replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors. That NPRM was prompted by mandatory continuing airworthiness information from a foreign airworthiness authority. A false smoke warning prompts the flightcrew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire. That condition, if not corrected, could result in repeated false smoke warnings that create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted.

Comments

Due consideration has been given to the single comment received in response to the NPRM.

Request To Reference Latest Service Bulletin Revisions

One commenter points out that, since the issuance of the NPRM, the manufacturer has issued Bombardier Service Bulletin 601R–26–016, Revision ''B,'' dated August 10, 2001, and Revision ''C,'' dated August 17, 2001. Revision ''B'' of the service bulletin was issued to: correct a wire change referenced in Revision ''A;'' revise the figure reference and the positioner part number; and provide a compliance statement. Revision ''C'' retains the corrections specified by Revision ''B'' and adds certain administrative information, which specifies that purchase orders should be submitted in order to obtain kit(s) referenced in the service bulletin. Therefore, the commenter requests that the NPRM be revised to specify the new service information.

The FAA agrees that the service bulletin revisions describing the corrected wiring changes should be referenced in the AD to ensure that the wiring procedures are accomplished correctly. Therefore, we have revised paragraph (a) of the AD to specify Revision ''B'' or Revision ''C'' as the correct reference for replacement of the existing smoke detectors having part number (P/N) 473052.

Conclusion

This change expands the scope of the originally proposed rule by removing reference Revision ''A'' of Bombardier Service Bulletin 601R–26–016, which contains incorrect wiring instructions. Accordingly, this supplemental NPRM proposes to require accomplishment of the proposed actions per Revision ''B'' or ''C'' of the service bulletin. Therefore, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 281 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed replacement of the existing smoke detectors in the cargo compartment with new, improved smoke detectors, and that the average labor rate is $60 per work hour. The cost of required parts is approximately $4,136 ($876 for one smoke detector kit and $1,630 each for two smoke detectors). Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,195,936, or $4,256 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket 2001–NM–250–AD.

Applicability: Model CL–600–2B19 series airplanes, serial numbers 7003 through 7480 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent false smoke warnings from the smoke detectors in the cargo compartment, which prompt the flightcrew to discharge fire extinguisher bottles, leaving those bottles depleted in the event of an actual fire, or which create uncertainty as to whether an emergency landing and emergency evacuation of passengers and flightcrew is warranted, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD: Replace the existing smoke detectors having part number (P/N) 473052, which are located in the cargo compartment, with new, improved smoke detectors having P/N 473597–19, in accordance with Bombardier Service Bulletin 601R–26–016, Revision ''B,'' dated August 10, 2001, or Revision ''C,'' dated August 17, 2001.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–21, dated May 23, 2001.

Issued in Renton, Washington, on March 27, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7994 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–348–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 and A310 series airplanes. This proposal would require replacement of certain symbol generator units (SGUs) in the electronic flight instrument system with new, improved SGUs, and modification of associated equipment and wiring. This action is necessary to ensure that the flightcrew has adequate flight information by preventing temporary loss of data from the primary flight and navigation displays. Inadequate flight information could result in reduced situational awareness for the flight crew, which could contribute to loss of control or impact with obstacles or terrain. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 3, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–348–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–348–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–348–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–348–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes. The DGAC advises that, in one incident, all data on both primary flight displays and both navigation displays were lost for a few seconds during high-rate maneuvering following an event of heavy turbulence. This loss of data has been attributed to monitor exceedance by the symbol generator units (SGUs) in the electronic flight instrument system. Temporary loss of data from the primary flight displays and navigation displays could cause the flightcrew to have inadequate flight information. Inadequate flight information could result in reduced situational awareness for the flight crew, which could contribute to loss of control or impact with obstacles or terrain.

Explanation of Relevant Service Information

Airbus Industrie has issued Service Bulletins A300–34–6132 (for Model A300–600 series airplanes) and A310–34–2157 (for Model A310 series airplanes), both dated May 17, 2001. Those service bulletins describe procedures for replacement of certain SGUs in the electronic flight instrument system with new, improved SGUs, and modification of associated equipment and wiring. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2001–467(B), dated October 3, 2001, in order to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 142 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed replacement and associated modifications, and that the average labor rate is $60 per work hour. Required parts would cost approximately $470 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $100,820, or $710 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 2001–NM–348–AD.

Applicability: Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes; certificated in any category; except those on which Airbus Service Bulletin A300–34–6132 or A310–34–2157, both dated May 17, 2001 (Airbus Industrie Modification 12100 or 12291), has been accomplished.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew has adequate flight information by preventing temporary loss of data from the primary flight and navigation displays, accomplish the following:

Replacement and Modification

(a) Within 3 years after the effective date of this AD, replace all symbol generator units (SGUs), part number (P/N) 9612660319, in the electronic flight instrument system, with new, improved SGUs, P/N 9612660321, and modify associated equipment and wiring, according to Airbus Service Bulletin A300–34–6132 (for Model A300–600 series airplanes) or A310–34–2157 (for Model A310 series airplanes), both dated May 17, 2001, as applicable.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–467(B), dated October 3, 2001.

Issued in Renton, Washington, on March 27, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7995 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–45–AD]

RIN 2120–AA64

Airworthiness Directives; Univair Aircraft Corporation Alon A–2 and A2–A, ERCO 415–C, 415–CD, 415–D, E, and G, Forney F–1 and F–1A, and Mooney M10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Univair Aircraft Corporation (Univair) Alon A–2 and A2–A, ERCO 415–C, 415–CD, 415–D, E, and G, Forney F–1 and F–1A, and Mooney M10 airplanes. This proposed AD would require you to repetitively inspect the wing center section for evidence of corrosion by installing inspection openings or by the use of a scope and light source, *e.g.,* fiberscope borescope or an endoscope, that meets specified criteria. This proposed AD would also require you to repair or replace any parts where corrosion or corrosion damage was found, install cover plates where inspection openings were made, and send inspection results to Federal Aviation Administration (FAA). This proposed AD is the result of several reports of corrosion being found throughout the wing center section structure. The actions specified by this proposed AD are intended to detect and correct corrosion in the wing center section which could result in failure of the wing center section structure during flight. Such failure could lead to loss of control of the airplane.

DATES: The FAA must receive any comments on this proposed rule on or before June 3, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–45–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2001–CE–45–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011, telephone: (303) 375–8882; facsimile: (303) 375–8888. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–45–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received several reports of severe corrosion being found throughout the wing center section of the affected model airplanes. We have determined that the original design configuration of these airplanes does not provide adequate means for routine visual inspection of the wing center section wing walkway boxes. The inability to inspect this area has resulted in corrosion being undetected on these airplanes.

What Are the Consequences if the Condition Is Not Corrected?

If not detected and corrected, the wing center section structure could fail during flight. Such failure could lead to loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Univair has issued Univair Aircraft Corporation Service Bulletin No. 31, date January 29, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—installing inspection openings and cover plate assemblies;

—repetitively inspecting for corrosion and corrosion damage using the inspection openings or a specified scope and light source, e.g., fiberscope borescope or an endoscope; and

—repairing or replacing any parts where corrosion or corrosion damage was found.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—the unsafe condition referenced in this document exists or could develop on other Univair Alon A–2 and A2–A, ERCO 415–C, 415–CD, 415–D, E, and G, Forney F–1 and F–1A, and Mooney M10 airplanes of the same type design;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin and report any damage found to FAA.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 2,600 airplanes in the U.S. registry.

What Would be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed installation of the inspection openings:

Labor cost	Parts cost	Total cost per airplane
10 workhours × $60 per hour = $600	$175	$775

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120.	$450 for purchase of a borescope or an endoscope, if applicable.	$120 or $570	$120 × 2,600 = $312,000 or $570 × 2,600 = $1,482,000.

The FAA has no method of determining the number of repetitive inspections each owner/operator would incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs or replacements each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Compliance Time of This Proposed AD

What Would be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is ''within the next 12 calendar months after the effective date of this AD and thereafter at intervals not to exceed 12 calendar months or 100 hours time-in-service (TIS), whichever occurs first''.

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

The unsafe condition specified by this proposed AD is caused by corrosion. Corrosion can occur regardless of whether the airplane is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this proposed AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours TIS.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Univair Aircraft Corporation: Docket No. 2001–CE–45–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
Alon A–2 and A2–A	All
ERCO 415–C, 415–CD, 415–D, E, and G.	All
Forney F–1 and F–1A	All
Mooney M10	All

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion in the wing center section which could result in failure of the wing center section structure during flight. Such failure could lead to loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the wing center section for corrosion or corrosion damage by accomplishing one of the following methods:	Within the next 12 calendar months after the effective date of this AD and thereafter at intervals not to exceed 12 calendar months or 100 hours time-in-service (TIS), whichever occurs first .	In accordance with the Procedures section of Univair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002, and Advisory Circulary 43–4A, Corrosion Control for Aircraft.
(i) Install inspection openings to gain access to the wing walkway box structure and inspect the wing center structure for corrosion or corrosion damage; or		
(ii) Use a scope and light source, *e.g.,* fiberscope borescope or an endoscope (as specified in Appendix 1 of this AD) to inspect the wing center structure for corrosion or corrosion damage.		
(2) If corrosion or corrosion damage is found during any inspection required in paragraph (d)(1) of this AD, repair of replace components of the wing center section	Prior to further flight after any inspection in which the corrosion or corrosion damage is found .	In accordance with the Procedures section of Univair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002, the applicable maintenance manual, and Advisory Circular 43–4A, Corrosion Control for Aircraft.
(3) If inspection openings were installed in accordance with paragraph (d)(1)(i) of this AD, install cover plate assemblies.	Prior to further flight after each inspection or repair required in paragraphs (d)(1) and (d)(2) of this AD .	In accordance with the Procedures section of Unvair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002.
(4) If any damage is found during any inspection required by this AD, submit a Malfunction or Defect Report (M or D), FAA Form 8010–4, to the FAA.	Within 10 days after the inspection in which the corrosion or damage was found or within 10 days after the effective date of this AD, whichever occurs later .	Send the report to Roger Caldwell, FAA, at the address in paragraph (f) of this AD. You may also file electronically as discussed in this AD.
(i) Include the airplane model and serial number, the extent of the damage (location and type), and the total number of hours TIS on the damaged wing.		
(ii) You may submit M or D reports electronically by accessing the FAA AFS–600 web page at http://av-info.faa.gov/isdr/. You will lose access to the report once electronically submitted. We recommend you print two copies prior to submitting the report. Forward one copy to the Denver Aircraft Certification Office (ACO) and keep the one copy for your records. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.		

Note 1: We have determined that Olympus OSF Endoscope (sigmoidoscope) with a Fujinon FIL–150 light source is acceptable for this inspection. Other scopes and light sources meeting the minimum characteristics stated in Appendix 1 of this AD are also acceptable.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

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

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011, telephone: (303) 375–8882; facsimile: (303) 375–8888. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Appendix 1 to Docket No. 2001–CE–45–AD

Minimum characteristic requirements for the scope and light source, *e.g.,* fiberscope boroscope or endoscope.

(1) Must be a remote high intensity light source of 150 Watts halogen or better.

(2) The optical system must be of a quality such that it remains constantly in focus from about 4 millimeters (0.16 inch) to infinity.

(3) When the tip is approximately 4 millimeters from the inspected surface, a magnification of about 10X must be achieved.

(4) The image guide and protective sheath length must be at least 2 feet for more, and the distal tip diameter must be 0.450 inch or larger.

(5) There must be control handles for four-way tip articulation of the last 4 to 5 inches for a minimum of 100 degrees for each direction.

Issued in Kansas City, Missouri, on March 27, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–7996 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule; Notice of 15-Day Extension in Comment Period

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Federal Trade Commission (''the Commission'' or ''FTC'') has extended the comment period by which comments must be submitted concerning the proposed changes to its Telemarketing Sales Rule (''the Rule'' or ''TSR''). This document informs prospective commenters of the change and sets a new date of April 15, 2002, for the end of the comment period.[1]

DATES: Written comments will be received until the close of business on April 15, 2002.

ADDRESSES: Six paper copies of each paper and/or written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, comments should also be submitted in electronic form. To encourage prompt and efficient review and dissemination of the comments to the public, all comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individual members of the public filing comments need not submit multiple copies or comments in electronic form. Alternatively, the Commission will accept papers and comments submitted to the following email address: *tsr@ftc.gov,* provided the content of any papers or comments submitted by email is organized in sequentially numbered paragraphs. All submissions should be identified as ''Telemarketing Sales Rule Review—Comment. FTC File No. R411001.''

Papers and written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission Regulations, 16 CFR 4.9, on normal business days between the hours of 8:30 a.m. and 5 p.m. in Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission will make this notice and, to the extent possible, all papers or comments received in response to this notice available to the public through the Internet at the following address: *www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine Harrington-McBride (202) 326–2452, email *cmcbride@ftc.gov;* Karen Leonard (202) 326–3597, email *kleonard@ftc.gov;* or Carole Danielson (202) 326–3115, email *cdanielson@ftc.gov,* Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On January 30, 2002, the Commission published a request for comment on proposed changes to its Telemarketing Sales Rule.[2] The Telemarketing and Consumer Fraud and Abuse Prevention Act (''the Telemarketing Act'' or ''the Act'') directed the Commission to promulgate rules to protect consumers from deceptive telemarketing practices and other abusive telemarketing activities. In response to this directive, the Commission adopted the TSR, which requires telemarketers to make specific disclosures of material information; prohibits misrepresentations; sets limits on the times telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services. The comment period for proposed changes to the TSR is currently scheduled to close on March 29, 2002.

Several stakeholders that participated in the original rulemaking proceeding, in the rule review public workshop, and in the public forum focusing on the Rule's do-not-call provision have expressed concern that there will not be sufficient time before March 29 to complete their responses to the Commission's Request for Comment on the proposed amendments. They have asked that the comment period be extended to enable them to complete their data collection. The Commission is mindful of the need to deal with this matter expeditiously. However, the Commission also is aware that the issues raised are complex and believes that the enhancement of the record that will be achieved by extending the comment period far outweighs any harm that might be caused by the delay.

Therefore, the Commission has decided to extend the comment period to April 15, 2002. This extension will provide sufficient time for commenters to prepare useful comments. This extension will not affect the date of the public forum to discuss the proposed changes to the TSR's provisions, but the Commission has determined to also extend the date by which applications to participate in the forum must be received. Accordingly, the public forum will be held, as originally scheduled, on June 5–7, 2002, and notification of interest in participating in the forum must be submitted in writing, but separate from public comments, on or before April 15, 2002, to Carole I. Danielson, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

Authority: 15 U.S.C. 1601–1608.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–8016 Filed 4–2–02; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[Petition IV–2000–1; FRL–7167–5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Kerr-McGee Chemicals, LLC; Mobile County, AL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: This document announces that the EPA Administrator has denied a petition to object to a state operating permit issued by the Alabama

[1] This document was received at the Office of the Federal Register on March 29, 2002.

[2] 67 FR 4492 (January 30, 2002).

Department of Environmental Management to Kerr-McGee Chemicals, LLC, Mobile County, Alabama. Pursuant to section 505(b)(2) of the Clean Air Act (Act), petitioners may seek judicial review of the petition in the United States Court of Appeals for the appropriate circuit within 60 days of this decision under section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303–8960. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/kerrmcgee_decision2000.pdf.*

FOR FURTHER INFORMATION CONTACT: Joel Huey, Air Permits Section, EPA Region 4, at (404) 562–9104 or *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to state operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. Mobile Bay Watch, Inc., submitted a petition to the Administrator on May 22, 2000, seeking EPA's objection to the operating permit issued to Kerr-McGee Chemicals, LLC. The petitioner maintains that the Kerr-McGee Chemicals operating permit is inconsistent with the Act because the permit fails to: (1) Require adequate periodic monitoring of facility emissions; (2) require the facility to prepare a Risk Management Plan as well as Worst Case Scenario and Planning Case Scenario; and (3) reflect the comments submitted by Mobile Bay Watch during the 30-day draft permit period. Mobile Bay Watch also bases its petition on the following statements: (1) Kerr-McGee requested in its permit application that the number of federally enforceable limitations in the operating permit be minimized; (2) Kerr-McGee requested in its permit application that the permit include a permit shield; (3) the period between the date of the permit application and the issuance of the draft permit was excessive; and (4) EPA failed to fully review the Kerr-McGee Chemicals permit. On February 1, 2002, the Administrator issued an order denying the petition. The order explains the reasons behind EPA's conclusion that the petitioner has failed to demonstrate that the Kerr-McGee Chemicals permit does not assure compliance with the Act on the grounds raised.

Dated: March 18, 2002.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 02–8063 Filed 4–2–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–711, MB Docket No. 02–66, RM–10252]

Digital Television Broadcast Service; Rutland, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Vermont ETV, Inc., licensee of noncommercial educational station WVER(TV), NTSC channel *28, Rutland, Vermont, requesting the substitution of DTV channel *9 for station WVER(TV)'s assigned DTV channel *56. DTV Channel *9 can be allotted to Rutland, Vermont, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (43–39–32 N. and 73–06–25 W.). However, since the community of Rutland is located 400 kilometers from the U.S.-Canadian border, concurrence from the Canadian must be obtained for this allotment. As requested, we propose to allot DTV Channel *9 to Rutland with a power of 30 and a height above average terrain (HAAT) of 411 meters.

DATES: Comments must be filed on or before May 23, 2002, and reply comments on or before June 7, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jonathan D. Blake, Covington & Burling, 1201 Pennsylvania Avenue, NW, P.O. Box 7566, Washington, DC 20044–7566 (Counsel for Vermont ETV, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–66, adopted March 25, 2002, and released April 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Vermont is amended by removing DTV Channel *56 and adding DTV Channel *9 at Rutland.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–7977 Filed 4–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–710, MB Docket No. 02–65, RM–10370]

Digital Television Broadcast Service and Television Broadcast Service; Georgetown, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Community Television, Inc., an applicant for a construction permit for a new noncommercial educational television station to operate on NTSC channel *41 at Georgetown. Community Television requests the replacement of DTV channel *38 for NTSC channel *41 at Georgetown. DTV channel *38 can be allotted to Georgetown, South Carolina, in compliance with Sections 73.622(a) and 73.623(c) of the Commission's criteria as set forth in the Public Notice, released November 22, 1999, DA 99–2605. DTV channel *38 can be allotted at reference coordinates 33–25–58 N. and 79–16–16 W. with a power of 500, a height above average terrain HAAT of 144 meters.

DATES: Comments must be filed on or before May 23, 2002, and reply comments on or before June 7, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gene A. Bechtel, Bechtel & Cole, Chartered, 1901 L Street, NW., Suite 250, Washington, DC 20036 (Counsel for Community Television, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–65, adopted March 25, 2002, and released April 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under South Carolina, is amended by removing Channel *41 at Georgetown.

3. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

4. Section 73.622(b), the Table of Digital Television Allotments under South Carolina, is amended by adding Georgetown, DTV channel *38.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–7976 Filed 4–2–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 571, 574 and 575

[Docket No. NHTSA–00–8011]

RIN 2127–AI54

Federal Motor Vehicle Safety Standards; Tires

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

ACTION: Correction to notice of proposed rulemaking (NPRM).

SUMMARY: This document contains corrections to the proposal which was published on Tuesday, March 5, 2002 (67 FR 10050).

DATES: Written comments may be submitted to this agency and must be received by May 6, 2002.

FOR FURTHER INFORMATION CONTACT:

For technical and policy issues: Mr. George Soodoo or Mr. Joseph Scott, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC, 20590. Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC, 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

Background

The proposal that is the subject of this correction was published in response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. It proposed to establish new and more stringent tire performance requirements in a new Federal motor vehicle safety standard that would apply to all new tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less. The proposal sought comment on the proposed new standard, including its applicability and test procedures, modifications to related existing standards, and lead time provided for manufacturers to achieve compliance.

Need for Correction

As published, the proposal inadvertently omits items which are in need of addition.

Correction of Publication

Accordingly, the publication on March 5, 2002 (67 FR 10050) is corrected as follows:

On page 10071, in the first column, following the second full paragraph, the following paragraph is added: ''Additionally, all light vehicles manufactured on or after September 1, 2004 would have to comply with the final rule. This proposed lead time would be consistent with the lead time proposed for the two-year phase-in discussed above.''

On page 10077, amendment 3a is added to read as follows: ''Table 1 to § 571.110 is revised to read as follows:

* * * * *

TABLE 1.—OCCUPANT LOADING AND DISTRIBUTION FOR VEHICLE NORMAL LOAD FOR VARIOUS DESIGNATED SEATING CAPACITIES

Designated seating capacity, number of occupants	Vehicle normal load, number of occupants	Occupant distribution in a normally loaded vehicle
2 through 4	2	2 in front
5 through 10	3	2 in front, 1 in second seat
11 through 15	5	2 in front, 1 in second seat, 1 in third seat, 1 in fourth seat
16 through 22	7	2 in front, 2 in second seat, 2 in third seat, 1 in fourth seat

Issued: March 28, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–8078 Filed 4–2–02; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 67, No. 64
Wednesday, April 3, 2002

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the paperwork Reduction Act for 1995. Comments are requested concerning: whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau of Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: 0412–.
Form No.: AID 1570–14.
Title: Report on Commodities.
Type of Review: New.

Purpose

The purpose of this information collection is to properly respond to the annual competition among applicants who apply on behalf of their sponsored overseas institutions and independent reviewers. ASHA needs to assess the strength and capability of the U.S. organizations, the overseas institutions and the merits of their proposed projects. Easily accessible historical records on past accomplishments and performance by repeat USOs, would speed the grant making process and provide documented reasons for both successful and unsuccessful applications.

Annual Reporting Burden

Respondents: 45.
Total annual responses: 1120.
Total annual hours requested: 613 hours.

Dated: March 21, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–7970 Filed 4–2–02; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: whether the proposed or continuing collection of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, D.C., 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB NO: OMB 0412–.
Form No.: AID 1570–13.
Title: Narrative/Time-Line Report.
Type of Review: New.

Purpose

This collection is a management and monitoring report used by the Bureau for Democracy, Conflict and Humanitarian assistance, Office of American Schools and Hospitals Abroad. The collection will ascertain that grant financed programs meet authorized objectives within the terms of agreements between its office and the recipients, which are United States Organizations that sponsor Overseas Institutions.

Annual Reporting Burden

Respondents: 80.
Total annual responses: 380.
Total annual hours requested: 200 hours.

Dated: March 21, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–7971 Filed 4–2–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–02–04]

National Advisory Committee for Tobacco Inspection Services; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of a forthcoming meeting of the National Advisory Committee for Tobacco Inspection Services.

DATES: April 16, 2002, 9:00 a.m.

ADDRESSES: The meeting will be held at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW, Washington, DC 20250–0280, Telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), and discuss the level of service (number of sets of graders) AMS will provide for the 2002–2003 tobacco marketing season. The Committee will recommend the desired level of service to be provided to producers by AMS and an appropriate fee structure to fund the recommended services for the 2002–2003 selling season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW, Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by April 10, 2002, and inform us of your needs.

Dated: April 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–8167 Filed 4–1–02; 3:05 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–020–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Application for Inspection and Certification of Animal Byproducts.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by June 3, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–020–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–020–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–020–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on the Application for Inspection and Certification of Animal Byproducts, contact Dr. Joyce Bowling, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 734–3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION

Title: Application for Inspection and Certification of Animal Byproducts.

OMB Number: 0579–0008.

Type of Request: Extension of approval of an information collection.

Abstract: U.S. exporters who wish to export certain animal byproducts to other countries must, in some instances, furnish the importing country with certificates that have been issued or endorsed by Veterinary Services (VS) of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture. VS Form 16–24, Application for Inspection and Certification of Animal Byproducts, is one such certificate. The form also serves as a written agreement under which the exporter pays for services we render in connection with documenting the certification statements required by the importing country.

The exporter provides VS with the information requested on VS Form 16–24, including a detailed description of the processing techniques that are used to make the product eligible to enter the importing country. VS uses this information to monitor and certify the processing techniques. After monitoring the processing technique, VS issues or endorses the certificate attesting to the class and quality of the products and that the products have been processed according to the conditions and requirements of the importing country.

Without this certification, the importing country would not accept the product, and the exporter would be unable to conduct business with that country. The use of VS Form 16–24 has no impact on animal disease prevention or eradication activities in the United States. The form was developed to meet the importation requirements of other countries.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of

information is estimated to average 1.5 hours per response.

Respondents: U.S. exporters of animal byproducts.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 20.

Estimated total annual burden on respondents: 30 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–8059 Filed 4–2–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan for the Shawnee National Forest (Alexander, Gallatin, Hardin, Jackson, Johnson, Massac, Pope, Saline, Williamson, and Union Counties, IL)

AGENCY: Forest Service, USDA.

ACTION: Notice of intent supplement.

SUMMARY: On March 20, 2002 the USDA Forest Service published in the **Federal Register**, a Notice of Intent (NOI) to prepare an Environmental Impact Statement and to revise the Shawnee National Forest Land and Resource Management Plan (Forest Plan). Several public meetings were listed in the NOI. Since these meetings were scheduled fairly early in the comment period, everyone may not have had sufficient notice prior to the meetings. To ensure adequate advance notification, two additional meetings are being scheduled, and the comment period is being extended.

SUPPLEMENTARY INFORMATION: The Shawnee National Forest is scheduling two public meetings in addition to the meetings that were scheduled in the NOI of March 20, 2002. All information shared by the Forest Service at these meetings will be identical to that shared at the previously scheduled meetings. These additional meetings will be held as follows:

May 28, 2002, 2–7 p.m., Township Davis-McCann Center, 15 North 14th Street, Murphysboro, IL 62966

May 29, 2002, 2–7 p.m.; Ralph Metcalf Federal Building, 77 West Jackson Blvd., Chicago, IL 60404.

The period for accepting comments from the public is also being extended. We need to receive your comments on the NOI in writing within 60 days after this NOI Supplement is published in the **Federal Register**. All other information in the March 20, 2002 NOI remains the same.

Dated: March 27, 2002.

Donald L. Meyer,

Acting Regional Forester.

[FR Doc. 02–7990 Filed 4–02–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Idaho Panhandle National Forests' Idaho Panhandle Resource Advisory Committee will meet Wednesday, April 17, 2002 in Coeur d'Alene, Idaho for a business meeting. The meeting is open to the public.

DATES: April 17, 2002.

ADDRESSES: The meeting location is the Idaho Panhandle National Forests' Supervisor's Office, located at 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Officer, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: Agenda topics include hearing presentations of project proposals, review of project proposals and receiving public comment.

Dated: March 28, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 02–8018 Filed 4–2–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

[Docket No.

Notice of Resource Advisory Committee Meeting

AGENCY: Southwest Idaho Resource Advisory Committee, Boise, ID, Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet Wednesday, April 17, 2002 in Boise, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on April 17, begins at 10:30 a.m., at the Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho. Agenda topics will include review and approval of project proposals and an open public forum.

FOR FURTHER INFORMATION CONTACT: Randy Swick, McCall District Ranger and Designated Federal Officer, at (208) 634-0400.

Dated: March 26, 2002.

Robert Giles,

Acting Forest Supervisor, Payette National Forest.

[FR Doc. 02–8049 Filed 4–2–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Rural Utilities Service

Inviting Preapplications for Rural Cooperative Development Grants

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business—Cooperative Service (RBS) announces the availability of approximately $5.3 million in competing Rural Cooperative Development Grant (RCDG) funds for fiscal year (FY) 2002. Of this amount, approximately $1.5 million will be reserved for preapplications which focus on assistance to small, minority producers through their cooperative businesses. Applicants for the reserved amount must have a governing board or

membership base comprised of at least 75 percent minority members. This action will comply with legislation which authorizes grants for establishing and operating centers for rural cooperative development. The intended effect of this notice is to solicit preapplications for FY 2002 and award grants before September 1, 2002.

DATES: The deadline for receipt of a preapplication is May 17, 2002. Preapplications received after that date will not be considered. Preapplications should be sent to the Rural Development State offices. State offices will forward the preapplications to the National office by May 31, 2002.

ADDRESSES: Entities wishing to apply for assistance should contact their USDA Rural Development State office to receive further information and copies of the preapplication package.

FOR FURTHER INFORMATION CONTACT: James E. Haskell, Assistant Deputy Administrator, Cooperative Services, Rural Business—Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250. Telephone (202) 720–8460.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements continued in this regulation were previously approved by the Office of Management and Budget (OMB) and were assigned OMB control number 0570–0006.

General Information

Rural Cooperative Development Grants (RCDG) are authorized by section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932). Regulations are contained in 7 CFR part 4284, subpart F. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. The program is administered through USDA Rural Development State offices acting on behalf of RBS.

Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria. Approximately $1.5 million is reserved for preapplications which focus on assistance to small, minority producers through their cooperative businesses. Applicants for the reserved amount must have a governing board or membership base comprised of at least 75 percent minority members. The priorities described in this paragraph will be used by RBS to rate preapplications. Points will be distributed in comparison to other preapplications on hand. Up to five points will be awarded to each factor. Each factor will receive equal weight. Preference will be given to applications that:

(1) Demonstrate a proven track record in administering a nationally coordinated, regionally or State-wide operated project;

(2) Demonstrate previous expertise in providing technical assistance to cooperatives in rural areas;

(3) Demonstrate the ability to assist in the retention of business, facilitate the establishment of cooperatives and new cooperative approaches, and generate employment opportunities that will improve the economic conditions of rural areas;

(4) Demonstrate the ability to create horizontal linkages among cooperative businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets;

(5) Commit to providing technical assistance and other services to underserved and economically distressed rural areas of the United States;

(6) Commit to providing greater than a 25 percent matching contribution, with private funds and in-kind contributions;

(7) Demonstrate transferability or demonstration value to assist rural areas outside of project area; and

(8) Demonstrate that any cooperative development activity is consistent with positive environmental stewardship.

Fiscal Year 2002 Preapplication Submission

Preapplications must include a clear statement of the goals and objectives of the project and a plan which describes the proposed project as required by the statute and 7 CFR part 4284, subpart F. Each preapplication received in the State office will be reviewed to determine if the preapplication is consistent with the eligible purposes outlined in 7 CFR part 4284, subpart F. Preapplications without supportive data to address selection criteria will not be considered.

Since the primary objective of the cooperative center concept is to provide technical assistance services, including feasibility analysis, preapplications that do not propose development or continuation of the cooperative center concept will not be considered. Also, preapplications that focus on assistance to only one cooperative within the project area will not be considered. To enhance the long-term viability of cooperative development centers, strengthening of technical assistance capacity within new and existing centers is strongly encouraged.

Copies of 7 CFR part 4284, subpart F, will be provided to any interested applicant by making a request to the Rural Development State office or RBS National office. Preapplications must be completed and submitted to the State Rural Development Office as soon as possible, but no later than May 17, 2002. Preapplications received after May 17 will not be considered.

For ease of locating information and in addition to the preapplication requirements contained in 7 CFR part 4284 subpart F, each preapplication should contain the following:

(1) A detailed Table of Contents containing page numbers for each component of the reapplication.

(2) A project summary of 250 words or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals, relevance of the project, and a listing of all organizations involved in the project. The project summary should immediately follow the Table of Contents.

(3) A separate one-page information sheet which lists each of the eight evaluation criteria followed by the page numbers of all relevant material and documentation contained in the preapplication which supports that criteria. This page should immediately follow the project summary.

(4) An additional requirement for those applicants who have received funding under the RCDG program in Fiscal Years 1997 through 2001 is a summation, not to exceed three pages, of progress and results for all projects funded fully or partially by the RCDG program in those years. This summary should include the status of cooperative businesses organized and all eligible grant purpose activities listed under 7 CFR 4284.515. The summary should immediately follow the page described above in (3) documenting the location of evaluation criteria supporting material.

Preapplications requesting Federal funds in excess of $300,000 will not be considered. The National office will score preapplications based on the grant selection criteria contained in 7 CFR part 4284, subpart F, and will select awardees subject to the availability of funds and the awardee's satisfactory submission of a formal application and related materials in accordance with

subpart F. Entities submitting preapplications that are selected for awards will be invited by the Rural Development State office to submit a formal application prior to September 1. It is anticipated that grant awardees will be selected by September 1, 2002.

In the event that the applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or de-obligate the award, if acceptable modifications are not submitted by the awardees within 15 working days from the date the application is returned to the applicant. Any modifications must be within the scope of the original application.

All applicants and grants must be in compliance with the requirements of 7 CFR parts 3015 and 3019.

Dated: March 27, 2002.

John Rosso,

Administrator, Rural Business—Cooperative Service.

BILLING CODE 3410–XY–U

U. S. DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT STATE OFFICES

ALABAMA Steve Pelham Sterling Center, Suite 601 4121 Carmichael Road Montgomery, AL 36106-3683 T: (334) 279-3400 F: (334) 279-3403	**GEORGIA** F. Stone Workman Stephens Federal Building 355 E. Hancock Avenue Athens, GA 30601-2768 T: (706) 546-2162 F: (706) 546-2152	**LOUISIANA** Michael B. Taylor 3727 Government Street Alexandria, LA 71302 T: (318) 473-7921 F: (318) 473-7829
ALASKA Bill Allen 800 West Evergreen, Suite 201 Palmer, AK 99645 T: (907)761-7705 F: (907) 761-7783	**HAWAII** Loraine Shin Federal Building, Room 311 154 Waianuenue Avenue Hilo, HI 96720 T: (808) 933-8302 F: (808) 933-8327	**MAINE** Michael W. Aube 967 Illinois Ave., Suite 4 P.O. Box 405 Bangor, ME 04402-0405 T: (207) 990-9106 F: (207) 990-9165
ARIZONA Eddie Browning 3003 North Central Avenue, Suite 900 Phoenix, AZ 85012 T: (602) 280-8700 F: (602) 280-8770	**IDAHO** Michael A. Field 9713 West Barnes Drive Suite A1 Boise, ID 83709 T: (208) 378-5600 F: (208) 378-5643	**MASS/RI/CONN** David H. Tuttle 451 West Street Amherst, MA 01002 T: (413) 253-4300 F: (413) 253-4347
ARKANSAS John M. Allen Federal Bldg. 700 W. Capitol Ave., Room 3416 Little Rock, AR 72201-3225 T: (501) 301-3200 F:(501) 301-3278	**ILLINOIS** Douglas A. Wilson Illini Plaza, Suite 103 1817 South Neil Street Champaign, IL 61820 T: (217) 403-6200 F: (217) 403-6243	**MICHIGAN** Joanne C. DeVuyst 3001 Coolidge Road, Suite 200 East Lansing, MI 48823 T: (517) 324-5188 F: (517) 324-5225
CALIFORNIA D. Paul Venosdel 430 G Street, Agcy. 4169 Davis, CA 95616-4169 T: (530) 792-5800 F: (530) 792-5837	**INDIANA** Robert White 5975 Lakeside Boulevard Indianapolis, IN 46278 T: (317) 290-3100 F: (317) 290-3127	**MINNESOTA** Stephen G. Wenzel 410 AgriBank Building 375 Jackson Street St. Paul, MN 55101 T: (651) 602-7800 F: (651) 602-7824
COLORADO Ginette Dennis 655 Parfet Street, Room E-100 Lakewood, CO 80215 T:720-544-2903 F:720-544-2970	**IOWA** Daniel W. Brown, Ph.D. Federal Building, Room 873 210 Walnut Street Des Moines, IA 50309 T: (515) 284-4663 F: (515) 284-4859	**MISSISSIPPI** Nick Walters Federal Building, Suite 831 100 West Capitol Street Jackson, MS 39269 T: (601) 965-4316 F: (601) 965-5384

U. S. DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT STATE OFFICES

DELAWARE-MARYLAND Marlene B. Elliott 4607 South Dupont Hwy P.O. Box 400 Camden, DE 19934-9998 T: (302) 697-4300 F: (302) 697-4390	**KANSAS** Charles "Chuck" R. Banks 1200 SW Executive Drive P.O. Box 4653 Topeka, KS 66604 T: (785) 271-2700 F: (785) 271-2708	**MISSOURI** Gregory C. Branum 601 Business Loop 70 West Parkade Center, Suite 235 Columbia, MO 65203 T: (573) 876-0976 F: (573) 876-0977
FLORIDA Charles W. Clemmons, Sr. 4440 NW 25th Place P.O. Box 147010 Gainesville, FL 32614-7010 T: (352) 338-3402 F: (352) 338-3405	**KENTUCKY** Kenneth Sloan 771 Corporate Drive, Suite 200 Lexington, KY 40503 T: (859) 224-7300 F:(859) 224-7340	**MONTANA** W. T. (Tim) Ryan Unit 1, Suite B 900 Technology Boulevard Bozeman, MT 59715 T: (406) 585-2580 F: (406) 585-2565
NEBRASKA M. James Barr Federal Building, Room 152 100 Centennial Mall N Lincoln, NE 68508 T: (402) 437-5551 F: (402) 437-5408	**OKLAHOMA** Brent J. Kisling 100 USDA, Suite 108 Stillwater, OK 74074 T: (405) 742-1000 F: (405) 742-1005	**UTAH** John R. Cox Wallace F. Bennett Fed. Bldg. 125 South State Street, Room 4311 Salt Lake City, UT 84138 T: (801) 524-4320 F: (801) 524-4406
NEVADA Larry J. Smith 1390 South Curry Street Carson City, NV 89703-5405 T: (775) 887-1222 F: (775) 885-0841	**OREGON** Lynn Schoessler 101 SW Main Street, Suite 1410 Portland, OR 97204-3222 T: (503) 414-3300 F: (503) 414-3385	**VERMONT/NH/** Jolinda H. LaClair City Center, 3rd Floor, 89 Main Street Montpelier, VT 05602 T: (802) 828-6002 F: (802) 828-6018
NEW JERSEY Andrew M. G. Law Tarnsfield Plaza, Suite 22 790 Woodlane Road Mt. Holly, NJ 08060 T: (609) 265-3600 F: (609) 265-3651	**PENNSYLVANIA** Byron E. Ross 1 Credit Union Place, Suite 330 Harrisburg, PA 17110-2996 T: (717) 237-2184 F: (717) 237-2191	**VIRGINIA** Joseph W. Newbill Culpeper Building, Suite 238 1606 Santa Rosa Road Richmond, VA 23229 T: (804) 287-1552 F: (804) 287-1721
NEW MEXICO Roberto Salazar 6200 Jefferson Street, Room 255 Albuquerque, NM 87109 T: (505) 761-4950 F: (505) 761-4976	**PUERTO RICO** Jose Otero Garcia IBM Building - Suite 601 654 Munos Rivera Avenue Hato Rey, PR 00918-6106 T: (787) 766-5095 F: (787) 766-5844	**VIRGIN ISLANDS** Glenn E. Walden, Acting 4400 NW 25th Place P.O. Box 147010 Gainesville, FL T: (352) 338-3402 F: 338-3405

U. S. DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT STATE OFFICES		
NEW YORK Patrick Brennan The Galleries of Syracuse 441 South Salina Street Syracuse, NY 13202 T: (315) 477-6435 F: (315) 477-6438	**SOUTH CAROLINA** Charles D. Sparks Strom Thurmond Federal Building 1835 Assembly Street, Room 1007 Columbia, SC 29201 T: (803) 765-5163 F: (803) 765-5633	**WASHINGTON** Jackie J. Gleason 1835 Blacklake Boulevard, SW. Suite B Olympia, WA 98512-5715 T: (360) 704-7715 F: (360) 704-7742
NORTH CAROLINA John J. Cooper 4405 Bland Road, Suite 260 Raleigh, NC 27609 T: (919) 873-2000 F: (919) 873-2075	**SOUTH DAKOTA** Lynn D. Jensen Federal Building, Room 210 200 4th Street SW Huron, SD 57350 T: (605) 352-1100 F: (605) 352-1146	**WEST VIRGINIA** Jenny N. Phillips 75 High Street P.O. Box 678 Morgantown, WV 26505 T: (304) 284-4861 F: (304) 284-4893
NORTH DAKOTA Clare Carlson Federal Building, Room 208 220 East Rosser, P.O. Box 1737 Bismarck, ND 58502-1737 T: (701) 530-2037F: (701) 530-2111	**TENNESSEE** Mary (Ruth) Tackett 3322 West End Avenue, Suite 300 Nashville, TN 37203-1071 T: (615) 783-1300 F: (615) 783-1301	**WISCONSIN** Frank Frassetto 4949 Kirschling Court Stevens Point, WI 54481 T: (715) 345-7600 F: (715) 345-7669
OHIO Randall Hunt Federal Building, Room 507 200 North High Street Columbus, OH 43215-2477 T: (614) 255-2400 F: (614) 255-2559	**TEXAS** R. Bryan Daniel Federal Building, Suite 102 101 South Main Temple, TX 76501 T: (254) 742-9700 F: (254) 742-9709	**WYOMING** John E. Cochran 100 East B, Federal Building, Rm 1005 P.O. Box 820 Casper, WY 82602 T: (307) 261-6300 F: (307) 261-6327

[FR Doc. 02–8025 Filed 4–2–02; 8:45 am]
BILLING CODE 3410–XY–C

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the availability of $12 million of grant funds for the RCDI program through the Rural Housing Service (RHS), herein referred to as the Agency, USDA. Applicants must provide matching funds in an amount at least equal to the Federal grant. These grants will be made to qualified intermediary organizations that will provide financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing, community facilities, or community and economic development. This Notice lists the information needed to submit an application for these funds.

DATES: The deadline for receipt of an application is 4 p.m. EST on July 2, 2002. The application deadline is firm as to date and hour. The agency will not consider any application received after the deadline.

ADDRESSES: Entities wishing to apply for assistance may download the application requirements delineated in this Notice from the RCDI Web site at: *www.rurdev.usda.gov/rhs/rcdi/index.htm.* Applicants may also request application packages from: Beth Jones, Rural Housing Service, STOP 0787, Room 0183, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1498, e-mail: *epjones@rdmail.rural.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Beth Jones, Senior Loan Specialist, Community Programs, RHS, USDA, STOP 0787, Room 0183, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1498, Facsimile (202) 690–0471, e-mail: *epjones@rdmail.rural.usda.gov.* You may also obtain information from the RCDI Web site at: *www.rurdev.usda.gov/rhs/rcdi/index.htm.*

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.446. This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

The paperwork burden has been cleared by the Office of Management and Budget under OMB Control Number 0575–0180.

Background

Congress created the Rural Community Development Initiative (RCDI) in Fiscal Year (FY) 2000 with an appropriation of $6 million under the Rural Community Advancement Program (RCAP). Congress appropriated $6 million in FY 2001 for the RCDI. The funds from FY 2001 are being carried over to FY 2002 for utilization. Congress appropriated $6 million in FY 2002 for

the RCDI. These funds are to be used solely to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas. Qualified private and public (including tribal) intermediary organizations proposing to carry out financial and technical assistance programs will be eligible to receive the funding. The intermediary will be required to provide matching funds in an amount at least equal to the RCDI grant.

Definitions for RCDI Purposes

Agency—the Rural Housing Service (RHS) or its successor.

Beneficiary—entities or individuals that receive benefits from assistance provided by the recipient.

Capacity—the ability of a recipient to finance and implement housing, community facilities, or community and economic development projects or provide financial and technical assistance to enhance a community's potential.

Federally recognized tribes—tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs, based on the Notice in the **Federal Register** published by the Bureau of Indian Affairs on March 13, 2000, volume 65, number 49, page 13298. Tribally Designated Housing Entities, (TDHEs), are eligible RCDI recipients.

Financial Assistance—Funds used by the intermediary to pay for the technical assistance program being delivered. Funds that pass through the intermediary to the recipient for eligible RCDI purposes.

Fund—the RCDI grant and matching money.

Intermediary—a qualified private nonprofit or public (including tribal) organization that provides financial and technical assistance to multiple recipients. The applicant entity must have been organized for a minimum of three years.

Low-income community—an authority, district, economic development authority, regional council, or unit of government representing an incorporated city, town, village, county, township, parish, or borough. The location of the low-income community's office that will be receiving the financial and technical assistance must be in a community with a median household income at, or below, 80 percent of either the state or national median household income.

Matching Funds—cash or confirmed funding commitments. Matching funds must be at least equal to the grant amount. These funds can only be used for eligible RCDI activities. In-kind contributions cannot be used as matching funds.

Nonprofit organization—a private community-based housing or community development entity with a valid 501(c)(3) letter from the Internal Revenue Service (IRS) designating their nonprofit status.

Recipient—the entity that receives the financial and technical assistance from the intermediary. The recipient must be a nonprofit organization, a low-income rural community, or a federally recognized tribe.

Rural and Rural Area—a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than urbanized areas immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants. Urbanized area data will be based on 1990 census data because 2000 census data is not available for urbanized areas.

Technical Assistance—skilled help in improving the recipient's abilities in the areas of housing, community facilities, or community and economic development. The Agency will determine whether a specific activity qualifies as technical assistance.

Eligibility Requirements

1. The recipient and beneficiary, but not the intermediary, must be located in an eligible rural area. The applicable Rural Development State Office can assist in determining the eligibility of an area. A listing of Rural Development State Offices is included in this Notice.

2. The name and location of recipients must be included in the grant application.

3. The recipients must be nonprofit organizations, low-income rural communities, or federally recognized tribes based on the RCDI definitions of these groups.

4. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient: a 501(c)(3) letter from the IRS is required for nonprofit recipients; for low-income community recipients, the Agency needs (a) evidence that the entity is a public body and (b) census data verifying that the median household income of the community, where the office receiving the financial and technical assistance is located, is at, or below, 80 percent of the state or national median household income; for federally recognized tribes, the Agency needs the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (see the definition of federally recognized tribes for details on this list).

5. Individuals cannot be recipients.

6. The intermediary must provide matching funds at least equal to the amount of the grant.

7. The intermediary must provide a program of financial and technical assistance to the recipient.

8. The intermediary organization must have at least three years prior experience working with nonprofit organizations, low-income rural communities, or tribal organizations in the areas of housing, community facilities, or community and economic development.

9. The respective minimum and maximum grant amount per intermediary is $50,000 and $1 million.

10. Proposals must be structured to utilize the grant funds within 3 years from the date of the award.

11. Each intermediary, whether singularly or jointly, may only submit one application for RCDI funds under this NOFA unless the intermediary's participation is limited to providing all or part of the matching funds.

12. Recipients can participate in more than one RCDI application; however, after grant selections are made, the recipient can only participate in multiple RCDI grants if the type of financial and technical assistance they will receive is not duplicative.

13. The intermediary and the recipient cannot be the same entity. The recipient can be a related entity to the intermediary, if it meets the definition of a recipient.

14. A nonprofit entity must already have their 501(c)(3) letter from the IRS when the intermediary applies for the RCDI grant. Organizations with pending requests for this designation are not considered eligible.

15. If the recipient is a low-income community, identify the unit of government to which the financial and technical assistance will be provided (i.e., town council or village board). The financial and technical assistance must be provided to the organized unit of government representing that community, not the community at large.

16. Nonprofits located in census designated places (CDPs) are eligible. CDPs are not considered eligible rural areas under low-income communities because they do not have a unit of government to receive the financial and technical assistance.

Eligible Fund Uses

Fund uses must be consistent with the RCDI purpose (see ''Background'' section of this Notice). A nonexclusive list of eligible grant uses includes the following.

1. Provide financial and technical assistance to develop recipients' capacity and ability to undertake projects related to housing, community facilities, or community and economic development (e.g., the intermediary hires a staff person to provide technical assistance to the recipient, or the recipient hires a staff person, under the supervision of the intermediary, to carry out the financial and technical assistance provided by the intermediary).

2. Develop the capacity of recipients to conduct community development programs (e.g. home-ownership education or training for minority business entrepreneurs).

3. Develop the capacity of recipients to conduct development initiatives (e.g., programs that support micro-enterprise and sustainable development).

4. Increase leveraging ability and access to alternative funding sources by providing training and staffing.

5. Provide the financial and technical assistance component for essential community facilities projects.

6. Assist recipients in completing predevelopment requirements for housing, community facilities, or community and economic development projects by providing resources for professional services (i.e., architectural, engineering, or legal).

7. Improve recipient's organizational capacity by providing training and resource material on developing strategic plans, board operations, management, financial systems, and information technology.

8. Purchase computers, software, and printers at the recipient level.

9. Provide funds to recipients for training-related travel costs and training expenses related to RCDI.

Ineligible Fund Uses

1. Funding a revolving loan fund.

2. Construction (in any form).

3. Intermediary preparation of strategic plans for recipients.

4. Funding illegal activities.

5. Grants to individuals.

6. Funding a grant where there may be a conflict of interest or an appearance of a conflict of interest involving any action by the Agency.

7. Paying obligations incurred before the beginning date or after the ending date of the grant agreement.

8. Purchasing real estate.

9. Improvement or renovation of the grantee's office space or for the repair or maintenance of privately owned vehicles.

10. Any other purpose prohibited in 7 CFR parts 3015, 3016, and 3019, as applicable.

11. Funds cannot be used for recipient's general operating costs.

Program Examples

The purpose of this initiative is to develop or increase the recipient's capacity through a program of financial and technical assistance to perform in the areas of housing, community facilities, or community and economic development. Strengthening the recipient's capacity in these areas will benefit the communities they serve. The RCDI structure requires the intermediary (grantee) to provide a program of financial and technical assistance to recipients. The recipients will in turn provide programs to their communities (beneficiaries). Following are examples of eligible and ineligible purposes under the RCDI program. These examples are illustrative and are not meant to limit the activities you may propose in your application. Activities that meet the objective of the RCDI program will be considered eligible.

1. The intermediary must work directly with the recipient, not the beneficiaries. An example would be that the intermediary provides training to the recipient on how to conduct home-ownership education classes. The recipient then provides ongoing home-ownership education to the residents of the community, the ultimate beneficiaries. This ''train the trainer'' concept fully meets the intent of this initiative. The intermediary is providing financial and technical assistance that will build the recipient's capacity by enabling them to conduct home-ownership education classes for the public. This is an eligible purpose. However, if the intermediary directly provided home-ownership education classes to individuals in the recipient's service area, this would not be an eligible purpose because the recipient would be bypassed.

2. If the intermediary is working with a low-income community as their recipient, the intermediary must provide the financial and technical assistance to the entity that represents the low-income community and is identified in the application. Examples of entities representing a low-income community are a village board or a town council. If the intermediary provides technical assistance to the Board of Directors of the low-income community on how to establish a cooperative, this would be an eligible purpose. However, if the intermediary works directly with individuals from the community to establish the cooperative, this is not an eligible purpose. The recipient's capacity is built by learning skills that will enable them to support sustainable economic development in their communities on an ongoing basis.

3. The intermediary may provide technical assistance to the recipient on how to create and operate a revolving loan fund (RLF). The intermediary may not monitor or operate the RLF. RCDI funds, including matching funds, cannot be used to fund RLFs.

Application Selection Process

Rating and ranking. Applications will be rated and ranked by a review panel based on the ''Evaluation Criteria and Weights'' contained in this Notice. If there is a tie score after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for ''Building Capacity'' and the applicant with the highest score in that category will receive a higher ranking. If the scores for ''Building Capacity'' are the same, the scores will be compared for the next criterion, in sequential order, until one highest score can be determined.

Initial screening. The Agency will screen each application to determine eligibility during the period immediately following the application deadline. Listed below are many of the reasons for rejection from our previous round of funding to help you prepare a better application. The following reasons for rejection are not all inclusive; however, they represent the majority of the applications previously rejected.

1. Recipients were not located in eligible rural areas based on the definition in this Notice.

2. Applicants failed to provide required documentation for recipients (*i.e.,* 501(c)(3) letter for nonprofit recipients).

3. Application did not follow the RCDI structure with an intermediary and recipients.

4. Recipients were not identified in the application.

5. Recipients cannot be individuals.

6. Intermediary did not provide evidence that they had been incorporated for at least three years as the applicant entity.

7. Applicants failed to address the ''Evaluation Criteria'' and were unable to compete.

8. The purpose of the proposal did not qualify as an eligible RCDI purpose.

9. Funds cannot be used for construction or renovations.

10. Financial and technical assistance cannot be provided directly to individuals.

The State Office will review their copy of the application and provide the State Director's written comments and recommendations to the National Office.

Evaluation Criteria and Weights

This information should be presented in narrative form. Documentation must be limited to three pages per criterion with the exception of the attachments for ''Population'' and ''Income.''

1. Building Capacity '' Maximum 60 Points

The applicant must demonstrate how they will improve the recipients' capacity, through a program of financial and technical assistance, as it relates to the RCDI purposes. Capacity-building technical assistance should provide new functions to the recipients or expand existing functions that will enable the recipients to undertake projects in the areas of housing, community facilities, or community and economic development, which will benefit the community. The program of financial and technical assistance you will provide, how you will deliver the program, and the ability to measure the program's effectiveness will determine the merit of your application. All applications will be competitively ranked with the applications providing the most improvement in capacity development and measurable activities being ranked the highest. Capacity-building technical assistance may include, but is not limited to: training to conduct community development programs (*i.e.,* home ownership education, minority business entrepreneurs, establish cooperatives, and establish micro-enterprises); organizational development (*i.e.,* board operations, management, and financial systems); instruction on how to develop and implement a strategic plan; instruction on how to access alternative funding sources to increase leveraging opportunities; staffing (*i.e.,* hire a person at intermediary level to provide technical assistance to recipient or hire person at recipient level to carry out financial and technical assistance provided by intermediary); and purchase technology equipment at the recipient level (*i.e.,* computers, printers, and software).

Your narrative response must address the following items:

a. Describe in detail the type of financial and technical assistance you will provide to the recipients and the activities you will conduct to deliver the financial and technical assistance.

b. Explain how financial and technical assistance will develop or increase the recipient's capacity. Indicate whether a new function is being developed or if existing functions are being expanded or performed more effectively.

c. Identify which RCDI purpose areas will be addressed with this assistance: housing, community facilities, or community and economic development.

d. Describe how the results of the financial and technical assistance will be measured. What benchmarks will be used to measure effectiveness?

Scoring—maximum of 60 points

1. Type of financial and technical assistance and implementation activities: 0–35 points

a. How well defined is the purpose of this proposal?

b. Are the implementation activities specifically defined?

c. Will the proposed implementation activities actually develop the recipient's capacity?

2. How financial and technical assistance will develop capacity: 0–10 points

a. Is a new function being developed and will it build capacity at the recipient level?

b. Is an existing function being expanded or performed more effectively and will it build capacity at the recipient level?

3. RCDI purpose: 0–5 points

a. Housing,

b. Community facilities, or

c. Community and economic development.

4. Measuring outcomes: 0–10 points

a. What benchmarks will be used to measure outcomes and effectiveness?

b. Are the proposed benchmarks an effective measurement for the type of financial and technical assistance provided?

2. Expertise—Maximum 30 Points

The applicant must demonstrate that they have conducted programs of financial and technical assistance and achieved measurable results in the areas of housing, community facilities, or community and economic development in rural areas. All applications will be competitively ranked using the following criteria:

List the types of financial and technical assistance your organization has provided for the last five years, for the following questions.

a. Have you worked with nonprofit organizations in rural areas? If yes, list the organizations, contact information, and type of assistance that was provided.

b. Have you worked with low-income communities in rural areas? If yes, list the communities, the type of entity you worked with (i.e., city government, town council, or village board), contact information, and the type of financial and technical assistance provided.

c. Have you worked with federally recognized tribes or any other culturally diverse organizations? If yes, list the names of the tribes or organizations, contact information, and the type of financial and technical assistance provided.

d. Provide a synopsis of what your organization does.

Scoring—maximum 30 points

1. The applicant has worked with groups in at least one of the three categories: 0–6 points

2. The types of financial and technical assistance provided are similar to the RCDI purposes: 0–15 points

3. The applicant demonstrates experience in working with the types of entities that they have listed as recipients in their application: 0–9 points

3. Population—Maximum 30 Points

Population is based on the 2000 Census Data for the community the recipient is located in. Community is defined for scoring purposes as a city, town, village, county, parish, borough, or census designated place where the recipient's office is physically located. The applicant must submit a copy of the census data from the following Web site to verify the population figures being used for each recipient. The data can be accessed on the Internet at *www.census.gov;* click on ''American FactFinder'' from the left menu; click on drop down menu for ''Show Me''; select ''Population, Race and Hispanic or Latino (GCT)''; click on drop down menu under ''for''; select ''State—Place and (in selected states) County Subdivision''; select state from next drop down menu; click on ''Go''; print information for submission and highlight recipient locations. The average population of the recipient locations will be used and will be scored as follows:

Population	Scoring
5,000 or less	30 points
5,001 to 10,000	20 points
10,001 to 20,000	10 points
20,001 to 50,000	5 points

4. Income—Maximum 30 Points

The average of the median household incomes for the communities where the recipients are physically located will

determine the points awarded. Applicants may compare the average recipient median household income to the state median household income or the national median household income; whichever yields the most points. The national median household income to be used is $30,056. The applicant must submit a copy of the income data from the following Web site to verify the income for each recipient. The data being used is from the 1990 census. The data can be accessed from the Internet at *www.census.gov;* click on ''American FactFinder'' from left menu; click on drop-down menu for ''Show Me''; select ''Income and Poverty (1990 QT); click on drop-down menu under ''for''; select ''a Place''; select state from next drop-down menu; select the place from the next drop-down menu; click on ''Go''; print information for submission. Points will be awarded as follows:

Average recipient median income is:	Scoring (points)
Less than 60 percent of the State or National median household income	30
Between 60 and 70 percent of the State or National median household income	20
Greater than 70 percent of the State or National median household income	10

5. Innovative Approach—Maximum 20 Points

The applicant must demonstrate that they have developed an innovative approach that can be used by other organizations as a model. To be considered innovative, the approach must propose an easily replicated new or useful service or method of providing service to recipients that builds their capacity to improve their communities in the areas of housing, community facilities, or community and economic development. Points will be awarded to applications that have the highest score on the following factors:

a. Ease of replication by nonprofit organizations, low-income rural communities, or federally recognized tribes;

b. Uniqueness of proposal;

c. Financial return to rural communities; and

d. Need by nonprofit organization, low-income rural community, or federally recognized tribe.

If warranted, up to twenty applicants will be eligible to receive points in this category.

The application ranking and scoring are:

Ranking	Scoring
10 highest-ranking applications for this criterion	20 points
Next 10 highest-ranking applicationsfor this criterion	10 points

If there is a tie score, it will be resolved by using the format listed under ''Rating and Ranking'' under ''Application Selection Process'' elsewhere in this Notice.

6. Soundness of Approach—Maximum 50 Points

The applicant can receive up to 50 points for soundness of approach. The overall proposal will be considered under this criterion. Applicants must list the page numbers in the application that address these factors.

a. Has the applicant demonstrated their ability to provide the proposed financial and technical assistance based on prior accomplishments? 0–5 points

b. The proposed financial and technical assistance program is clearly stated and the applicant has defined how this proposal will be implemented. The plan for implementation is viable: 0–20 points

c. Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount and matching funds should be utilized to maximize capacity building at the recipient level: 0–15 points

d. How closely the proposal fits the objectives for which applications were invited: 0–10 points

7. Geographic Distribution Points—20 Points

Applicant must provide a map that specifically describes the areas covered by their recipients. After applications have been evaluated and awarded points under the first six criteria, the Agency may award 20 points per application to promote a broad geographic distribution of RCDI funds.

8. Purpose Distribution Points—20 Points

Applicant must state the primary purpose of their application (i.e., housing, community facilities, or community and economic development). After applications have been evaluated and awarded points under the first six criteria, the Agency may award 20 points per application to promote diversity of RCDI purposes.

9. Proportional Distribution Points—20 Points

Applicant must state the amount of their grant request. After applications have been evaluated and awarded points under the first six criteria, the Agency may award 20 points per application to promote dispersion of grant awards between the range of $50,000 to $1,000,000.

Deliverables

Grant funds and matching funds must be used in equal proportions. This does not mean funds have to be used equally by line item. The request for reimbursement and supporting documentation must show that RCDI fund usage does not exceed the cumulative amount of matching funds used. Grant funds will be disbursed pursuant to relevant provisions of 7 CFR parts 3015, 3016, and 3019, as applicable. Matching funds must be used to support the overall purpose of the RCDI program. RCDI funds will be disbursed on a reimbursable basis only. No advances will be made. Matching funds cannot be expended prior to execution of the RCDI Grant Agreement. No reimbursement will be made for any funds expended prior to execution of the RCDI Grant Agreement unless the grantee has requested and received written Agency approval of the costs prior to the actual expenditure. This exception is applicable for up to 90 days prior to grant closing and only applies to grantees that have received written approval but have not executed the RCDI Grant Agreement. The Agency cannot retroactively approve reimbursement for expenditures prior to execution of the RCDI Grant Agreement.

Grant Amounts

In the event that the applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or de-obligate the award if acceptable modifications are not submitted by the awardee within 15 working days from the date the request for modification is made. Any modifications must be within the scope of the original application.

Program Requirements

1. A Civil Rights Impact Analysis Certification must be completed by the Agency prior to grant approval.

2. A pre-award compliance review will be conducted by the Agency prior to closing the grant.

3. The intermediary and recipient must comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and Executive Order 12250.

4. The grantee must comply with the applicable requirements of 7 CFR part 3015, ''Uniform Federal Assistance Regulations,'' part 3016, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' and part 3019, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.''

Program Restrictions

Meeting expenses. In accordance with 31 U.S.C. 1345, ''Expenses of Meetings,'' appropriations may not be used for travel, transportation, and subsistence expenses for a meeting. RCDI grant funds cannot be used for these meeting-related expenses. Matching funds may be used to pay for these expenses. RCDI funds may be used to pay for a speaker as part of a program, equipment to facilitate the program, and the actual room that will house the meeting. RCDI funds can be used for travel, transportation, or subsistence expenses for training and technical assistance purposes. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345. Travel and per diem expenses will be similar to those paid to Agency employees. Rates are based upon location. Rate information can be accessed on the Internet at *http://policyworks.gov/perdiem.* Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Grantees and recipients may exceed the Government rate for lodging by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees. Mileage and gas reimbursement will be the same rate used by Agency employees. The current mileage and gas reimbursement rate is 36.5 cents per mile.

Grantee Requirements

Grantees will be required to do the following.

1. Execute a Rural Community Development Initiative Grant Agreement, which is published at the end of this NOFA.

2. Execute Form RD 1940–1, ''Request for Obligation of Funds.''

3. Use Form SF 270, ''Request for Advance or Reimbursement'' to request reimbursements.

4. Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

5. Maintain a financial management system that is acceptable to the Agency.

6. Ensure that records are maintained to document all activities and expenditures utilizing RCDI grant funds and matching funds. Receipts for expenditures will be included in this documentation.

7. Provide annual audits or management reports on Forms RD 442–2, ''Statement of Budget, Income, and Equity,'' and RD 442–3, ''Balance Sheet,'' depending on the amount of Federal funds expended and the outstanding balance.

8. Collect and maintain data provided by recipients on race, sex, and national origin and ensure that their recipients collect and maintain the same data on their beneficiaries.

9. Provide a final project performance report.

10. Identify and report any association or relationship with Rural Development employees on a format provided by the Agency.

Contents of Application Package

A complete application for RCDI funds must include the following.

1. A summary page listing the following items. This information should be double-spaced between items and not in narrative form.

a. Applicant's name,

b. Applicant's address,

c. Applicant's telephone number,

d. Name of applicant's contact person and telephone number,

e. Applicant's fax number,

f. County where applicant is located,

g. Congressional district number where applicant is located,

h. Amount of grant request,

i. Number of recipients, and

j. Source and amount of matching funds.

2. A detailed Table of Contents containing page numbers for each component of the application.

3. A project overview, no longer than five pages, which should include the following items. Please note that these items will also need to be addressed separately and in detail under ''Building Capacity'' of the ''Evaluation Criteria.''

a. The type of financial and technical assistance to be provided and how it will be implemented.

b. How the capacity and ability of the recipients will be improved.

c. The overall goal to be accomplished.

d. The benchmarks to be used to measure the success of the program.

4. Organizational documents for the intermediary, which confirm their existence for a minimum of three years as the applicant entity.

5. Verification of matching funds (e.g., a copy of a bank statement if matching funds are in cash or a copy of the confirmed funding commitment from the funding source). The applicant will be contacted by the Agency prior to grant award if verification of matching funds was not submitted with the application. The applicant will have 10 working days, from the date of contact, to submit verification of matching funds. If the applicant is unable to provide the verification within that timeframe, their application will be considered ineligible.

6. Recipient information must include:

a. Recipient entity name,

b. Complete address (mailing and physical location, if different),

c. County where located,

d. Number of congressional district where recipient is located,

e. Contact person's name and telephone number, and

f. Documentation on the population composition of the service area of the recipient, including race, sex, and national origin.

7. Submit evidence that the recipient entity is eligible.

a. Nonprofits—provide a valid 501(c)(3) letter from the IRS.

b. Low-income community—provide a copy of the 2000 census data to verify the population and evidence that the median household income is at, or below, 80 percent of either the state or national median household income. We will only accept data from *www.census.gov.* The specific instructions to retrieve data from this site are detailed under the ''Evaluation Criteria'' for ''Population'' and ''Income.''

c. Federally recognized tribes—provide the page listing their name from the current **Federal Register** list of tribal entities published on March 13, 2000, volume 65, number 49, page 13298.

8. Each of the ''Evaluation Criteria'' must be addressed specifically and individually by category. Present these criteria in narrative form. Documentation must be limited to three pages per criterion with the exception of attachments for ''Population'' and ''Income.''

9. A timeline identifying specific activities and proposed dates for completion.

10. A detailed project budget that includes the RCDI grant amount and matching funds for the duration of the grant. This should be a line item budget, by category. Categories such as salaries, administrative, other, and indirect costs must be clearly defined. Supporting documentation listing the components of these categories must be included.

11. Form SF–424, ''Application for Federal Assistance.'' (Do not complete Form SF–424A, ''Budget Information.'' A separate line item budget should be presented as described in No. 10 of this section.)

12. Form SF–424B, ''Assurances—Non-Construction Programs.''

13. Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

14. Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''

15. Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements.''

16. Certification of Non-Lobbying Activities.

17. Standard Form LLL, ''Disclosure of Lobbying Activities'', if applicable.

18. Form RD 400–1, ''Equal Opportunity Agreement,'' for the applicant and each recipient.

19. Form RD 400–4, ''Assurance Agreement,'' for the applicant and each recipient.

20. Identify and Report any Association or Relationship with Rural Development Employees.

The required forms and certifications can be downloaded from the RCDI Web site at: *www.rurdev.usda.gov/rhs/rcdi/index.htm.*

What and Where To Submit

The original application package must be submitted to: Beth Jones, Rural Housing Service, STOP 0787, Room 0183, 1400 Independence Ave. SW., Washington, DC 20250–0787 and a copy of the application must be submitted to the Rural Development State Office where the applicant is located. A listing of Rural Development State Offices is included in this Notice. Applications sent electronically or by facsimile will not be accepted.

When To Submit

The deadline for receipt of an application is 4 p.m. EST on July 2, 2002. The application deadline is firm as to date and hour and applies to submission of the original application to the National Office in Washington, DC. The Agency will not consider any application received after the deadline. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7722, TDD (907) 761–8905, Dean Stewart

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8747, TDD (602) 280–8706, Leonard Gradillas

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3257, TDD (501) 301–3279, Jesse Sharp

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5825, TDD (530) 792–5848, Charles M. Clendenin

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 136), TDD (303) 236–1590, Leroy W. Cruz

Connecticut, Served by Massachusetts State Office, Delaware and Maryland State Office, 4607 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4324, TDD (302) 697–4303, James E. Waters

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3440, TDD (352) 338–3499, Glenn E. Walden

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2171, TDD (706) 546–2034, Jerry M. Thomas

Guam, Served by Hawaii State Office, Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309, TDD (808) 933–8321, Thao Khamoui

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5617, TDD (208) 378–5644, Daniel H. Fraser

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200 (ext. 6209), TDD (217) 403–6240, Gerald A. Townsend

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3109 (ext. 431), TDD (317) 290–3343, Gregg Delp

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4152, TDD (515) 284–4858, Dorman Otte

Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2730, TDD (785) 271–2767, Gary L. Smith

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7415, TDD (606) 224–7422, Vernon Brown

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7940, TDD (318) 473–7655, Danny H. Magee

Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9125, TDD (207) 942–7331, Alan C. Daigle

Maryland, Served by Delaware State Office, Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4318, TDD (413) 253–7068, Daniel R. Beaudette

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip H. Wolak

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7810, TDD (651) 602–3799, James Maras

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0995, TDD (573) 876–9480, D. Clark Thomas

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 585–2562, Deborah Chorlton

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5559, TDD (402) 437–5093, Denise Brosius-Meeks

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 26), TDD (775) 885–0633, Mike Holm

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6037, TDD (603) 223–6083, William W. Konrad

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3640, TDD (609) 265–3687, Michael P. Kelsey

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM

87109, (505) 761–4955, TDD (505) 761–4938, Clyde F. Hudson

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6427, TDD (315) 477–6447, David Miller

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2061, TDD (919) 873–2003, Thurman E. Burnette

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2044, TDD (701) 530–2113, Donald Warren

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2391, TDD (614) 255–2554, David M. Douglas

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1060, TDD (405) 742–1007, Rock W. Davis

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3360, TDD (503) 414–3387, Jerry W. Sheridan

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2187, TDD (717) 237–2261, Gary Rothrock

Puerto Rico State Office, IBM Building—Suite 601, 654 Munos Rivera Avenue, Hato Rey, PR 00918–6106, (787) 766–5095 (ext. 236), TDD (787) 766–5332, Pedro Gomez

Rhode Island, Served by Massachusetts State Office, South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashvile, TN 37203–1084, (615) 783–1345, TDD (615) 783–1397, Keith Head

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9760, TDD (254) 742–9712, Eugene G. Pavlat

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4329, TDD (801) 524–3309, Bonnie Carrig

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6030, TDD (802) 223–6365, Rhonda Shippee

Virgin Islands, Served by Florida State Office, Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1600, TDD (804) 287–1753, Carrie Schmidt

Washington State Office, Suite B, 1835 Black Lake Boulevard, SW, Olympia, WA 98512–5715, (509) 664–0203, TDD (360) 704–7760, Sandi Boughton

Western Pacific Territories, Served by Hawaii State Office, West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4868, TDD (304) 284–5941, Dianne Crysler

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615 (ext. 131), TDD (715) 345–7614, Mark Brodziski

Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles Huff

Dated: March 28, 2002.

James C. Alsop,

Acting Administrator, Rural Housing Service.

OMB NO. 0575–0180

United States Department of Agriculture

Rural Housing Service

Rural Community Development Initiative Grant Agreement

This grant agreement (Agreement), effective the date the Agency official signs the document, is a contract for receipt of grant funds under the Rural Community Development Initiative (RCDI).

Between _____ a private or public or tribal organization, (Grantee or Intermediary) and the United States of America acting through the Rural Housing Service (the Agency), Department of Agriculture, (Grantor), for the benefit of recipients listed in Grantee's application for the grant.

Witnesseth:

The principal amount of the grant is $_____ (Grant Funds). Matching funds, in an amount equal to the grant funds, will be provided by Grantee. The Grantee and Grantor will execute Form RD 1940–1, ''Request for Obligation of Funds''.

Whereas,

Grantee will provide a program of financial and technical assistance to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas;

Now, therefore, in consideration of said grant;

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0180. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Grantee agrees that Grantee will:

A. Provide a program of financial and technical assistance in accordance with the proposal outlined in the application, (see Attachment A), the terms of which are incorporated with this Agreement and must be adhered to. Any changes to the approved program of financial technical assistance must be approved in writing by the Grantor;

B. Use Grant Funds only for the purposes and activities specified in the application package approved by the Agency including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance;

C. Charge expenses for travel and per diem that will not exceed the rates paid Agency employees for similar expenses. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Lodging rates may exceed the Government rate by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees, which is based upon location. Mileage and gas will be reimbursed at the existing Government rate. Rates can be accessed on the Internet at http://policyworks.gov/perdiem;

D. Charge meeting expenses in accordance with 31 U.S.C. 1345. Grant funds may not be used for travel, transportation, and subsistence expenses for a meeting. Matching funds may be used to pay these expenses. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345.

E. Request quarterly reimbursement for grant activities during the previous quarter. Reimbursement will be made on a pro rata basis with matching funds. Form SF 270, ''Request for Advance or Reimbursement,'' will be used to request reimbursement. A project performance report, in narrative form, and a financial report, reflecting the activities conducted, must accompany the request for reimbursement. Matching fund usage must be included in all reports.

F. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (due 15 working days after each calendar quarter). The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include, but are not limited to, the following:

1. Describe the activities that the funds reflected in the financial status report were used for;

2. A comparison of actual accomplishments to the objectives for that period;

3. Reasons why established objectives were not met, if applicable;

4. Problems, delays, or adverse conditions which will affect attainment of overall

program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation;

5. Objectives and timetables established for the next reporting period;

6. If available, a summary of the race, sex, and national origin of the recipients and a summary from the recipients of the race, sex, and national origin of the beneficiaries; and

7. The final report will also address the following:

(a) What have been the most challenging or unexpected aspects of this program?

(b) What advice would you give to other organizations planning a similar program? Please include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(c) Are there any post-grant plans for this project? If yes, how will they be financed?

(d) If an innovative approach was used successfully, the grantee must describe their program in detail for replication by other organizations and communities.

G. Consider potential recipients without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability;

H. Ensure that any services or training offered by the recipient, as a result of the financial and technical assistance received, must be made available to all persons in the recipient's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability at reasonable rates, including assessments, taxes, or fees. Programs and activities must be delivered from accessible locations. The recipient must ensure that where there are non-English speaking populations that materials are provided in the language that is spoken;

I. Ensure recipients are required to place nondiscrimination statements in advertisements, notices, pamphlets and brochures making the public aware of their services. The Grantee and recipient are required to provide widespread outreach and public notification in promoting any type of training or services that are available through grant funds;

J. The Grantee must collect and maintain data on recipients by race, sex, and national origin. The grantee must ensure that their recipients also collect and maintain data on beneficiaries by race, sex, and national origin as required by title VI of the Civil Rights Act of 1964 and must be provided to the Agency for compliance review purposes;

K. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor the Grant Funds with any legally permitted interest from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, at its option and without regard to prior waivers of this Agreement or by such other proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to assure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made;

L. Provide Financial Management Systems that will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis;

2. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income related to Grant Funds and matching funds;

3. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

4. Accounting records supported by source documentation; and

5. Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. The grantee will provide verifiable documentation regarding matching fund usage, i.e., bank statements or copies of funding obligations from the matching source.

M. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts;

N. Provide an A–133 audit report if $300,000 or more of federal funds are expended in a one-year period. If federal funds expended during a one-year period are less than $300,000 and there is an outstanding loan balance of $300,000 or more, an audit in accordance with generally accepted government auditing standards is required. If federal funds expended during a one year period are less than $300,000 and there is an outstanding loan balance of less than $300,000, a management report may be submitted on Forms RD 442–2, ''Statement of Budget, Income and Equity'' and 442–3, ''Balance Sheet'';

O. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of a State are not held accountable for interest earned on grant funds pending their disbursement;

P. Not encumber, transfer or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor; and

Q. Not duplicate other program activities for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees that:

A. It will make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds. The funds will be disbursed to Grantee on a pro rata basis with the Grantee's matching funds; and

B. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be:

1. Advisable to further the purpose of the grant or to protect Grantor's financial interest therein; and

2. Consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Both Parties Agree:

A. Extensions of this grant agreement may be approved by the Agency, in writing, provided in the Agency's sole discretion the extension is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the application package during the extension period;

B. The Grantor must approve any changes in recipient or recipient composition;

C. The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor: *Provided, however,* That any Grant Funds actually disbursed and not needed for grant purposes be returned immediately to the Grantor. This agreement shall terminate three years from this date unless extended or unless terminated beforehand due to default on the part of the Grantee or for convenience of the Grantor and Grantee. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulations;

D. As a condition of the Agreement, the Grantee certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR 3015.205(b), which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Grantee will comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Executive Order 12250;

E. The Grantee will ensure that the recipients comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and Executive Order 12250. Each recipient must sign Form RD 400–1, ''Equal Opportunity Agreement'' and Form RD 400–4, ''Assurance Agreement'';

F. The provisions of 7 CFR part 3015, ''Uniform Federal Assistance Regulations,''

part 3016, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' or part 3019, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations,'' and the fiscal year 2002 ''Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)'' are incorporated herein and made a part hereof by reference; and

G. This Agreement may be terminated for cause in the event of default on the part of the Grantee or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the program will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof, Grantee has this day authorized and caused this Agreement to be executed by

_____
Attest

_____
By _____
(Grantee)
(Title) _____
Date _____

United States of America

Rural Housing Service

By _____
(Grantor) (Name) (Title)
Date _____

Attachment A

[Application proposal submitted by grantee.]

[FR Doc. 02–8024 Filed 4–2–02; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Competitive Enhancement Needs Assessment Survey Program.

Agency Form Number: N/A.

OMB Approval Number: 0694–0083.

Type of Request: Renewal of an existing collection of information.

Burden: 3,000 hours.

Average Time Per Response: 30 minutes per response.

Number of Respondents: 3,000 respondents.

Needs and Uses: The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense and to develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs. The information collected from voluntary surveys will be used to assist small and medium-sized firms in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal Laboratories. The goal is to improve regions of the country adversely by cutbacks in defense spending and military base closures.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: March 29, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8026 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: BXA Program Evaluation.

Agency Form Number: None.

OMB Approval Number: 0694–xxxx.

Type of Review: Emergency clearance.

Burden: 667 hours.

Average Time Per Response: 10 minutes per response.

Number of Respondents: 4,000 respondents.

Needs and Uses: This form is used by BXA seminar instructors at seminar programs throughout the year. Seminar participants are asked to fill out the evaluation form during the program and turn it in at the end of the program. The responses to these questions provide useful and practical information that BXA can use to determine that it is providing a quality program and gives BXA information useful to making recommended improvements. It also shows attendees that BXA cares about their training experience and values their viewpoint.

Affected Public: Businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 5 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: March 29, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8027 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Export Controls of High Performance Computers.

Agency Form Number: None.

OMB Approval Number: 0694–0073.

Type of Request: Extension of a currently approved collection of information.

Burden: 78 hours.

Average Time Per Response: 42 to 107 minutes per response.

Number of Respondents: 5 respondents.

Needs and Uses: These provisions are established in recognition of the strategic significance of these high performance computers, in particular

their potential to make substantial contributions to activities of national security and weapons proliferation concerns. BXA will conduct annual reviews of the HPC definition, the threshold levels, the safeguards, the HPC country Tier groupings and variable safeguard requirements to be consistent with our national security and proliferation concerns, technical advancements, and changes in market conditions. In addition, recommendations from the public for revising the controls will be considered.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: March 29, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8028 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Census Bureau

Census Employment Inquiry

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 3, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kathleen A. Garcia, Bureau of the Census, Room 1727, Building #3, Washington, DC 20233, or (301) 457–2868.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BC–170, Census Employment Inquiry, is used to collect information such as personal data and work experience from job applicants. The BC–170 is used throughout the census and intercensal periods for the Special Censuses and decennial census pretests and dress rehearsals for time limited appointments. Applicants completing the form for a census related position are applying for temporary jobs in office and field positions (clerks, enumerators, crew leaders, supervisors). In addition, as an option to the OF–612, Optional Application for Federal Employment, the BC–170 may be used when applying for temporary/permanent office and field positions (clerks, field representatives, supervisors) on a recurring survey in one of the Census Bureau's 12 Regional Offices (ROs) throughout the United States. This form is completed by job applicants before or at the time they are tested. Selecting officials review the information shown on the form to evaluate applicant's eligibility for employment.

During the decennial census, the BC–170 is intended to expedite hiring and selection in situations requiring large numbers of temporary employees for assignments of a limited duration. The form has been demonstrated to meet our recruitment needs for temporary workers and requires significantly less burden than the Office of Personnel Management Optional Forms that are available for use by the public when applying for Federal positions.

II. Method of Collection

We collect this information at the time of testing for temporary and permanent positions. Potential employees being tested complete a four-page paper application provided at the testing site.

III. Data

OMB Number: 0607–0139.

Form Number: BC–170.

Type of Review: Regular submission.

Affected Public: Individuals.

Estimated Number of Respondents: 176,000.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 44,000.

Estimated Total Annual Cost: The only cost to the individual is his/her time for completing the BC–170.

Respondent's Obligation: Required to obtain a benefit.

Legal Authority: Title 13, U.S.C. Section 23.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 29, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8029 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–874]

Notice of Initiation of Antidumping Duty Investigation: Certain Ball Bearings and Parts Thereof From the People's Republic of China

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

ACTION: Initiation of antidumping duty investigation.

EFFECTIVE DATE: April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson or Geoffrey Craig at (202) 482–3797 or (202) 482–4161, respectively; Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (''the Act''), by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are references to the provisions codified at 19 CFR Part 351 (2001).

The Petition

On February 13, 2002, the Department received a petition filed in proper form by the American Bearing Manufacturers Association (''ABMA'' or ''the petitioner''). On February 21, 2002, we sent the petitioner a letter with questions regarding the petition. The Department received information supplementing the petition on February 27, 2002.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of ball bearings and parts thereof from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party, as defined in sections 771(9)(E) and 771(9)(F) of the Act and has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department to initiate. (*See* the *Determination of Industry Support for the Petition* section below.)

Scope of Investigation

The scope of the investigation includes all antifriction bearings, regardless of size, precision grade or use, that employ balls as the rolling element (whether ground or unground) and parts thereof (inner ring, outer ring, cage, balls, seals, shields, etc.) that are produced in China. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts and parts thereof, ball bearings (including thrust, angular contact, and radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. The scope includes ball bearing type pillow blocks and parts thereof; and wheel hub units incorporating balls as the rolling element. With regard to finished parts, all such parts are included in the scope of the petition. With regard to unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the petition are those that will be subject to heat treatment after importation.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.93.30, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4000, 8708.99.4960, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Specifically excluded from the scope are unfinished parts that are subject to heat treatment after importation. Also excluded from the scope are cylindrical roller bearings, mounted or unmounted, and parts thereof (''CRB'') and spherical plain bearings, mounted and unmounted, and parts thereof (''SPB''). CRB products include all antifriction bearings that employ cylindrical rollers as the rolling element. SPB products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends. Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''Customs'') purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation.

The petition covers ball bearings and parts thereof (''BB&P'') as defined in the *Scope of the Investigation* section, above, a single class or kind of merchandise. The Department has no basis on the record to find the petitioner's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set

[1] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

forth in the petition. However, the Department will take into account any comments submitted by parties in connection with this issue during the course of the proceeding, and revisit the issue, if appropriate.

On March 4, 2002, the Department received comments regarding industry support from the following six PRC producers of the merchandise subject to this investigation: Ningbo MOS Group, Ningbo Cixin Bearing, Ningbo Huanchi Group, Wangxiang China, Ningbo General Bearing Co., Limited, and Jiangsu General Ball & Roller Co., Limited.

On March 5, 2002, the above six PRC producers filed additional information regarding their challenge to the standing of the petitioner. Specifically, they asserted that many products covered by the scope of the product definition are not represented by ABMA member companies.

On March 5, 2002, the Department also received a submission from the petitioner to correct a ''software sorting error'' with respect to the shipment volumes reported for certain ABMA member companies. It claimed that this error does not affect the reported shipments to production ratio of ABMA member companies.

The petitioner submitted another response on March 13, 2002, to rebut the industry support challenge filed by the six foreign producers on March 4 and 5, 2002. In this submission, the petitioner revised its ABMA member companies' production volume, and the shipments volume and value for ''complete bearings.'' It also provided similar information for ''parts.'' It demonstrated that the industry support for its petition is over 50 percent either by ''parts,'' or by ''complete bearings,'' or by ''ball bearings and parts thereof.'' In addition, it rebutted the six PRC producers' March 5, 2002, allegations by showing that none of the named products in the foreign producers' submission, (*i.e.,* casters, constant velocity joints, hardware, and linear bearings (used, for example, in furniture and desk drawers)) are covered by the scope of the petition.

On March 15, 2002, the above six PRC producers filed additional information regarding their challenge to the standing of the petitioner. Specifically, they state that if the petition excludes those products referenced in the March 5 submission (*i.e.,* casters, constant velocity joints, hardware, and linear bearings) then the petition should be amended to say so explicitly. Further, they submitted a list of companies that they believe manufacture ball bearings or ball bearing parts that are not listed in the petition, and assert that by failing to provide the Department with a complete listing of the U.S. producers of ball bearings and ball bearings parts, the ABMA has complicated our effort to rule on its standing to petition for antidumping relief.

On March 19, 2002, the petitioner filed a rebuttal to the PRC producers' March 15, 2002 submission. The petitioner states that given its reported industry support figures, there is no need for the Department to poll individual companies since there is no possibility that the remaining companies represent more than a small minority of the domestic ball bearing industry. Further, the petitioner takes issue with the list of companies submitted by foreign producers, and notes that in any event none of the companies has registered opposition to the petition.

The Department has reviewed the comments of these PRC producers and the petitioner's revision to its petition. For further discussion of the comments and the petitioner's revision to its petition, *see* the Industry Support Attachment to the *Import Administration AD Investigation Checklist,* dated March 25, 2002 (*''Initiation Checklist''*) (public version on file in the Central Records Unit of the Department of Commerce, Room B–099) for further description.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied on the petition. The only industry-wide data available was shipment data for calendar year (''CY'') 2000. Thus, the petition contained production and shipment data (by volume) of its members for CY 2000. To estimate industry-wide production, the petitioner compared its member companies' shipment data by volume with their production data by volume and derived a shipment to production ratio. The petitioner then divided the total industry-wide shipment figure by this ratio to derive an estimated total industry-wide ball bearing production.

Foreign producers contend that the petitioners' calculation of industry support, in using ''complete bearings'' figures, would be inaccurate by not taking into account ''parts.'' The petitioner subsequently provided industry support information taking into account ''parts'' as well as ''complete bearings.'' Based on this information, the petitioner has demonstrated that industry support was greater than 50 percent. *See Initiation Checklist.*

Accordingly, we find that information contained in the petition and its supplements demonstrate that the domestic producers or workers who support the petition account for over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) and section 732(c)(4)(D) are met. *See Initiation Checklist* at Attachment I. Furthermore, because the Department received no domestic opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. *See Initiation Checklist.* Thus, the requirement of section 732(c)(4)(A)(ii) is met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Period of Investigation

The anticipated period of investigation is July 1, 2001, through December 31, 2001.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to home market and U.S. price are detailed in the *Initiation Checklist.*

The Department has analyzed the information in the petition and considers the country-wide import statistics for the anticipated period of investigation (''POI'') and pricing information used to calculate the estimated margin to be sufficient for purposes of initiation. Based on the information submitted in the petition, adjusted where appropriate, we are initiating this investigation, as discussed below and in the *Initiation*

Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we will re-examine the information and may revise the margin calculation, if appropriate.

Export Price

The petitioner based export prices [2] on price lists and quotes of four representative sample products (6201–2RS, 6201ZZ, 6203–2RS, and 6203ZZ) from Chinese distributors of Chinese ball bearings and U.S. distributors of Chinese ball bearings for the period October to December 2001. Some prices were FOB Chinese port, for which the petitioner made no deductions to arrive at a net-price. In most instances, the prices were FOB from a U.S. location. In these instances, the petitioner calculated a net price by deducting from the price movement expenses and a U.S. distributor markup of 15 percent. Movement expenses include costs for duties, ocean insurance and freight, and other import charges. *See Initiation Checklist.*

Normal Value

The petitioner asserts that the PRC is a nonmarket economy country (''NME'') within the meaning of section 771(18) of the Act. In previous investigations, the Department has determined that the PRC is an NME. *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 22183 (May 31, 2001); *Steel Wire Rope from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 66 FR 12759 (February 28, 2001). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product appropriately is based on the producer's factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act.

In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

For the normal value calculation, the petitioner based the factors of production, as defined by section 773(c)(3) of the Act, on the quantities of inputs used to produce four representative ball bearings reported by one of its major member companies. The petitioner uses the actual usage rates of a U.S. production facility in accordance with 19 CFR 351.202(b)(7)(B) because information on actual usage rates of representative Chinese bearing producers is not reasonably available to the petitioner. The petitioner claims that this company was selected because it is one of the most efficient ball bearing producers in the world. Therefore, this company's usage rates should yield conservative estimates of the degree of dumping for the selected products. The petitioner asserts that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per capita gross national product. Based on the information provided by the petitioner, we believe that the petitioner's use of India as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioner valued factors of production, where possible, on reasonably available, public surrogate country data. Specifically, the factor costs for all but one of the material inputs, including inner and outer rings, retainers, shields, and seats, were based on the Monthly Statistics of the Foreign Trade of India for the period January to December 2000. The petitioner did not rely on Indian import values for the factor cost of balls because it claims that such Indian import values are not reliable. Therefore, for balls, the petitioner conservatively used the value of steel used to produce rollers derived during the twelfth administrative review of tapered roller bearings. The value was adjusted for inflation. The petitioner asserts that using this value is appropriate because the balls used in the representative products, like the rollers reviewed, are made of AISI 52100 chrome steel.

Where scrap from the production process is recyclable, the recovery value for the scrap is subtracted from the gross cost. Values for scrap steel and the scrap offset were based on Indian imports of scrap. Unit energy costs were obtained from publicly available Indian energy prices, TERI Energy Data Directory and Yearbook 1999/2000, adjusted for inflation.

Labor was valued using the regression-based wage rate for China provided by the Department, in accordance with 19 CFR 351.408(c)(3).

The factory overhead rate, selling, general & administrative expenses (''SG&A'') rate, and profit rate, were based on the average respective rates derived from the 1999 financial statements of three surrogate Indian ball bearing producers. The petitioner did not include costs of packing in its normal value calculation.

Based on the information provided by the petitioner, we believe that the petitioner's factors of production methodology represents information reasonably available to the petitioner and is appropriate for purposes of initiating this investigation.

Based on comparisons of export price to normal value, the petitioner calculated dumping margins ranging from 17 to 249 percent. *See Initiation Checklist.*

Fair Value Comparisons

The Department has examined the adequacy and accuracy of the information the petitioner used in its calculations of U.S. and home market prices and has found that it represents information reasonably available to the petitioner supporting the allegation of dumping.

Based on the data provided by the petitioner, there is reason to believe that imports of ball bearings and parts thereof from the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioner contends that the industry's injured condition is evident in the decline of U.S. producers' output, sales, market share, profits, productivity, return on investment, and capacity utilization, as well as negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, investment, and existing development and production efforts. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, and lost sales, and pricing information. We have examined the accuracy and adequacy of the evidence provided in the petition and

[2] The petitioner states that its dumping analysis proceeded under the conservative assumption that the vast majority of Chinese ball bearing sales in the Untied States are export price transactions.

have determined that the petition alleges the elements necessary for the imposition of a duty under section 731 of the Act and contains information reasonably available to the petitioner supporting the allegations (see *Initiation Checklist* at Attachment II).

Initiation of Antidumping Investigation

Based upon our examination of the petition on ball bearings and parts thereof from the PRC and the petitioner's responses to our supplemental questionnaire clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. See *Initiation Checklist.* Therefore, we are initiating an antidumping duty investigation to determine whether imports of ball bearings and parts thereof from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is postponed, we will make our preliminary determination no later than 140 days after the date of this initiation. See ''Case Calendar'' section of the *Initiation Checklist.*

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than April 1, 2002, whether there is a reasonable indication that imports of ball bearings and parts thereof from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 25, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8071 Filed 4–2–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–817]

Initiation of Antidumping Duty Investigation: Silicon Metal From the Russian Federation

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

EFFECTIVE DATE: April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Aishe Allen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6412, (202) 482–0172, respectively.

INITIATION OF INVESTIGATION

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations are to 19 CFR Part 351 (2002).

The Petition

On March 7, 2002, the Department received a petition on imports of silicon metal from the Russian Federation (''Russia'') filed in proper form by Globe Metallurgical Inc., Simcala Inc., the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, I.U.E.–C.W.A., AFL–CIO, C.L.C., Local 693, The Paper, Allied–Industrial, Chemical and Energy Workers International Union, Local 5–89, and the United Steel Workers of America, AFL–CIO, Local 9436, hereinafter referred to as ''the petitioners.'' On March 13, 2002, the Department requested clarification of certain areas of the petition and received a response on March 18, 2002.

In accordance with section 732(b) of the Act, the petitioners allege that imports of silicon metal from Russian are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States.

The petitioners are domestic producers of silicon metal and account for over 25 percent of domestic production of silicon metal, as defined in the petition. Therefore, the Department finds that the petitioners have standing to file the petition because they are interested parties as defined under section 771(9)(C) of the Act, with respect to the subject merchandise. The petitioners have demonstrated sufficient industry support with respect to the antidumping duty investigation they are requesting the Department to initiate (*see* ''Determination of Industry Support for the Petition'' below).

Scope of Investigation

For purposes of this investigation, the product covered is silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by this investigation also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal currently is classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (''HTSUS''). This investigation covers all silicon metal meeting the above specification, regardless of tariff classification.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (1997). The Department encourages all interested parties to submit such comments within 20 calender days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the

petition account for: (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the domestic like product referred to in the petition is the single domestic like product defined in the ''Scope of Investigation'' section, above. At this time, the Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Moreover, the Department has determined that the petition contains adequate evidence of industry support; therefore, polling was unnecessary (*see Initiation Checklist* Re: Industry Support, March 27, 2002) (''*Initiation Checklist*''). To the best of the Department's knowledge, producers supporting the petition represent over 50 percent of total production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9) (A), (C), (D), (E), or (F) of the Act has expressed opposition to the petition.

Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and factors of production are also discussed in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

The petitioners identified the following Russian companies as major producers of silicon metal in Russia: Bratsk Aluminum Plant (''Bratsk''), JSC Russian Aluminum, Uralsky Aluminum Plant (''Uralsky''), and Irkutsk Aluminum Plant (''Irkutsk'').

The petitioners based export price (''EP'') on import values declared to the U.S. Customs Service (''Customs''). In calculating import values declared to Customs, the petitioners used the HTSUS category under which subject merchandise is currently classified (i.e., 2804.69.10 and 2804.69.50). The petitioners calculated EP based on the average unit values (''AUVs'') for entries of subject merchandise during July through December 2001. For purposes of initiation, we re–calculated the average U.S. price based on HTSUS by using a quantity based weighted–average of each HSTUS subheading. *See Initiation Checklist*. In order to obtain ex–factory prices, the petitioners deducted foreign inland freight from the Customs value. For purposes of calculating foreign inland freight, the petitioners used the surrogate value for rail because of the large distances involved and the lower expense of shipping by rail, as compared to shipments by truck.

To determine export price, we relied on the data in the petition except that we adjusted the petitioners' estimate for foreign inland freight. *See Initiation Checklist*. To value foreign inland freight, the petitioners first calculated an average distance of three known producers of silicon metal in Russia to each producer's nearest port. *See Initiation Checklist*. The petitioners reported that the average distance for the three known producers of silicon metal in Russia to the nearest port was 4,149 kilometers. The petitioners multiplied this distance by an Egyptian surrogate value for rail freight that was based on an average of rates for distances ranging from 98 to 884 kilometers. For purposes of initiation, we revalued freight by multiplying the average distance to the port by the Egyptian surrogate value for rail freight for 884 kilometers only, as this is the closest distance to 4,149 kilometers.

Non–Market Economy Status

The petitioners asserted that Russia is a non–market economy country (''NME'') and no determination to the contrary has yet been made by the Department. In previous investigations, the Department has determined that Russia is an NME. *See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Russian Federation* (''*Magnesium from Russia*''), 66 FR 49347 (September 27, 2001). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the Russian Federation has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product appropriately is based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of Russia's NME status and the granting of separate rates to individual exporters.

Normal Value

The petitioners provided a dumping margin calculation using the Department's NME methodology as required by 19 C.F.R. § 351.202(b)(7)(i)(C). For the normal value (''NV'') calculation, petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor and energy), for silicon metal on information from Russian producers. *See Initiation Checklist*.

The petitioners selected Egypt as their surrogate country. The petitioners argued that pursuant to 773(c)(4) of the Act, Egypt is an appropriate surrogate

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

because it is a market–economy country that is at a comparable level of economic development to the NME and is a significant producer of comparable merchandise. Based on the information provided by the petitioners, we believe that the petitioners' use of Egypt as a surrogate country is appropriate for purposes of initiation of this investigation. *See Initiation Checklist*.

In accordance with section 773(c)(4) of the Act, the petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain raw materials, the petitioners used import statistics from Egypt, as reported in the United Nations Statistical Division Commodity Trade Database System (''UNCTS'') for 1999, excluding those values from countries previously determined by the Department to be NME countries. For inputs valued in Egyptian pounds and not contemporaneous with the period of investigation (''POI'') (*i.e.*, July – December 2001), we used information from the wholesale price indices (''WPI'') in Egypt as published in the International Financial Statistics (''IFS''), December 2001, to determine the inflation adjustment. The surrogate values calculated by the petitioners for raw materials were recently used in the antidumping duty investigation of silicomanganese from Kazakhstan, with the exception of electrode paste, charcoal and wood chips. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Siliconmanganese from Kazakhstan*, (''*Silicomanganese from Kazakhstan*'') 66 FR 56639 (November 9, 2001) and *Initiation Checklist*.

Labor was valued using the regression–based wage rate for Russia provided by the Department, which is available on the Import Administration's website, in accordance with 19 CFR 351.408(c)(3). Petitioners valued electricity using the same Egyptian surrogate value used in *Silicomanganese from Kazakhstan*.

Factory overhead, selling, general and administrative expenses (SG&A), interest, and profit were derived from the 1999–2000 financial statements of Sinai Manganese Company (''Sinai''), an Egyptian ferro–manganese alloys producer.

We made adjustments to NV for electrode paste, charcoal, wood chips, and the surrogate ratios. For further information, see the *Initiation Checklist*.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margin for silicon metal from Russia is 97.17 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of silicon metal from Russia are being, or are likely to be, sold in the United States at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in (1) declines in production, (2) declines in shipments, and (3) declines in prices (4) capacity utilization, and (5) employment.

The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see* Attachments to *Initiation Checklist*, Re: Material Injury).

Initiation of Antidumping Investigation

Based upon our examination of the petition on silicon metal imports from Russia, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of silicon metal from Russia are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the government representatives of Russia. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than April 22, 2002, whether there is a reasonable indication that imports of silicon metal from Russia are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: March 27, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8069 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–813]

Notice of Extension of Time Limit of Preliminary Results of New Shipper Review: Stainless Steel Butt–Weld Pipe Fittings from Korea

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

ACTION: Notice of Extension of Time Limit of Preliminary Results of New Shipper Review.

EFFECTIVE DATE: April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924 or Robert James at (202) 482–0649; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 2001).

Background

On February 23, 1993, the Department published the antidumping duty order on stainless steel butt–weld pipe fittings from Korea. *See Antidumping Duty Order: Certain Welded Stainless Steel Butt–Weld Pipe Fittings from Korea*, 58 FR 11029 (February 23, 1993). On August 31, 2001, TK Corporation, a

producer and exporter of the subject merchandise during the period of review (POR), requested that the Department conduct an antidumping duty new shipper review of the antidumping duty order. On October 5, 2001, the Department initiated the requested review. *See Stainless Steel Butt–Weld Pipe Fittings from Korea: Notice of Initiation of New Shipper Antidumping Duty Review*, 66 FR 51017 (October 5, 2001).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act, the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Tariff Act further provides, however, that the Department may extend that 245–day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

In the course of this proceeding the Department has determined, through consultation with the U.S. Customs Service, that there is an issue as to whether TK Corporation's U.S. sales fall within the period of investigation. Due to the need to analyze this question, it is not practicable to complete this review by the current deadline of March 27, 2002.

Therefore, in accordance with section 751(a)(3)(A) of the Tariff Act, the Department is extending the time limit for the preliminary results by 120 days, until no later than July 25, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published in accordance with section 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: March 27, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–8070 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

Docket Number: 02–007. *Applicant:* National Institutes of Health, NIAMS/LSBR, 6 Center Drive, Building 6, Room B2–34, Bethesda, MD 20892–2717. *Instrument:* Electron Microscope, Model Tecnai 30 He. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to collect state-of-the-art cryo-electron microscopy for a variety of projects aimed at determining the structures of macromolecular complexes at high spatial resolution. Two immediate projects are Capsid Assembly of Hepatitis B Virus and Maturation of Bacteriophage Capsids. *Application accepted by Commissioner of Customs:* March 5, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–8074 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Vermont; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–001. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* Upgrade for X-ray based Motion Analysis System. *Manufacturer:* RSA BioMedical Innovations AB, Sweden. *Intended Use:* See notice at 67 FR 8939, February 27, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant.

The National Institutes of Health advises in its memorandum dated February 1, 2002, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–8073 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure and Alloy Magnesium From Canada: Notice of Initiation of New Shipper Countervailing Duty Review

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

ACTION: Notice of initiation of new shipper countervailing duty review.

SUMMARY: On February 28, 2002, the Department of Commerce received a request to conduct a new shipper review of the countervailing duty orders on pure and alloy magnesium from Canada. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating this new shipper review.

EFFECTIVE DATE: April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Craig Matney, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3464 or (202) 482–1778, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of Commerce's (''the Department's'') regulations are to 19 CFR Part 351 (April 2001).

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2002, the Department received a request from Magnola Metallurgy Inc. (''Magnola''), to conduct a new shipper review of the countervailing duty orders on pure and alloy magnesium, issued August 31, 1992 (57 FR 39392). These orders have a February semi-annual anniversary month. Magnola's request was made pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d).

Initiation of Review

In accordance with 19 CFR 351.214(b)(2) of the Department's regulations, Magnola provided certification that (1) it did not export subject merchandise to the United States during the period of investigation (''POI''), and (2) since the investigation was initiated, it never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI, including those not individually examined during the investigation. Also, in accordance with 19 CFR 351.214(b)(2), Magnola submitted documentation establishing: (1) The date on which it first shipped the subject merchandise for export to the United States; (2) the volume of its first and subsequent shipments; and, (3) the date of the first sale to an unaffiliated customer in the United States. In addition, Magnola provided a certification stating that it has informed the Government of Canada (''GOC'') that the GOC will be required to provide a full response to the Department's countervailing duty questionnaire.

Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, we are initiating a new shipper review of the countervailing duty orders on pure and alloy magnesium from Canada. Pursuant to 19 CFR 351.214(h)(i), we intend to issue the preliminary results of this review not later than 180 days from the date of publication of this notice. All provisions of 19 CFR 351.214 will apply to Magnola throughout the duration of this new shipper review.

In a countervailing duty proceeding, the standard period of review (''POR'') in a new shipper review is the same as the period specified in 19 CFR 213(e)(2) for an administrative review. Therefore, the POR for this new shipper review is January 1, 2001, through December 31, 2001, and we will review the subsidies received by the company during that period.

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer, and to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise exported by Magnola.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a) of the Act and 19 CFR 351.214.

Dated: March 27, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–8072 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020314060-2060-01; I.D. 022502B]

RIN 0648–ZB15

Financial Assistance for Research and Development Projects in Chesapeake Bay to Strengthen, Develop and/or Improve the Stock Conditions of the Chesapeake Bay Fisheries

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

ACTION: Notice of availability of funds.

SUMMARY: A total of up to $1,400,000 in Fiscal Year (FY) 2002 funds is available through the NOAA/NMFS Chesapeake Bay Office to assist in carrying out research and development projects that address various aspects of Chesapeake Bay fisheries (commercial and recreational), including coastal and estuarine research, monitoring, modeling, and assessment; fisheries research and stock assessments; data management; and, multiple species interactions through cooperative agreements. About $750,000 of the base amount is available to initiate new projects in FY 2002, as described in this announcement. It is the intent of the NOAA Chesapeake Bay Office to continue with several existing relationships and to make awards through this program for projects pending acceptable scientific review. These projects include the multispecies monitoring programs. NMFS issues this document to set forth instructions on how to apply for financial assistance, and how NMFS will determine which applications will be selected for funding.

DATES: Applications for funding under this program must be received by 5 p.m. eastern daylight savings time on May 3, 2002. Applications received after that time will not be considered for funding. Applications will not be accepted electronically nor by facsimile machine submission.

ADDRESSES: You can obtain an application package from, and send completed applications to: Derek Orner, National Marine Fisheries Service, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403. You can also obtain the application package from the Chesapeake Bay Fisheries Research Program Home Page http://noaa.chesapeakebay.net/cbfrp

FOR FURTHER INFORMATION CONTACT: Mr. Derek Orner, National Marine Fisheries Service, NOAA Chesapeake Bay Office, 410/267-5660; or e-mail: derek.orner@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. *Authority.* The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753a, authorizes the Secretary of Commerce (Secretary), for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several states, and with non-profit organizations relating to cooperative research units. The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661-666c, to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of fisheries, resources thereof, and for fisheries habitat restoration. The Departments of Commerce (DOC), Justice, State, the Judiciary, and Related Agencies Appropriations Act of 2002 makes funds available to the Secretary.

B. *Catalog of Federal Assistance (CFDA).* The Chesapeake Bay Fisheries Research Program is listed in the ''Catalog of Federal Domestic Assistance'' under number 11.457, entitled Chesapeake Bay Studies.

C. *Program Description.* The Chesapeake Bay Stock Assessment

Committee (CBSAC) was established in 1985 to plan and review Baywide resource assessments, coordinate relevant actions of state and Federal agencies, report on fisheries status and trends, and determine, fund and review research projects. The program implements a Baywide plan for the assessment of commercially, recreationally, and selected ecologically important species in the Chesapeake Bay. In 1988, CBSAC developed a Baywide Stock Assessment Plan, in response to provisions in the Chesapeake Bay Agreement of 1987. The Plan identified that key obstacles to assessing Bay stocks was the lack of consistent, Baywide, fishery-dependent and fishery-independent data. Research projects funded since 1988 have focused on developing and improving fishery-independent surveys and catch statistics for key Bay species, such as striped bass, oysters, blue crabs and alosids. Stock assessment research is essential, given the recent declines in harvest and apparent stock condition for many of the important species of the Chesapeake Bay. The Fisheries Steering Committee was established in 2001 to guide the various Chesapeake Bay fisheries' issues including management and research.

D. *Funding Availability.* This document describes how interested persons can apply for funding under the Chesapeake Bay Fisheries Research Program, and how funding decisions will be made.

This solicitation announces that funding of up to $1,400,000 may be available through the Chesapeake Bay Fisheries Research Program. This announcement does not guarantee that sufficient funds will be available to make awards for all selected applications submitted under this program.

II. Funding Priorities

Proposals should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multi-disciplinary. Coordinated efforts involving multiple eligible applicants or persons are encouraged. Proposals must address one of the priorities listed here. If the proposal addresses more than one priority, it should list first on the application the priority that most closely reflects the objective of the proposals.

(A) *Stock Assessment Research.* Consideration for funding will be given to applications that address the following stock assessment research and management priorities for the Chesapeake Bay. These priorities are not listed in any particular order:

(1) Assessments of the abundance, productivity, distribution, and exploitation patterns of important Chesapeake Bay finfish and shellfish resources. Proposals may include research on life history characteristics, stock-recruitment relationships, and schedules of vital rates. Descriptions of stock structure, demographics and spatial distribution would also be appropriate. It is anticipated that proposals will combine analyses of existing fishery-dependent and fishery-independent data.

(2) Development and/or implementation of a program to provide a reliable data base for estimating the impact of recreational fishing on living marine resources in Chesapeake Bay. Projects should:

a. Conduct a review of the work previously conducted on the development of methods for conducting a Baywide recreational survey;

b. Implement on a Baywide scale based on earlier work (if applicable);

c. Provide reliable estimates of recreational catch, fishing effort, catch rates, size composition, and sex ratios for all components of the recreational fishery.

(3) Blue Crab Stock Assessment Analyses

a. Analyses which may corroborate the results of the length-based estimates of fishing mortality rates (current estimates based on 120 mm or greater carapace width) and investigations into the relative exploitation rates on peeler size blue crabs.

b. Analyses of the trends in relative exploitation rates on blue crab, according to major gear types used in the commercial fishery.

c. Develop methods for estimation of Baywide commercial fishing effort and conduct a pilot study to test the methods.

d. Design and develop an integrated Baywide blue crab mark and recapture study that will provide information on growth, natural mortality, fishing mortality, size selectivity, catchability, reporting rates and the distribution of harvest among the fisheries. Results should be informative with respect to the reproductive frequency of female crabs, and longevity.

(4) Improvement or implementation of the collection of fishery-dependent data within Chesapeake Bay. Projects can involve either the commercial and/or recreational components of the fishery. Projects should focus on collecting biological data (size, sex, age, diet), and catch and effort data from Baywide harvests of significant finfish and shellfish fisheries to provide accurate, statistically representative information on the spatial and temporal characteristics of the harvest. Proposals may involve designs for port-sampling of landings, or on-board analysis of the catch, analysis of intercepts and telephone surveys. Proposals that document information on by-catch and discard mortality would be relevant and are encouraged.

The proposals should recognize current efforts to collect biological data from Bay fisheries and attempt to define the optimal, regional (Maryland, Potomac River Fisheries Commission, and Virginia jurisdictions) sampling program.

(5) Improvement and/or implementation of Chesapeake Bay fisheries database tools (including oracle database systems and web-based public access) for the various fishery-dependent and fishery-independent data currently and historically available in Chesapeake Bay. Proposals are encouraged to coordinate with the Atlantic Coastal Cooperative Statistics Program (ACCSP) and/or the Northeast Area Monitoring Assessment Program (NEAMAP) activities.

(B) *Multispecies Management and Research.* The Chesapeake Bay is a complex and dynamic ecosystem that supports many fisheries that are economically important both regionally and nationally. To date, these resources have been managed on a single species basis. While the single species approach has served us well, the existence of both biological and technical (by-catch) interactions in most Chesapeake Bay fisheries point to the need to move toward a wider, multispecies perspective. This viewpoint was wholeheartedly endorsed at a workshop of regional, national and international scientists held to address the potential utility of multispecies approaches to fisheries management in the Chesapeake Bay (STAC Publication 98-002, www.chesapeake.org). The ultimate objective of this research and monitoring is to lead to the development of an ecosystem plan for Chesapeake Bay fisheries, within which the rational exploitation of individual species can be determined.

Consideration for funding will be given to applications that address the following multispecies management and research priorities for the Chesapeake Bay. Priorities are not listed in any implied order:

(1) Fishery-independent Surveys. Plan, develop and conduct coordinated Baywide surveys to regularly estimate species abundances, trends and biological characteristics (e.g., age/size structure, recruitments, growth and mortality rates, food habitats) for

economically and ecologically important key species. Proposals within this task should:

a. Review and assess existing fishery independent sampling programs conducted by regional agencies to evaluate their potential applicability to the Chesapeake Bay. This may include evaluation of the use of fixed and random sampling protocols, with or without stratification, and the sampling characteristics of different gear types.

b. Develop and initiate a Baywide, coordinated, fishery-independent survey that may include multiple gear, such as benthic and midwater trawling, and hydroacoustics to characterize the status and trends in the abundance, distribution and characteristics of key Chesapeake Bay finfish and shellfish.

(2) Retrospective Analyzes. Document and quantify multispecies interactions among economically and ecologically important finfish and shellfish within the Chesapeake Bay. The proposed work should lead to the identification of the 'strong' interactions within the Chesapeake Bay fisheries system. Work may involve analysis of commercial and recreational catch and effort data, the analysis of the patterns of diets and energy flows within the fisheries system, or multivariate analyses of abundance relationships within the fisheries system and their relationship to environmental and habitat characteristics.

(3) Multispecies Assessment / Ecosystem Modeling. Apply and assess alternative multispecies fisheries models to the Chesapeake Bay fisheries systems. The submitted proposal should detail the development of a multispecies or ecosystem model focusing on core Chesapeake Bay species. Examples of possible approaches include, but are not limited to: multispecies biomass dynamic, multispecies yield per recruit, multispecies virtual population analysis, multispecies bioenergetics, spatial-physical predator-prey, trophic production and ecosystem simulation models. Model approaches should seek to predict constraints and patterns in the fisheries production of the Chesapeake Bay system.

(C) *Fisheries Ecosystem Plan (FEP) Research and Implementation.* The NOAA Chesapeake Bay Office has initiated development of an FEP for Chesapeake Bay. An FEP is an umbrella document containing information on the structure and function of the ecosystem in which fishing activities occur, so that managers can be aware of the effects their decisions have on the ecosystem, and the effects other components of the ecosystem may have on fisheries. Development of FEPs for each major ecosystem was recommended by the NMFS appointed Ecosystem Principles Advisory Panel which was formed under a mandate by the Sustainable Fisheries Act of 1996. (See the Panel's Report to Congress at: http://www.nmfs.noaa.gov/sfa/EPAPrpt.pdf.) The initial FEP will reflect the existing state of knowledge about the Chesapeake Bay ecosystem. Effective FEP implementation, however, and ultimate success of the Bay's FEP initiative, will require new research to characterize critical components of the ecosystem. The total value of the proposals selected for funding under this priority cannot exceed $100,000 of the base amount. Priorities are not listed in any particular order.

(1) Design and implementation of surveys to identify habitats, spawning areas, and feeding grounds for significant Chesapeake Bay species.

(2) Promote a higher level of understanding of the relationships between fisheries, the ecosystem, society and the environment. Proposals may include:

a. Improving the understanding of the 'multiple pathways' that can affect managed species and members of their significant food webs. Pathways might include (but are not limited to): the effects of habitat degradation and restoration, influences of the spatial arrangement of habitats, effects of environmental fluctuations or climate change, and the impact of changes in predator-prey relationships.

b. Characterizing uncertainty in key parameters used to support fisheries management decisions. This should include the ability to show the risks associated with the estimated uncertainty.

c. Describing the social and economic drivers of both commercial and recreational sectors of the Chesapeake Bay fishing industry.

d. Determining the relevance of existing, or proposed, indicators of ecosystem health (especially to meet the objective of linking fisheries and human health to the supporting Chesapeake Bay ecosystem).

III. How to Apply

A. *Eligible applicants.* Eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

The Department of Commerce National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

B. *Duration and terms of funding.* Under this solicitation, NMFS will fund Chesapeake Bay Fisheries Research Projects as 12 month cooperative agreements. The cooperative agreement has been determined to be the appropriate funding instrument because of the substantial involvement of NMFS in:

1. Developing program research priorities;

2. Evaluating the performance of the program for effectiveness in meeting regional goals for Chesapeake Bay stock assessments;

3. Monitoring the progress of each funded project;

4. Holding periodic workshops with investigators; and

5. Working with recipients to prepare annual reports summarizing current accomplishments of the Chesapeake Bay Stock Assessment Committee.

Project dates should be scheduled to begin no later than 1 October 2002. Cooperative agreements are approved on an annual basis but may be considered eligible for continuation beyond the first project and budget period subject to the approved scope of work, satisfactory progress, and availability of funds at the total discretion of NMFS. However, there are no assurances for such continuation. Publication of this document does not obligate NMFS to award any specific cooperative agreement or to obligate any part of the entire amount of funds available.

C. *Cost-sharing requirements.* Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required by the Chesapeake Bay Fisheries Research Program but is encouraged.

D. *Format.* 1. Applications for project funding must be complete and must

follow the format described in this document.

Applicants must identify the specific research priority or priorities to which they are responding. If the proposal addresses more than one priority, it should list first on the application the priority that most closely reflects the objective of the proposals. For applications containing more than one project, each project component must be identified individually using the format specified in this section. If an application is not in response to a priority, it should so state. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application.

Applications must not be bound and must be one-sided. All incomplete applications will be returned to the applicant. Applicants are required to submit 1 signed original and 2 copies of the proposal.

2. Applications must be submitted in the following format:

(a) *Cover sheet*: An applicant must use OMB Standard Form 424 (revised 7/97) as the cover sheet for each project. Applicants may obtain copies of these forms from the NOAA Grants Management Division, the NOAA Chesapeake Bay Office (see **ADDRESSES**) from the NOAA Grants website, http://www.rdc.noaa.gov/grants/.

(b) *Project summary*: It is recommended that each proposal contain a summary of not more than one page that provides the following:

(1) Project title.

(2) Project status (new vs. continuation).

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal Investigator(s) (PI).

(6) Project objectives.

(7) Summary of work to be performed.

(8) Total Federal funds requested.

(9) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.

(10) Total project cost.

(c) *Project description* (including results from prior support): Each project must be completely and accurately described. The main body of the proposal should be a clear statement of the work to be undertaken and should include: specific objectives and performance measures for the period of the proposed work and the expected significance; relation to longer-term goals of the PI's project; and relation to other work planned, anticipated, or underway under Federal Assistance. The project description must not exceed 15 pages in length. Visual materials, including charts, graphs, maps, photographs and other pictorial presentations are not included in the 15-page limitation. If an application is awarded, NMFS will make all portions of the project description available to the public for review; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

(1) Identification of problem(s): Describe the specific problem to be addressed (see section II above).

(2) Project objectives: The project description must identify the following three project objectives: (1) Identify the specific priority listed earlier in the solicitation to which the proposed projects respond, if any. (2) Identify the problem/opportunity you intend to address and describe its significance to the fishing community. (3) State what you expect the project to accomplish.

If you are applying to continue a project previously funded under the Chesapeake Bay Fisheries Research Program, describe in detail your progress to date and explain why you need additional funding.

Objectives should be:

(a) Simple and easily understandable.

(b) As specific and quantitative as possible.

(c) Clear with respect to the ''what and when '' and should avoid the ''how and why.''

(d) Attainable within the time, money, and human resources available.

(e) Use action verbs that are accomplishment oriented.

(f) Identify specific performance measures.

(3) Results from Prior Chesapeake Bay Fisheries Research Support: If any PI or co-PI identified on the project has received Chesapeake Bay Fisheries Research (CBSAC) support in the past 5 years, information on the prior award(s) is required. The following information must be provided:

(a) The NOAA award number, amount and period of support;

(b) The title of the project;

(c) Summary of the results of the completed work, including, for a research project, any contribution to the development of human resources in science/biology;

(d) Publications resulting from the award;

(e) Brief description of available data, samples, physical collections and other related research products not described elsewhere; and

(f) If the proposal is for renewed support, a description of the relation of the completed work to the proposed work.

(4) Need for Government financial assistance: Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(5) Benefits or results expected: Identify and document the results or benefits to be derived from the proposed activities.

(6) Project statement of work: The Statement of Work is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective(s).

Investigators submitting proposals in response to this announcement are strongly encouraged to develop inter-institutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. Such collaborative efforts will be factored into the final funding decision.

Each Statement of Work must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the Statement of Work.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. A detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures (from item III.D.2.c(5)(d)) that are to be attained in each project month covered by the Statement of Work. Table format should follow sequential month rather than calendar month (i.e. Project period Month 1, Month 2... versus October, November ...)

(7) Federal, state and local government activities: List any programs (Federal, state, or local government or activities, including Sea Grant, state Coastal Zone Management Programs, NOAA Oyster Disease Research

Program, the state/Federal Chesapeake Bay Program, etc.) this project would affect and describe the relationship between the project and those plans or activities.

(8) Project management: Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

(9) Monitoring of project performance: Identify who will participate in monitoring the project.

(10) Project impacts: Describe how these products or services will be made available to the fisheries and management communities.

(11) Evaluation of project: The applicant is required to provide an evaluation of project accomplishments and progress towards the project objectives and performance measures at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical feasibility, or to quantify the results of the project in promoting increased production, product quality and safety, management effectiveness, or other measurable factors.

(12) Total project costs: Total project costs is the amount of funds required to accomplish what is proposed in the Statement of Work, and includes contributions and donations. All costs must be shown in a detailed budget. A standard budget form (SF-424A) is available from the offices listed and on the internet (see **ADDRESSES**). NMFS will not consider fees or profits as allowable costs for grantees. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. The date, period covered, and findings for the most recent financial audit performed, as well as the name of the audit firm, the contact person, and phone number and address, must be also provided.

(d) Supporting documentation: Provide any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

IV. Review Process and Criteria

A. *Initial Evaluation of Applications.* Applications will be reviewed by NOAA to assure that they meet all requirements of this announcement, including eligibility and relevance to the Chesapeake Bay Fisheries Research Program. Proposals that do not support the technical and management priorities of the Chesapeake Bay, as defined in section II. above will not be considered for funding.

B. *Consultation with Experts in the Field of Stock Assessment and Fisheries Research.* For applications meeting the requirements of this solicitation, NMFS will conduct an individual technical evaluation (via mail/electronic mail) of each project. This review normally will involve experts from both NOAA and non-NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. Reviewers will be asked to score and comment based on the following four criteria (total of 50 possible points):

1. Problem description and conceptual approach for resolution, especially the applicant's comprehension of the problem(s), familiarity with related work that is completed or ongoing, and the overall concept proposed to resolve the problem(s) (15 points).

2. Soundness of project design/technical approach, especially whether the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and weaknesses of the technical design proposed for problem resolution (20 points).

3. Project management and experience and qualifications of personnel, including organization and management of the project, and the personnel experience and qualifications (5 points).

4. Justification and allocation of the budget in terms of the work to be performed (10 points).

C. *Review Panel.* NMFS will convene a review panel consisting of at least three regional experts (both NOAA and non-NOAA panelists) in the scientific and management aspects of fisheries research.

Each individual panel member will:

1. Provide independent review based on the same criteria and scoring as the technical review.

2. Provide a numerical ranking of all submitted proposals and suggestions for modifications (i.e., budget, personnel, technical approach, etc.).

The review panel will collectively:

1. Discuss all review comments as a panel incorporating the evaluation provided by the technical reviewers.

D. *Funding Decision.* After applications have been evaluated and ranked numerically by the review panel, the Director of the NOAA/NMFS Chesapeake Bay Office, in consultation with the Assistant Administrator (AA) for Fisheries, NOAA, will determine the projects to be recommended for funding based upon the technical evaluations and panel review comments, and determine the amount of funds available for the program. Numeric ranking will be the primary consideration for deciding which of the proposals will be selected for funding. In making the final selections, NOAA/NMFS may consider costs, geographical distribution, inter-jurisdictional and inter-institutional collaboration and duplication with other federally funded projects. Accordingly, numerical ranking is not the sole factor in deciding which proposals will be selected for funding. The Director of the NOAA/NMFS Chesapeake Bay Office will prepare a written justification for any recommendations for funding that fall outside the ranking order, or for any cost adjustments. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, the Grants Office, and the NOAA/NMFS Chesapeake Bay Office staff. Potential grantees should not initiate projects in expectation of Federal funding until an award document signed by an authorized NOAA official has been received.

E. Applications not selected for funding will be held in the Program Office for a period of at least 12 months.

V. Administrative Requirements

A. *Obligations of the applicant.* Periodic Workshops--Investigators will be expected to prepare for and attend one or two workshops with other Fisheries Research Program researchers to encourage interdisciplinary dialogue and collaboration.

B. *Other requirements.* 1. Indirect Cost Rates--The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Regardless of any approved indirect cost

rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs for this Program. Applicants with indirect costs above 25 percent may use the amount above the 25 percent level as cost sharing. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

2. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget, in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

3. Financial Management Certifications/preaward Accounting Survey--Successful applicants, at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable Office of Management and Budget (OMB) Circulars prior to execution of the award. Any first-time applicant for Federal grant funds may be subject to a preaward accounting survey by the DOC specified in the applicable OMB Circulars/Code of Federal Regulations prior to execution of the award.

Classification

This action has been determined to be ''not significant'' for purposes of Executive Order 12866.

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Pursuant to Section 553(a)(2) of the Administrative Procedure Act, prior notice and an opportunity for public comment are not required for this notification concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms (SF) 424 and 424A have been approved by OMB under their respective control numbers 0348-0043 and 0348-0044. Notwithstanding any other provision of 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 Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: March 26, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–8081 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032802C]

Individual Fishing Quota (IFQ) Stakeholders; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The H. John Heinz III Center for Science, Economics and the Environment, at NMFS' request, will host a meeting to discuss quota allocation programs as options for fishery management. This meeting is open to the public. The public may also attend as observers and submit written statements to the stakeholder meetings on May 7 and 8, 2002.

DATES: The open meeting will convene at 9 a.m. on Monday, May 6, 2002, recess at 5 p.m. Small working sessions to solicit views and debate issues among pre-determined participants will continue on May 7 and 8, 2002.

ADDRESSES: The meeting will be held at The Tremont House Hotel, 2300 Ship Mechanic Row, Galveston, TX 77550, 409–763–0300.

FOR FURTHER INFORMATION CONTACT: Mary Hope Katsouros or Laurie Allen at 202–737–6307.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the use of quota allocation strategies as a tool for fishery management. This will be done by reviewing current U.S. individual fishing and transferable quota programs, community development programs and other cases, the 1999 National Research Council's report, entitled ''Sharing the Fish'', related reports and literature, and input from stakeholders. This meeting presents an opportunity for stakeholders to provide their views on the pros and cons of this type of fishery management tool. A report will be produced by The Heinz Center that will provide a summary of public input and an analysis of policy options considered by stakeholders. If you are unable to attend, but do want to provide input, send your written statements no later than 5 p.m., April 20, 2002, to The Heinz Center, Attn: IFQ Project, 1101 Pennsylvania Avenue, N.W., Suite 735 South, Washington, DC. 20004.

Although other issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issue may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–326–6352 at least 5 days prior to the meeting date.

Dated: March 28, 2002.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–8084 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032602G]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Atlantic Mackerel, Squid and Butterfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Friday, April 19, 2002, from 10 a.m. until 4 p.m.

ADDRESSES: This meeting will be held at the Sheraton International Hotel, Baltimore Washington International Airport, 7032 Elm Road, Baltimore, MD; telephone: 410–859–3300.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to make quota recommendations for the 2003 fishing year for Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish and consider an in-season adjustment to the 2002 *Loligo* quota.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MAFMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the MAFMC Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 27, 2002.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–8083 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032602C]

Endangered Species; Permits

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

ACTION: NMFS has issued permit 1355.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has issued permit 1355 to Mr. Eugene Greer, of Columbia Environmental Research Center.

DATES: Permit 1355 was issued to Mr. Eugene Greer on March 21, 2002.

ADDRESSES: Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR1, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (phone:301–713–2319).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: *Lillian.Becker@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Species Covered in This Notice

The following species are covered in this notice:

Endangered Shortnose Sturgeon (*Acipenser brevirostrum*)

Permit 1355

Notice was published on January 3, 2002 that Mr. Eugene Greer, of Columbia Environmental Research Center applied for a scientific research permit (1355). The applicant proposes to test the effects of toxins found in the waters of North Carolina on the growth and survival of shortnose sturgeon fry. Up to 3,000 fry will be placed into water shipped in from the rivers of North Carolina and measured. Permit 1355 was issued on March 21, 2002, authorizing take of shortnose sturgeon. Permit 1355 expires June 1, 2004.

Dated: March 28, 2002.

Ann Terbush,

Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–8082 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 10, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before June 3, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically

mailed to the Internet address *KarenF.Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: March 29, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Small Business Innovation Research (SBIR) Program—Phase I—Grant Application Package.

Abstract: This application package invites small business concerns to submit a Phase I research application for the Small Business Innovation Research (SBIR) program. This is in response to Pub. L. 106–554, the ''Small Business Reauthorization Act of 2000, H.R. 5667'' (the ''Act'') enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education (ED), to establish a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or R&D through a uniform, highly competitive, three-phase process each fiscal year.

Additional Information: The Act further requires the Small Business Administration (SBA) to issue policy directives for the general conduct of the SBIR programs within the Federal Government. In order to avoid public harm and comply with the law and SBA Policy Directives, the Department is requesting an emergency clearance by April 10, 2002. This is the only way to assure that applicants have an adequate response time, that their applications receive an expert peer review, and that their awards are made before the end of the fiscal year.

Frequency: Annually.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 250.

Burden Hours: 10,000.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting ''Browse Pending Collections'' and clicking on link number. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO__RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–8052 Filed 4–2–02; 8:45 am]

BILLING CODE 4001–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7167–6]

EPA Science Advisory Board Metals Assessment Panel; Request for Nominations; EPA Science Advisory Board MARLAP Review Panel; Correction to Meeting Location; EPA Science Advisory Board Clean Air Scientific Advisory Committee; Advance Meeting Notification

1. Metals Assessment Panel; Request for Nominations

ACTION: Notice; request for nominations to serve on the Metals Assessment Panel of the U. S. Environmental Protection Agency's Science Advisory Board.

SUMMARY: The U.S. Environmental Protection Agency's (Agency, EPA) Science Advisory Board (SAB) is announcing the formation of a Metals Assessment Panel and is soliciting nominations of qualified individuals to serve on this Panel. The SAB was established to provide independent scientific and technical advice to the EPA Administrator on Agency positions; in this case advice on development of cross-Agency guidance for assessing certain hazards and risks for metals and metal compounds.

Any interested person or organization may nominate qualified individuals for membership on the Panel. Nominations (preferably in electronic format) should include the individual's name, occupation, position, qualifications to address the issue, and contact information (i.e., telephone number, fax number, mailing address, email, and/or Website). To be considered, all nominations must include a current resume (preferably electronic) providing information on the nominee's background, experience, and qualifications for this Panel.

Background

There has been considerable interest in the scientific assessments that the Agency conducts on metals and metal compounds. Discussions between the Agency and external stakeholders, as well as concerns expressed formally as part of the recent Toxics Release Inventory (TRI) lead rulemaking, have demonstrated the need for a more comprehensive, cross-Agency approach to metals assessments that can be applied to human health and ecological assessments. Therefore, the Agency is developing a Framework that will offer guidance for EPA programs to use when considering the various environmental properties of metals, such as

persistence, bioaccumulation and toxicity, in assessing the hazards and risks of metals and metal compounds. As a first step in accomplishing this goal, the Agency is developing an Action Plan that

(a) Identifies the primary elements to be addressed in the assessment Framework,

(b) Proposes a structure for the Framework, and

(c) Sets out a process that will culminate in the production of the Framework, per se.

The Agency has asked the SAB to form a Panel to provide advice (i.e., generate an SAB Advisory) on the Action Plan and subsequently to review (i.e., generate an SAB Review) the Framework that will be developed over the coming year.

The SAB is negotiating a specific Charge to guide the Metals Assessment Panel consideration of the Action Plan. The specific questions that constitute the Charge provide general guidance to the nominators about the technical qualifications of individuals who are being sought to carry out the work of the Panel. It is anticipated that the Panel will contain experts who have proven knowledge of the toxicology of metals in humans and the environment, the transport and fate of metals in the environment, computer modeling of the behavior of metals in the environment, risk assessment of metals, and the technical issues that arise in applying these principles in a decision-making context.

The current version of the Charge follows, although details of the Charge may change as a result of ongoing discussions between the Agency and the Panel. Updates will be posted on the SAB Website: *www.epa.gov/sab.*

Tentative Charge to the Metals Assessment Panel of the SAB

Please comment on the soundness of the Action Plan, specifically focus on the following:

1. Please comment on the soundness of the proposed organizing principles for the Framework.

2. EPA has attempted to capture the major, cross-cutting scientific issues that are specific to assessing the hazard and risk of metals and metal compounds. Please comment on the scientific issues presented in the Action Plan. In particular, does the SAB concur that these are the major, cross-cutting issues of concern with respect to assessing hazard and risks of metals and metal compounds? If not, which issues would you add or delete from this list and why?

3. Has EPA adequately characterized the issues and does the SAB concur with the steps proposed for addressing these issues? Why or why not?

4. Can the SAB suggest priorities within the list of issues based on the state-of-the-science and the feasibility of developing guidance in the near term. Which issues should be the focus of longer-term research efforts?

5. Are there specific recommendations (including methods and models) for addressing these issues that are not captured by EPA's Action Plan?

6. Please comment on the feasibility of the proposed process for drafting the Framework. Do you consider the time line to be realistic? Are the measures being taken to involve the public adequate?

7. Please comment on the structure for the Framework. Is it clear and all inclusive?

Any interested person or organization may nominate qualified individuals for membership on the Panel. Nominations should include the individual's name, occupation, position, qualifications to address the issue, and contact information (i.e., telephone number, fax number, mailing address, email address, and/or Website). To be considered, all nominations must include a current resume (preferably electronic), providing the nominee's background, experience, and qualifications.

Nominations should be submitted (preferably in electronic format) to Ms. Stephanie Sanzone, Designated Federal Officer, EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, telephone (202) 564–4561; FAX (202) 501–0323; e-mail at *sanzone.stephanie@epa.gov* no later than April 13, 2002. The Agency will not necessarily formally acknowledge or respond to nominations.

The nominations received through this solicitation will be combined with nominations obtained through other sources; e.g., the Agency, SAB members, and particular organizations. From this larger group of nominees (termed the ''WIDECAST''), a smaller subset of candidates (the ''Short List'') will be identified for more detailed consideration. The names of the Short List individuals, along with a short biosketch of each, will be posted on the SAB Website *(www.epa.gov/sab).* The public will have the opportunity to provide any information, analysis, and documentation—related to expertise, knowledge, scientific credibility, conflict-of-interest, possible lack of impartiality, experience, and skills working in committees and advisory panels—that they feel should be considered in the final Panel selection process. The public will also be asked to provide information, analysis, and documentation on their views of the Short List as it relates to questions of whether all necessary domains of knowledge are represented to conduct the review, whether all relevant scientific perspectives are included, and whether there is a sufficient range of experience to conduct a fully informed, credible technical review. Such data provided by the public will be considered, along with information collected by the SAB Staff (e.g., review of the candidates' resumes and confidential conflict of interest statements (OGE form 450) and conversation with the candidates), when the SAB Staff Director makes the final decisions on Panel membership from the Short List, in consultation with SAB leadership, as needed.

Panel members will be asked to attend at least one public meeting, possibly followed by a public teleconference meeting over the anticipated 3-month course of the activity. The Executive Committee (EC) of the SAB will critically review the Panel's report and reach a judgment about its transmittal to the Administrator.

2. MARLAP Review Panel; Correction to Meeting Location

The Multi-Agency Radiological Laboratory Analytical Protocols (MARLAP) Review Panel of the Radiation Advisory Committee (RAC) of the US EPA Science Advisory Board announced a meeting for April 23–25, 2002 (see 67 FR 11328–11330, March 13, 2002). The meeting location was given as EPA Hearing Room 1153 in the EPA East Headquarters Building, 1201 Pennsylvania Avenue, NW, Washington, DC 20004. The street address should read 1201 Constitution Avenue, NW, not 1201 Pennsylvania Avenue, NW. The other information given in the previous FR is correct.

3. Clean Air Scientific Advisory Committee; Advance Notification of Meetings

The Particulate Matter Review Panel of the Clean Air Scientific Advisory Committee (CASAC) will hold two meetings to review Agency draft documents concerned with the Particulate Matter National Ambient Air Quality Standards (NAAQS). The first meeting will be held on July 18–19, 2002 to review the draft Particulate Matter Criteria Document. The second meeting will be held on September 18–19, 2002 to review the Particulate Matter

Staff Paper. Both meetings will be held in Research Triangle Park, NC. Details about these meetings will appear in a FR Notice approximately one month prior to each meeting. Availability of review documents will be posted separately in the FR approximately two months prior to each meeting. These FR Notices will contain contact information and information concerning how to provide comments to either EPA or to CASAC. For further information concerning these two planned meetings, please contact Mr. Robert Flaak, CASAC Designated Federal Officer at (202) 564–4546, *flaak.robert@epa.gov* or at US EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

General Information

Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website *(http://www.epa.gov/sab)* and in the *Science Advisory Board FY2000 Annual Staff Report* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: March 26, 2002.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 02–8065 Filed 4–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0004; FRL–6831–7]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to review of the Cumulative and Aggregate Risk Evaluation System (CARES)™ Model used as a tool for dietary and residential pesticide exposure and risk assessments. The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Olga Odiott at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on April 30 – May 1, 2002 from 8:30 a.m. to approximately 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Hotel is (703) 486–1111. Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your request must identify docket control number OPP–2002–0004 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Designated Federal Official, Office of Science Coordination and Policy (7201M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: odiott.olga@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Food Quality Protection Act (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* A meeting agenda and copies of EPA primary background documents for the meeting will be available by the end of March. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA/SAP Internet Home Page at http://www.epa.gov./scipoly/sap/. To access this document, on the Home Page, select ''**Federal Register** Notice Announcing This Meeting.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedregstr/.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–2002–0004. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the review of key features of the CARES™ model, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0004 in the subject line on the first page of your request. Members of the public wishing to submit comments should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** to confirm that the meeting date and agenda have not been modified. Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advance written request to the persons listed under **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc.). There is no limit on the extent of written comments for consideration by the Panel, but oral statements before the panel are limited to approximately 5 minutes. The

Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral or written statements at the meeting should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies of their presentation and/or remarks to the Panel. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: ''opp–docket@epa.gov.'' Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–2002–0004. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

This 2–day meeting concerns scientific issues undergoing consideration within the EPA Office of Pesticide Programs (OPP). The Panel will review key features of the CARES™ Model to include the software code, data requirements, data inputs, and output reports. The presentation will focus on the operating system and will solicit panel comments and advice with respect to the transparency and operation of the model. CARES™ is a model for assessing aggregate and cumulative exposure and risk to pesticides. To assist the Panel in their evaluation of CARES™ each Panel member will be provided a copy of the CARES™ software and supporting documentation. The Panel will also be provided with hypothetical, yet representative, residue and toxicological data sets for assessing aggregate and cumulative exposure and risk via the dietary, residential and drinking water pathways. Interested public parties can obtain a copy of the CARES™ software by contacting Angelina Duggan at Aduggan@croplifeamerica.org. This program is copyrighted and there will be a charge for a copy of the program.

B. Panel Report

Copies of the Panel's report of their recommendations will be available within 60–working days after the meeting, and will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information Records Integrity Branch (PIRIB) at the address and telephone listed below under Unit I.

List of Subjects

Environmental protection.

Dated: March 25, 2002.

Vanessa T. Vu,

Director, Office of Science Coordination and Policy.

[FR Doc. 02–7947 Filed 4–2–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7167–7]

EPA Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Engineering Committee (EEC, Committee) of the US EPA Science Advisory Board (SAB) will meet via public teleconference on the date and time noted below. All times noted are Eastern Time. This meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office (if any) is included below. Subsequent teleconference meetings of the EEC are planned for July 3, 2002, September 4, 2002 and November 6, 2002. Information concerning these meetings will appear in future **Federal Register** notices.

1. Environmental Engineering Committee (EEC)—May 1, 2002

The Environmental Engineering Committee (EEC, Committee) of the US EPA Science Advisory Board (SAB), will conduct a public teleconference meeting on May 1, 2002 hosted from Room 6528, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting will begin at 12:00 pm and adjourn no later than 2:00 pm. The public is encouraged to attend the meeting in the conference room noted above, however, the public may also attend through a telephonic link if lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Mary Winston (see contact information below)

Purpose of the Meeting—The primary purpose of this meeting will be to review for approval a commentary prepared by the EEC's Risk Reduction Options Selection Subcommittee. The Committee reviewed the December 20, 1001 draft report of the Subcommittee at its January 30, 2002 conference call and agreed that the report would be revised to address the comments received. Those revisions are in progress and the Committee expects to have the commentary available for consideration at the May 1, 2002 conference call.

The Committee will also use the meeting to discuss the future of the EEC. To prepare for this, several members are preparing a paper on the future of the EEC to stimulate discussion at the May 1 conference call. This discussion will also address the Committee's FY2003 plans.

The Committee may also be briefed on issues of technical interest. For example, if schedules permit, there may be a briefing on nanotechnology addressing both the state of the Agency and the state of the science.

Availability of Review Materials: The draft commentary will be available at the SAB's website (www.epa.gov/sab) before April 24, 2002.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this teleconference meeting or who wishes to submit brief oral comments (3 minutes or less) must contact Ms. Kathleen White, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; fax (202) 501–0582; or via e-mail at *white.kathleen@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. White no later than

noon Eastern Time April 24, 2002. An agenda or information on participation in the above teleconference meeting may be obtained from Ms. Mary Winston, Management Assistant, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: (202) 564–4538, FAX (202) 501–0582; or via e-mail at *winston.mary@epa.gov.*

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. White at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 26, 2002.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 02–8064 Filed 4–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00764; FRL–6830–3]

The Association of American Pesticide Control Officials/State FIFRA Issues Research and Evaluation Group Working Committee on Water Quality and Pesticide Disposal; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality and Pesticide Disposal will hold a 2-day meeting, beginning on April 29, 2002, and ending April 30, 2002. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. The purpose of this meeting is to provide an opportunity for States to discuss with EPA matters related to pesticide regulatory policies that affect water quality and pesticide disposal.

DATES: The meeting will be held on Monday, April 29, 2002, from 8:30 a.m. to 5 p.m. and Tuesday, April 30, 2002, from 8:30 a.m. to noon.

ADDRESSES: This meeting will be held at the Days Inn Crystal City, 2000 Jefferson Davis Hwy., Arlington, VA.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00764 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: aapco@plainfield.bypass.com or Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: Mcduffie.Georgia @epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all parties interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decisionmaking process are invited and encouraged to attend the meetings and participate as appropriate. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00764. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any

information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00764 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00764. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Tentative Agenda

Committee Operations & Orientation
Water Quality Registration Review Issue Team Report
Association of States & Interstate Water Pollution Control Administration (ASIWPCA) Introduction and Presentation
Review of Label Statements for Disposal
Environmental Fate & Effects Division Presentation on OP Cumulative Risk Assessment
Discussion of Pesticide Regulatory Education Program (PREP) Water Quality Recommendations
Schedule Setting
Committee Member Up-date
Office of Pesticide Program Up-date
Office Enforcement and Compliance Assurance Up-date
EPA Report—Office of Water, Office of Pesticide, & Office of Enforcement and Compliance Assurance
New Issue Team Discussion

List of Subjects

Environmental protection, Hazardous waste disposal, Pesticides and pests, Water pollution.

Dated: March 19, 2002.

Jay S. Ellenberger,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 02–7945 Filed 4–2–02; 8:45 am]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Elementary-Secondary Staff Information Report

AGENCY: Equal Employment Opportunity Commission (EEO).

ACTION: Notice of information collection under review; Elementary-Secondary Staff Information Report EEO–5.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a one-year extension of the existing collection as listed below.

DATES: Written comments on this notice must be submitted on or before June 3, 2002.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittal will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801

L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street NW. Room 9222, Washington, DC 20507, (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: The Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, 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

Collection Title: Elementary-Secondary Staff Information Report EEO–5.

OMB Number 0346–0003.

Frequency of Report: Biennial.

Type of Respondent: Public elementary and secondary school districts with 100 or more employees.

Description of Affected Public: State and Local Government.

Number of Responses: 5,000.

Reporting Hours: 12,000.

Federal Cost: $80,000.

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 and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirement for various kinds of employers. Elementary and secondary public school systems and districts have been required to submit EEO–5 reports EEOC since 1974 (biennially in even-numbered years since 1982). Since 1996 each 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, greatly reducing the respondent burden and cost.

EEO–5 data are used by the EEOC to investigate charges of employment discrimination against elementary and secondary public school districts. The data are used to support EEOC decisions and conciliations, and 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 are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs).

Burden Statement: the estimated number of respondents included in the annual EEO–5 survey is 5000 public elementary and secondary school districts. The number of responses per respondent is one report. The annual number of responses is approximately 5,000 and the total hours per response ranges from one (1) to five (5) hours. The estimated total number of response hours is 12,000 each time the survey is conducted (i.e., biennially.) Respondents are encouraged to report data on electronic media such as magnetic tapes and diskettes.

Dated: March 27, 2002.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 02–7988 Filed 4–2–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011695–004.

Title: CMA CGM/Norasia Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: Norasia Container Lines Limited, CMA CGM, S.A.

Synopsis: The proposed amendment would permit CMA CGM to swap slots from its allocation on China Shipping Container Lines Company's vessels under the CMA CGM/CSG Slot Exchange, Sailing and Cooperative Working Agreement, FMC Agreement No. 011712, with Norasia in exchange for slots from Norasia's allocation under the subject agreement.

Agreement No.: 011796.

Title: CMA CGM/Lloyd Triestino Slot Exchange, Sailing and Cooperative Working Agreement.

Parties: CMA CGM, S.A., Lloyd Triestino Di Navigazione S.p.A.

Synopsis: Under the proposed agreement, the parties may consult on sailing schedules, ports served, service frequency, and the exchange of slots or space on their respective vessels in the trades between U.S. West Coast ports and ports in Asia. The parties request expedited review.

Agreement No.: 11797.

Title: New Caribbean Service Consortium Agreement.

Parties: CMA CGM, S.A., Hapag-Lloyd Container Linie GmbH, P&O Nedlloyd Limited/P&O Nedlloyd B.V., Hamburg-Süd KG, Compania Sud Americana de Vapores, S.A.

Synopsis: The proposed agreement would permit the parties to share their vessels in the trade between ports in Puerto Rico and the U.S. Virgin Islands, on the one hand, and ports in North Europe, the Caribbean, and Central America, on the other hand.

Dated: March 25, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–8046 Filed 4–2–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information

The Commission gives notice that it has requested that the parties to the below listed agreement provide additional information pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. 1705(d). The Commission has determined that further information is necessary to evaluate the impact of the proposed agreement on transportation costs and services. This action prevents the agreement from becoming effective as originally scheduled.

Agreement No.: 201128.

Title: Florida Ports Conference II.

Parties: Canaveral Port Authority; Broward County, Port Everglades

Department; Jacksonville Port Authority; Port of Key West, City of Key West Transportation Department; Manatee County Port Authority; Miami-Dade County, Port of Miami; Ocean Highway and Port Authority, Nassau County, Port of Fernandina; Port of Palm Beach District; Panama City Port Authority; City of Pensacola, Port of Pensacola; and Tampa Port Authority.

Dated: March 29, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–8048 Filed 4–2–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
4088F	Able Freight Services, Inc. 5340 W. 104th Street Los Angeles, CA 90045.	February 10, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–8047 Filed 4–2–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 4456NF.
Name: Arrisco International, Inc.
Address: 1808 G Associates Lane, Charlotte, NC 28217.
Date Revoked: March 14 2002.
Reason: Failed to maintain valid bonds.

License Number: 2944F.
Name: Astral International Shipping Services, Inc.
Address: 2414 World Trade Center, New Orleans, LA 70130.
Date Revoked: March 3, 2002.
Reason: Failed to maintain valid bond.

License Number: 4455NF.
Name: Cargo Transport, Inc.
Address: 6700 Marginal Way, SW, Seattle, WA 98106.
Date Revoked: February 22, 2002.
Reason: Surrendered license voluntarily.

License Number: 12237N.
Name: Costa Rica Carriers, Inc.
Address: 8620 NW 70th Street, Miami, FL 33166.
Date Revoked: March 18, 2002.
Reason: Failed to maintain a valid bond.

License Number: 2467F.
Name: L. C. Forwarding International Company.
Address: 150 Marine Street, Lake Charles, LA 70601.
Date Revoked: March 31, 2002.
Reason: Surrendered license voluntarily.

License Number: 2689F.
Name : Raul Nunez dba Nunez Forwarding Company.
Address: 14655 Northwest Freeway, Suite 119, Houston, TX 77040.
Date Revoked: March 14, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4257F.
Name: Road Runner International, Inc. dba International Delivery Systems.
Address: 1021 Stuyvesant Avenue, Union, NJ 07083.
Date Revoked: March 2, 2002.
Reason: Failed to maintain a valid bond.

License Number: 12426N.
Name: Windward Container Lines, Inc.
Address: 2630 NW 75th Avenue, Miami, FL 33122–1432.
Date Revoked: February 14, 2002.
Reason: Surrendered license voluntarily.

License Number: 17228N.
Name: YTN Corp.
Address: 122 N. Commonwealth Avenue, #311, Los Angeles, CA 90004.
Date Revoked: March 1, 2002.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–8045 Filed 4–2–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Int'l Cargo, LLC, 98 Craig Road, Manalapan, NJ 07726. Officer: Katherine Buonomo, President (Qualifying Individual).

Delcon Line (USA), Inc., 18726 Western Avenue, Gardena, CA 90248. Officers: Sunee Noh, Managing Director (Qualifying Individual) Doo Hee Lee, CEO.

All Transport LLC, 2824 May Avenue, Redondo Beach, CA 90278. Officer: Andres J. Villablanca, CEO Qualifying Individual.

Top Line Logistics Inc., 147–40 184th Street, Jamaica, NY 11413. Officers: Almon S.C. Lee, President (Qualifying Individual) Violet Horng, Vice President.

Remnant Shipping, Inc., 14928 S. Figueroa Street, Gardena, CA 90248. Officer: Soonyoung Chung, CEO (Qualifying Individual).

Fashion Container Line LLC dba FMI Inc. dba, FMI Trucking dba FMI International, 800 Federal Blvd., Carteret, NJ 07008. Officers: Geoff Tice, Vice President (Qualifying Individual) Ernie DeSaye, President.

Navivan Corp., 200 Crofton Road, Suite 2, Bldg. 10–B, Kenner, LA 70062. Officers: Ivan Lopez, Director (Qualifying Individual) Eric Lopez, Director.

Global Freight Transport Inc., 17 Jessica Lane, North Brunswick, NJ 08902. Officer: William Roach, President (Qualifying Individual).

Diaz & Flores, Inc., RR 3, Box 4550, San Juan, PR 00928. Officers: Rosa Marina Flores, President (Qualifying Individual) Paulette Diaz Barbosa, Vice President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Caribbean Int'l Cargo Transport, Inc. dba, Caribbean Int'l Forwarders and Consolidators, Inc., 2759 NW 82 Avenue, Miami, FL 33122. Officers: Soraya Quintana, Export Agent (Qualifying Individual) Joaquin Hernandez, Director.

Sun Island Freight L.C., 17401 NW 8th Street, Pembroke Pines, FL 33029. Officers: Jerome Anthony Lafond, Treasurer/Secretary (Qualifying Individual) Maurice Holder, President.

1st Class International, Inc., 8242 A Sandy Court, Jessup, MD 20794. Officer: Raef Boussi, President (Qualifying Individual).

Embassy Cargo NJ Inc., 45 Tamarack Circle, Skillman, NJ 08558. Officers: Silvio Travia, President (Qualifying Individual) Fabrizio Travia, Vice President.

Momentum Logistics Corp., 16311 Stone Grove Lane, Cerritos, CA 90703. Officer: Ralph Koo, Director/President.

Swiftpak, Inc., 17352 SW 35th Street, Miramar, FL 33029. Officers: Jacquelin Carter, President (Qualifying Individual) Howard Carter, CEO.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

AJB International Transport, Inc., 5013 North Hale Avenue, Tampa, FL 33614. Officer: Alejandro Barbosa, President (Qualifying Individual).

Worchel Transport Inc. dba Prime Transport, 150–4 183rd Street, Springfield Gardens, NY 11413. Officers: Sam Fischel, President (Qualifying Individual) David Wortman, Vice President.

Sun Continental Logistics, Inc., 10834 S. La Cienega Blvd., Inglewood, CA 90304. Officers: Jack Y. M. Kao, President (Qualifying Individual) Yoke Liu, Vice President.

Dated: March 29, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–8044 Filed 4–2–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 17, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309–4470:

1. Noel Mitchell Dowling, Jr., Dothan, Alabama; to acquire additional voting shares of BancSouth Corporation, Dothan, Alabama, and thereby indirectly acquire additional voting shares of BankSouth, Dothan, Alabama.

2. Johnny Fred Coleman, Livingston, Tennessee; to acquire additional voting shares of American Bancshares Corporation, Dothan, Alabama, and thereby indirectly acquire additional voting shares of American Bank & Trust of the Cumberlands, Livingston, Tennessee.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Don H. Carlton and Brenda C. Bruton, both of Tulsa, Oklahoma; to acquire voting shares of ASB Corporation, Tulsa, Oklahoma, and thereby indirectly acquire voting shares of American State Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, March 28, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–8013 Filed 4–2–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 April 26, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Nicolet Bankshares, Inc., Green Bay, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Nicolet National Bank, Green Bay, Wisconsin.

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Peoples State Bancorp, Inc., Munising, Michigan; to become a bank

holding company by acquiring 100 percent of the voting shares of Peoples State Bank of Munising, Munising, Michigan.

2. State Bancshares of Ulen, Inc., Dilworth, Minnesota; to acquire 100 percent of the voting shares of K Roberts, Inc., Hendrum, Minnesota, and thereby indirectly acquire voting shares of Viking Bank, Hendrum, Minnesota.

C. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lauritzen Corporation, Omaha, Nebraska; to acquire up to 0.9 percent of the voting shares of First National of Nebraska, Inc., Omaha, Nebraska, and thereby indirectly acquire voting shares of First National Bank of Omaha, Omaha, Nebraska; First National Bank, North Platte, Nebraska; Platte Valley State Bank & Trust Co., Kearney, Nebraska; Fremont National Bank & Trust Co., Fremont, Nebraska; First National Bank & Trust Company, Columbus, Nebraska, First National Bank, Overland Park, Kansas; First National Bank South Dakota, Yankton, South Dakota; First National of Colorado, Inc., Fort Collins, Colorado; and thereby indirectly acquire voting shares of First National Bank, Fort Collins, Colorado; Union Colony Bank, Greeley, Colorado; First National Bank of Colorado, Boulder, Colorado; First National of Illinois, Inc., Omaha, Nebraska; and thereby indirectly acquire voting shares of Castle Bank, N.A., DeKalb, Illinois.

Board of Governors of the Federal Reserve System, March 28, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–8012 Filed 4–2–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transaction Granted Early Termination, 03/05/2002			
20020467	Express Scripts, Inc	Richard O. Ullman	Airport Properties, LLC (''APLLC'') CFI of New Jersey, Inc. (''CFINJ'') CFI, Inc. (''CFI'') National Prescription Administrators, Inc. (''NPA'') NPA of New York, IPA, Inc. (''IPA'') The Ullman Family Partnership, LP (''LP'')
20020476	Givaudan, S.A	Nestle S.A	FIS–North America, Inc
20020477	Royal Dutch Petroleum Company	Siemens und Shell Solar GmbH	Siemens und Shell Solar GmbH
20020484	Telephone and Data Systems, Inc. Voting Trust.	MCT Inc	MCT, Inc
20020485	Lee Enterprises Incorporated	Robert S. Howard and Lillian I. Howard.	Howard Publications, Inc
20020487	Community Newspaper Holdings, Inc.	Dow Jones & Company, Inc	The Ashland Daily Independent, Inc The Joplin Globe, Inc The Mankato Free Press, Inc The Sharon Herald
20020488	ALLTEL Corporation	Verizon Communications Inc	Verizon South Inc
200020489	Welsh, Carson, Anderson 7 Stowe VIII, L.P.	SAVVIS Communications Corporation.	SAVVIS Communications Corporation
Transaction Granted Early Termination, 03/08/2002			
20020441	The Titan Corporation	Jaycor, Inc. Employee Stock Ownership Plan.	Jaycor, Inc
20020462	Stonebridge Partners Equity Fund III, L.P.	General Electric Company	Hunter Fan Company
20020471	Ripplewood Partners, L.P	Proxim, Inc	Proxim, Inc
20020482	BJ Services Company	Great Lakes Chemical Corporation	OSCA, Inc
20020502	The Shaw Group Inc	The IT Group, Inc., Debtor in Possession.	The IT Group, Inc., Debtor in Possession
20020503	Societe des Participations du Commissariat.	Duke Energy Corporation	Duke Engineering & Services, Inc
20020504	Vector Group Ltd	Gary L. Hall	The Medallion Company, Inc
20020506	Mr. Paris Mouratoglou	Innogy Holdings plc	Delaware Mountain Wind Farm L.P. NWP Indian Mesa Wind Farm L.P Pennsylvania Windfarms Inc
20020511	Province Healthcare Company	Memorial Health Systems, Inc	Henry County, Inc
20020513	Sun Capital Partners II, L.P	Questron Technology, Inc	Questron Technology, Inc

Trans No.	Acquiring	Acquired	Entities
200020517	Centrica plc	NewPower Holdings, Inc	NewPower Holdings, Inc
Transaction Granted Early Termination, 03/11/2002			
20020475	Maverick Tube Corporation	Precision Tube Holding Corporation	Precision Tube Holding Corporation
20020486	aaiPharma Inc	Eli Lilly and Company	Eli Lilly and Company
20020494	Pharmacia Corporation	Nastech Pharmaceutical Company Inc.	Nastech Pharmaceutical Company Inc
20020512	PeopleSoft, Inc	Peoplesoft, Inc	Momentum Business Applications, Inc
Transaction Granted Early Termination, 03/12/2002			
20020483	Level 3 Communications, Inc	Rebar, LLC	CorpSoft, Inc
20020497	Moody's Corporation	KMV Corporation	KMV Corporation
20020498	MidAmerican Energy Holdings Company.	The Williams Companies, Inc	Kern River Gas Transmission Company
20020505	U.S. Bancorp	First Defiance Financial Corp	The Leader Mortgage Company, LLC
Transaction Granted Early Termination, 03/15/2002			
20020524	WLR Recovery Fund, L.P.	The LTV Corporation	EGL–LTV Holding Com. LTV Steel Company, Inc.
20020530	Code, Hennessy & Simmons, IV, L.P.	Furnishings International Inc.	Berkline Corporation Blue Mountain Trucking Corporation Universal Furniture Limited
20020533	Forstmann Little & Co. Equity Partnership V, L.P.	MCLeodUSA Incorporated	MCLeodUSA Incorporated
20020534	Forstmann Little & Co. Subordinated Debt & Equit Mgmt. VI.	MCLeodUSA Incorporated	MCLeodUSA Incorporated
20020535	Forstmann Little & Co. Equity Partnership—VII, L.P.	MCLeodUSA Incorporated	MCLeodUSA Incorporated
20020536	Forstmann Little & Co. Sub. Debt & Equity Mgmt. Buyout VII.	MCLeodUSA Incorporated	MCLeodUSA Incorporated
20020537	Forstmann Little & Co. Subordinated Debt & Equity Mgmt. VIII.	MCLeodUSA Incorporated	MCLeodUSA Incorporated
20020544	AT&T Wireless Services, Inc	AT&T Wireless Services, Inc	AT&T Wireless PCS of Philadelphia, LLC

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay; or, Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580. (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–8017 Filed 4–2–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: ''Enrollee Survey of Relationship Between Out-of-Pocket Costs and Use of Prescribed Medications''. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by June 3, 2002.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 2101 East Jefferson Street, Suite 500, Rockville, MD 20852–4908.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Enrollee Survey of Relationship Between Out-of-Pocket Costs and Use of Prescribed Medications''

The project is being conducted in response to an AHRQ task order entitled ''Patient Safety and the Quality of Care: An Examination of Economic and Structural Characteristics, Working Conditions, and Technological Advances'' (*issued under Contract 290–00–0012:* Accelerating the Cycle of Research through a Network of Integrated Delivery Systems with the Center for Health Care Policy and Evaluation, UnitedHealth Group, Minnetonka, MN).

Past research suggests that increases in out-of-pocket costs are associated with decreased medication use in the elderly who have a drug benefit. Furthermore, reductions in medication use have been associated with increases in visits to physicians' offices and emergency departments and admissions to hospitals and long-term care facilities.

When Medicare beneficiaries alter their use of prescription medications in

response to their out-of-pocket costs, patient safety and quality of care may be compromised.

As suggested by OMB, we have been in communication with the Center for Medicare & Medicaid Services (CMS) (*contact:* Frank Eppic, Deputy Director, Information and Methods Group, ORDI, tel: 410–786–7950 or *FEppic@hcfa.org*) regarding the availability of data on this topic, particularly CMS's Medicare Current Beneficiary Survey (MCBS). Examination of raw response frequencies on the 1999 MCBS survey indicate that fewer than 2% (319/16670 total respondents) cite costs or lack of coverage as primary reasons for not getting a prescription filled. This small percentage seems to be inconsistent with other reports on the inadequacy of drug benefits for the elderly. However, the MCBS does not inquire whether Medicare beneficiaries get prescriptions filled, but take less medication than prescribed because of out-of-pocket costs or caps on drug benefits. In addition, the amount of drug coverage is not ascertained. Since data to determine the prevalence of cost-related reductions in medication use under different drug benefits and subsequent worsening health or increased use of health care services are sparse, additional research on this important issue is warranted.

The proposed study will utilize the Center for Health Care Policy and Evaluation's administrative database that includes several Medicare+Choice health plans that have provided a limited drug benefit in 2002. Data collected by survey will determine how often out-of-pocket costs or caps incurred under the available drug benefit caused Medicare beneficiaries to alter their use of prescription medicines including not getting a prescription filled or refilled or taking reduced doses. These are the dependent variables for the study.

Survey data will be used to identify medications that have not been taken or reduced and alternatives that have been used to make judgments about the potential clinical consequences of any changes in medication-taking behavior. In addition, respondents' perceptions of the effects of any changes in medication use on their health status and utilization of other services (physician visits, emergency department visits and hospital admissions) will be ascertained. Several potential correlates will be assessed as well, most of which are based on previous studies of medication use in the elderly population. Other key variables will be extracted from administrative (enrollment and claims) data including age, gender, identity of the health plan, duration of enrollment, number of prescription claims, types of medications, prescription copayments, number of physician visits and hospital admissions during the period prior to the survey.

Data Confidentiality Provisions

Assurances of confidentiality will be given to participants within the informed consent form that each person will sign prior to participation (*See* Appendix 1). These assurances explain the applicability of AHRQ's confidentiality statute, 42 U.S.C. 299c–3(c). (*See* Appendix 2). The consent form will be reviewed, modified if requested and approved by an Institutional Review Board and sent to survey recipients along with the survey (*see* Appendix 3). the Center for Health Care Policy and Evaluation has an extensive security program in place to safeguard the privacy and confidentiality of data. This multi-tiered program, comprised of both policies and specific procedures, promotes compliance with all legal and regulatory requirements for privacy protection of individually identifiable health information. Building and office access cards and computer identification codes and passwords are in operation.

Encryption and authentication are utilized where control over sensitive information is required including file transfers (*e.g.,* (FTP) and data processing applications. Automated monitoring (network and platform intrusion detection) and system firewalls are established for all major network interface points.

Additional confidentiality procedures include: (1) Written agreements with a subcontractor hired to administer the questionnaire; (2) use of key-code processes and encryption to protect individual identity of data records in the Center for Health Care Policy and Evaluation's administrative database; (3) use of study-specific keys for data transmission and linkage of sample information and survey data; (4 efforts to ensure that the least sensitive level of data possible is used or transmitted in the conduct of research; (5) destruction of data files after completion of the research project, approximately one year after the final report is filed under the task order or one year after the final report is filed under the tasks order or one year after a journal article is published based upon the final report, whichever is later (to allow access to assist other scientists seeking to validate or replicate results); and (6) written policies and procedures and training of employees in regards to protection of human subjects and data confidentiality.

Data Products

Data will be produced in the following forms:

1. A file will be developed comprising the sample from the Center for Health Care Policy and Evaluation's database of enrollment and claims to be used to collect the survey data. The sample file will contain an investigator-assigned, study specific case identity code that will allow the survey results file to be linked back to the administrative data.

2. A second file will include information on the final disposition of all cases and survey responses along with variables derived from administrative data. This file will be analyzed to generate research reports. The proportion (probability) that an individual in the study population altered his/her prescription mediation-taking behavior because of out-of-pocket costs or limits on drug benefits will be estimated with 95% confidence intervals. The probabilities of altered medication use secondary to out-of-pocket costs or caps on drug benefits will be analyzed separately. Since the sampling design provides equal probabilities of selection without cluster techniques, design effects do not need to be taken into consideration during estimation of the probabilities and confidence intervals (variance). The finite population correction factor should also be negligible. Missing data on partially completed surveys will be imputed. Estimates and tests of potential explanatory variables will be generated by two-step regression models in an effort to control non-response bias.

The data are intended to be used for purposes such as:

1. Providing information about the extent and correlates of reduced prescription drug use to help define the circumstances when out-of-pocket costs might become a quality/safety issue.

2. Helping to inform policymakers about how current drug benefits being provided by Medicare+Choice plans affect patients' quality of care.

3. Informing the design of drug benefits for Medicare beneficiaries that foster quality care by considering financial barriers to effective use of pharmaceuticals.

Method of Collection

The population to be studied consists of individuals enrolled in the Center for Health Care Policy and Evaluation's UnitedHealthcare Medicare+Choice health plans that provide a drug benefit in 2002, from which a sample will be drawn and surveyed. The Center for

Health Care Policy & Evaluation maintains a database comprised of enrollment and claims data generated by these health plans. Actual 2002 enrollment will be used for sampling. None of drug benefits being studied require a deductible and all will use the same formulary or preferred drug list.

Investigators will use the enrollment and claims database to define the sampling frame for the study. Pharmacy claims will not be used for sample selection because they would be missing if enrollees do not get prescriptions filled, and selecting people because they had a pharmacy claim could bias estimates of cost-altered medication use. Since medication use and out-of-pocket prescription costs are related to the presence of chronic conditions, selection of enrollees will be based on diagnoses listed in the administrative data. The focus will be on medical conditions that are common in the elderly population for which medications are often prescribed including hypertension, hyperlipidemia (high cholesterol), coronary artery disease, congestive heart failure, diabetes, arthritis, glaucoma and gastrointestinal ulcers. The presence of one or more of these diagnoses on claims from physician visits or hospital admissions that occur in the first quarter of 2002 will be used to create a sampling frame. This will help assure that sampled enrollees have recently seen a physician who has acknowledged the presence of the condition and a high likelihood of having been prescribed medication.

Eligible health plan members must also be enrolled during the entire first quarter of 2002 to facilitate collection of administrative variables for the analysis.

The sample of eligible enrollees will be stratified by health plan and a simple random sample will be selected from each health plan using a proportionate (uniform) sampling fraction. Missing sampling frame elements are not expected to be a problem, and anyone excluded from the sampling frame because of missing diagnoses due to claims lags will be considered missing at random because physician and hospital claim lags should be totally independent of cost-related changes in medication-taking behavior.

The sample file will contain an investigator-assigned, study specific case identity code that will allow the survey results file to be linked back to the administrative data. Checks for changes in address will be made and survey packets prepared. A cover letter from the investigators will invite Medicare beneficiaries enrolled in UnitedHealthcare Medicare+Choice health plans to participate in the study, and a written consent form approved by a duly constituted Institutional Review Board will be sent along with the survey questionnaire. Two mailings with a postcare reminder sent in the interim period and follow-up calls to non-responders after the second survey mailing are planned to obtain a response rate similar to the Medicare Consumers Assessment of Health Plans Survey response rate of 75% to 82%. Respondents will not receive any gifts or payments as incentives to respond.

Estimated Annual Respondent Burden

This is a one-time survey with 24 multiple choice questions, plus one question that asks respondents to name any medication(s) they did not use as prescribed because of cost, plus one question that asks respondents to name the medication(s), if any, that they used as alternative(s) to the medication(s) that cost too much. The survey will be conducted in 2002.

Survey year	Number of respondents	Estimated time per respondent in hours	Estimated total burden hours	Estimated cost to the government
2002	1,125	.25	281	$35,000

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 26, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–8067 Filed 4–2–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03001]

Grants for Education Programs in Occupational Safety and Health; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for institutional training grants in occupational safety and health. This program addresses the ''Healthy People 2010'' focus area of Occupational Safety and Health.

The National Institute for Occupational Safety and Health (NIOSH) is mandated to provide an adequate supply of qualified personnel to carry out the purposes of the Occupational Safety and Health Act. The specific purpose of this program is to provide financial assistance to eligible applicants to assist in providing an adequate supply of qualified professional occupational safety and health personnel. Projects are funded to support Occupational Safety and Health Education and Research Center Training Grants (ERCs) and Long-Term Training Project Grants (TPGs).

ERCs are academic institutions that provide interdisciplinary graduate training and continuing education in the industrial hygiene, occupational health nursing, occupational medicine, occupational safety, and closely related occupational safety and health fields. The ERCs also serve as regional resource centers for industry, labor, government, and the public. TPGs are academic institutions that primarily provide single-discipline graduate training in the industrial hygiene, occupational health nursing, occupational medicine, occupational safety, and closely related occupational safety and health fields.

B. Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and any other U.S. Territory or Trust Territory not named herein are eligible to apply for an institutional training grant.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds and Types of Training Awards

Approximately $4,000,000 is available for competing continuation or new awards in FY 2003 to fund ERC and TPG programs. Funding estimates may change.

1. Funding for ERCs

Approximately $2,880,000 of the total funds available will be utilized as follows:

a. Approximately $2,400,000 is available to award four competing continuation or new ERC grants. This includes a total of $160,000 to augment the support of occupational medicine program residents. Awards will range from $400,000 to $800,000 with the average award being $600,000.

b. Approximately $300,000 is available to award five competing continuation or new training grants; two of the awards are planned for $120,000 for Hazardous Substance Academic Training (HSAT) Programs and three of the awards are planned for $180,000 for Hazardous Substance Training (HST) Programs.

The awards are to support the development and presentation of continuing education and short courses (HST Programs), and academic curricula (HSAT Programs) for trainees and professionals engaged in the management of hazardous substances. Program support is available for faculty and staff salaries, trainee costs, and other costs to provide training and education for occupational safety and health and other professional personnel engaged in the evaluation, management, and handling of hazardous substances.

c. Approximately $120,000 is available to award two competing continuation or new training grants. These awards will support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety.

d. Approximately $60,000 is available to award one competing continuation or new grant to support the enhancement of the ERC research training mission through the support of pilot project research training programs.

2. Funding for TPGs

Approximately $580,000 is available to fund nine competing continuation or new TPG grants. Awards will range from $20,000 to $100,000, with the average award being $65,000. This includes a total of $40,000 to augment the support of occupational medicine program residents. These awards will support academic programs in the core disciplines (*i.e.,* industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety and ergonomics) and relevant components (*e.g.,* occupational injury prevention, industrial toxicology, ergonomics).

These awards are intended to augment the scope, enrollment, and quality of training programs rather than to replace funds already available for current operations.

3. Funding for ERCs and TPGs

Approximately $540,000 is available to fund four competing continuation or new grants for occupational injury prevention research training. Awards will range from $75,000 to $150,000, with the average award being $135,000. This program is intended to encourage new occupational injury prevention research training programs and will only support doctoral-level training and trainees. In institutions with existing NIOSH-funded occupational safety/ergonomics and/or injury epidemiology programs, funding will be considered for the addition of a doctoral-level program only if it is not part of the existing NIOSH-funded program. For the purpose of this announcement, only doctoral-level programs with a specific concentration in occupational injury prevention will be considered. The proposed program must be described in detail, with objectives, competencies and how achieved in specified courses, curricula, recruitment, faculty and other program features. Institutions submitting proposed programs under this announcement which also have existing NIOSH-funded programs in safety/ergonomics and/or injury epidemiology must describe in detail how the proposed program differs from the existing program. In some instances, it may be necessary to replace the existing program funding with funding available under this announcement.

4. It is expected that awards will begin on or about July 1, 2003, and will be made for a 12-month budget period within a project period of up to five years. ERC individual program awards will be made for a 12-month budget period within a project period not to exceed that of the main ERC training grant.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

The following are applicant requirements that define the ERC and TPG programs to be conducted:

1. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various objectives of the grant. Measures must be objective/quantitative and must measure the intended outcomes. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

2. An ERC shall be an identifiable organizational unit within the sponsoring organization. Applicants must meet the following characteristics in order to be considered for an award. If the characteristics are not met, the application will be considered non-responsive and will be returned to the applicant without a review.

a. Cooperative arrangements with a medical school or teaching hospital (with an established program in preventive or occupational medicine), a school of nursing or its equivalent, a school of public health or its equivalent, or a school of engineering or its equivalent. It is expected that other schools or departments with relevant disciplines and resources shall be represented and shall contribute as appropriate to the conduct of the total program, e.g., epidemiology, toxicology, biostatistics, environmental health, law, business administration, and education. Specific mechanisms to implement the cooperative arrangements between departments, schools/colleges, universities, etc., shall be demonstrated in order to assure that the intended interdisciplinary training and education will be engendered.

b. An ERC Director who possesses a demonstrated capacity for sustained productivity and leadership in occupational health and safety education and training. The Director

shall oversee the general operation of the ERC Program and shall, to the extent possible, directly participate in training activities. A Deputy Director shall be responsible for managing the daily administrative duties of the ERC and to increase the ERC Director's availability to ERC staff and to the public.

c. Program Directors who are full-time faculty and professional staff representing various disciplines and qualifications relevant to occupational safety and health who are capable of planning, establishing, and carrying out or administering training projects undertaken by the ERC. Each academic program, as well as the continuing education and outreach program, shall have a Program Director.

d. Faculty and staff with demonstrated training and research expertise, appropriate facilities and ongoing training and research activities in occupational safety and health areas.

e. A program for conducting education and training for four core disciplines: Occupational physicians, occupational health nurses, industrial hygienists, and occupational safety personnel. ERC core academic programs are intended to provide multi-level practitioner and research training. Core academic programs should offer masters degrees and, in research institutions, doctoral degrees. There shall be a minimum of five full-time students or full-time equivalent students in each of the core programs, with a goal of a minimum of 30 full-time students (total in all of core and component programs together). ERCs are encouraged to recruit and train minority students to help address the under-representation of minorities among the occupational safety and health professional workforce. Although it is desirable for an ERC to have the full range of core programs, an ERC with a minimum of three academic programs of which two are in the core disciplines is eligible for support providing it is demonstrated that students will be exposed to the principles and issues of all four core disciplines. In order to maximize the unique strengths and capabilities of institutions, consideration will be given to the development of: New and innovative academic programs that are relevant to the occupational safety and health field, *e.g.,* ergonomics, industrial toxicology, occupational injury prevention, and occupational epidemiology; and to innovative technological approaches to training and education. ERCs must also document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. Each core program curriculum shall include courses from non-core categories as well as appropriate clinical rotations and field experiences with public health and safety agencies and with labor-management health and safety groups. Where possible, field experience shall involve students representing other disciplines in a manner similar to that used in team surveys and other team approaches. ERCs should address the importance of providing training and education content related to special populations at risk, including minority workers and other sub-populations specified in the National Occupational Research Agenda (NORA) special populations at risk category.

f. A specific plan describing how trainees in core and component academic programs will be exposed to the principles of all other occupational safety and health core and allied disciplines. ERCs that apply as a consortium (contracting with other institutional partners) generally have geographic, policy and other barriers to achieving this ERC characteristic and, therefore, must give special, innovative, attention to thoroughly describing the approach for fulfilling interdisciplinary interaction between students.

g. Demonstrated impact of the ERC on the curriculum taught by relevant medical specialties, including family practice, internal medicine, dermatology, orthopedics, pathology, radiology, neurology, perinatal medicine, psychiatry, etc., and on the curriculum of undergraduate, graduate and continuing education of primary core disciplines as well as relevant medical specialities and the curriculum of other schools such as engineering, business, and law.

h. An outreach program to interact with and help other institutions or agencies located within the region. Programs shall be designed to address regional needs and implement innovative strategies for meeting those needs. Partnerships and collaborative relationships shall be encouraged between ERCs and TPGs. Programs to address the under-representation of minorities among occupational safety and health professionals shall be encouraged. Specific efforts should be made to conduct outreach activities to develop collaborative training programs with academic institutions serving minority and other special populations, such as Tribal Colleges and Universities, Historically Black Colleges and Universities, and Hispanic-Serving Institutions. Examples of outreach activities might include: Interaction with other colleges and schools within the ERC and with other universities or institutions in the region to integrate occupational safety and health principles and concepts within existing curricula (*e.g.,* Colleges of Business Administration, Engineering, Architecture, Law, and Arts and Sciences); exchange of occupational safety and health faculty among regional educational institutions; providing curriculum materials and consultation for curriculum/course development in other institutions; use of a visiting faculty program to involve labor and management leaders; cooperative and collaborative arrangements with professional societies, scientific associations, and boards of accreditation, certification, or licensure; and presentation of awareness seminars to undergraduate and secondary educational institutions (*e.g.,* high school science fairs and career days) as well as to labor, management and community associations.

i. A specific plan for preparing, distributing and conducting courses, seminars and workshops to provide short-term and continuing education training courses for physicians, nurses, industrial hygienists, safety engineers and other occupational safety and health professionals, paraprofessionals and technicians, including personnel from labor-management health and safety committees, in the geographical region in which the ERC is located. The goal shall be that the training be made available to a minimum of 400 trainees per year representing all of the above categories of personnel, on an approximate proportional basis with emphasis given to providing occupational safety and health training to physicians in family practice, as well as industrial practice, industrial nurses, and safety engineers. Priority shall be given to establishing new and innovative training technologies, including distance learning programs and to short-term programs designed to prepare a cadre of practitioners in occupational safety and health. Where appropriate, it shall be professionally acceptable that Continuing Education Units (as approved by appropriate professional associations) may be awarded. These courses should be structured so that higher educational institutions, public health and safety agencies, professional societies or other appropriate agencies can utilize them to provide training at the local level to occupational health and safety personnel working in the workplace. Further, the ERC shall conduct periodic training needs assessments, shall develop a specific plan to meet these needs, and shall have demonstrated

capability for implementing such training directly and through other institutions or agencies in the region. The ERC should establish and maintain cooperative efforts with labor unions, government agencies, and industry trade associations, where appropriate, thus serving as a regional resource for addressing the problems of occupational safety and health that are faced by State and local governments, labor and management.

j. A Board of Advisors or Consultants representing the user and affected population, including representatives of labor, industry, government agencies, academic institutions and professional associations, shall be established by the ERC. The Board should meet at least annually to advise an ERC Executive Committee and to provide periodic evaluation of ERC activities. The Executive Committee shall be composed of the ERC Director and Deputy Director, academic Program Directors, the Director for Continuing Education and Outreach and others whom the ERC Director may appoint to assist in governing the internal affairs of the ERC.

k. A plan to incorporate research training into all aspects of training and, in research institutions, as documented by on-going funded research and faculty publications, a defined research training plan for training doctoral-level researchers in the occupational safety and health field. The plan will include how the ERC intends to strengthen existing research training efforts, how it will integrate research training activities into the curriculum, field and clinical experiences, how it will expand these research activities to have an impact on other primarily clinically-oriented disciplines, such as nursing and medicine, and how it will build on and utilize existing research opportunities in the institution. Each ERC is required to identify or develop a minimum of one, preferably more, areas of research focus related to work environment problems. Consideration should be given to the CDC/NIOSH priority research areas identified in the National Occupational Health Research Agenda (NORA). Further information regarding NORA may be found at the CDC/NIOSH Internet address: *http://www.cdc.gov/niosh/norhmpg.html.* The research training plan will address how students will be instructed and instilled with critical research perspectives and skills. This training will emphasize the importance of developing and working on interdisciplinary teams appropriate for addressing a research issue. It should also prepare students with the skill necessary for developing research protocols, pilot studies, outreach efforts to transfer research findings into practice, and successful research proposals. Such components of research training will require the ERCs to strive toward developing the faculty composition and administrative infrastructure essential to being Centers of Excellence in Occupational Safety and Health Research Training that are required to train research leaders of the future. The plan should address the incremental growth of such elements and evaluation of the plan commensurate with funds available. In addition to the research training components, the plan will also include such items as specific strategies for obtaining student and faculty funding, plans for acquiring equipment, if appropriate, and a plan for developing research-oriented faculty.

l. Evidence in obtaining support from other sources, including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

3. TPG applicants must document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. There shall be a minimum of three full-time students or full-time equivalent students in each academic program. Applicants should address the importance of providing training and education content related to special populations at risk, including minority and disadvantaged workers. The types of training currently eligible for support are:

a. Graduate training for practice, teaching, and research careers in occupational safety and health. Priority will be given to programs producing graduates in areas of greatest occupational safety and health need. Strong consideration will be given to the establishment of innovative training technologies including distance learning programs.

b. Undergraduate and other pre-baccalaureate training providing trainees with capabilities for positions in occupational safety and health professions.

c. Special technical or other programs for long-term training of occupational safety and health technicians or specialists.

E. Application Content

The information in the Program Requirements, Other Requirements, and Evaluation Criteria sections should be used to develop the application content. Applications will be evaluated on the basis of the evaluation criteria, so it is important to fully consider them in laying out the program plan. The narrative should be no more than 15 pages per program, printed on one side, single-spaced, with one inch margins and unreduced font. The print must be clear and legible. Use standard size, black letters that can be clearly copied. Do not use photo reduction. Prepare all graphs, diagrams, tables, and charts in black ink. The application must contain only material that can be photocopied. Do not include course catalogue and course brochures. When additional space is needed to complete any of the items, use plain white paper (8 ½ × 11 inches), leave one inch margins on each side, identify each item by its title, and type the name of the program director and the grant number (if the application is a competitive renewal) in the upper right corner of each page. All pages, including Appendices should be numbered consecutively at least one-half inch from the bottom edge.

Note: Please consult the detailed Recommended Outline for Preparation of Competing New/Renewal Training Grant Applications (CDC 2.145 A) available at the internet address listed in section F.

F. Submission and Deadline

Applications should be clearly identified as an application for an ERC Training Grant or TPG Training Grant.

Application

Submit the original and two copies of CDC 2.145 A–ERC or TPG (OMB Number 0920–0261). Forms and instructions are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.html.*

On or before July 1, 2002, submit the application to the Grants Management Specialist identified in Section J of this announcement, ''Where to Obtain Additional Information''.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above will be returned to the applicant.

G. Evaluation Criteria

Upon receipt, applications will be reviewed for completeness and responsiveness to Program Requirements (*see* Section D). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Those applications judged to be competitive will be further evaluated individually against the following criteria and the extent to which they have been met. The initial peer review will be conducted by means of a panel meeting or site visit. The purpose of the initial review is to obtain basic information regarding elements of the proposed training grant program and to provide a technical report as input to the Special Emphasis Panel. The final official peer review will be conducted by a Special Emphasis Panel appointed by CDC.

1. All ERC and TPG applications will be evaluated to determine the extent to which the proposed Measures of Effectiveness will demonstrate the accomplishment of program objectives.

2. ERC evaluation criteria are as follows:

a. Plans to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. Special consideration should be given to the development of programs addressing the under-representation of minorities among occupational safety and health professionals. Indicators of regional need should include measures utilized by the ERC such as previous record of training and placement of graduates. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

b. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the ''Characteristics of an Education and Research Center'' (*see* D.1).

c. The establishment of new and innovative programs and approaches to training and education relevant to the occupational safety and health field and based on documentation that the program meets specific regional workforce needs. In reviewing such proposed programs, consideration should be given to the developing nature of the program and its capability to produce graduates who will meet such workforce needs.

d. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

e. Academic training including the number of full-time and part-time students and graduates for each core and component program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, *etc.*). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

f. Methods in use or proposed methods for evaluating the effectiveness of training and outreach including the use of placement services and feedback mechanisms from graduates as well as employers, innovative strategies for meeting regional needs, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

g. Competence, experience and training of the ERC Director, the Deputy ERC Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

h. Institutional commitment to ERC goals. An example of institutional commitment to the long-term stability of ERC programs is the commitment of tenured or tenure-track faculty positions to each participating academic program.

i. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

j. Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds. This includes a separate budget for the academic staff's time and effort in continuing education and outreach.

k. Evidence of the integration of research experience into the curriculum, and field and clinical experiences. In institutions seeking funds for doctoral and post-doctoral (physician training) level research training, evidence of a plan describing the research and research training the ERC proposes. This should include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

l. Evidence of success in attaining outside support to supplement the ERC grant funds including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

m. Evidence of a strategy to evaluate the impact that the ERC and its programs have had on the region served by the Center. Examples could include a continuing education needs assessment and action plan, a workforce needs survey and action plan, consultation and research programs provided to address regional occupational safety and health problems, the impact on primary care practice and training, a program graduate data base to track the employment history and contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

n. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

3. ERC individual program evaluation criteria are as follows:

a. Hazardous Substance Training Program in Education and Research Centers:

(1) Relevance of the proposed project to each element of the characteristics of a hazardous substance training program.

(2) Comprehensiveness and soundness of the training plan developed to carry out the proposed activities. This is based on a documented need for the training and evidence to support the approach used to provide the required training. It includes descriptions of the scope and magnitude of the hazardous substance problem in the region served by the ERC and current activities and training efforts.

(3) Education and experience of the Project Director, faculty, and staff assigned to this project with respect to handling, managing or evaluating hazardous substance sites and to the training of professionals in this field.

(4) Creativity and innovation of the project leadership with respect to marketing the courses, structure in attracting trainees and/or providing incentives for training.

(5) Extent to which the applicant considered the work of relevant agencies involved in hazardous substance activities, including EPA, and cooperated with these agencies in developing and implementing this training program.

(6) Suitability of facilities and equipment available for this project.

(7) Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds.

b. Agricultural Safety and Health Education Programs in Education and Research Centers:

(1) Evidence of a needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination and special industrial or community training needs that may be peculiar to the region.

(2) Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

(3) The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve characteristics of an ERC.

(4) The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

(5) Previous record of academic training in agricultural safety and health including the number of full-time and part-time students and graduates, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous record of continuing education training in agricultural safety and health and record of outreach activity and assistance to agricultural groups within the ERC region.

(6) Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

(7) The competence, experience and training of the Program Director and other professional staff in relation to the type and scope of training and education involved.

(8) Institutional commitment to Center goals.

(9) Academic and physical environment in which the training will be conducted, including access to appropriate occupational agricultural settings.

(10) Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds. This includes the budget for the academic program and the continuing education and outreach program.

(11) Evidence of a plan describing the agricultural safety and health training the Center proposes. This should include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

(12) Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

c. Hazardous Substance Academic Training Program in Education and Research Centers:

(1) Evidence of a needs assessment directed to the overall contribution of the proposed training program toward meeting the needs of the job market, especially within the applicant's region. The needs assessment should consider the regional requirements for hazardous substance training, information dissemination and special industrial, labor or community training needs that may be peculiar to the region.

(2) Evidence of a plan to satisfy regional needs for training in the areas outlined by the application, including Program projected enrollment and recruitment and current workforce populations.

(3) The extent to which the HSAT curriculum content and design includes: Formalized training objectives; minimal course content to achieve a degree or successful completion of the specialty area requirements; course descriptions; course sequence; additional related courses open to occupational safety and health students; time devoted to lecture, laboratory, and field experience; and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

(4) Previous record of academic and/or short course training delivered in the hazardous substances field, including the number and type of students trained. Previous record of hazardous substances outreach activity and assistance to hazardous substance groups within the ERC's region.

(5) Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, student evaluations from academic and continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

(6) The competence, experience and training of the Program Director and other professional staff in relation to the type and scope of training and education involved.

(7) Institutional commitment to HSAT Program goals.

(8) Academic and physical environment in which the training will be conducted.

(9) Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds. This includes the budget required to support the training courses developed, as well as accounting for the academic staff's time.

(10) Evidence of a plan describing the hazardous substances academic training the Center proposes. This should include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

(11) Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

(12) Extent to which the applicant has collaborated with state and federal agencies having hazardous substance management functions, including the U.S. Environmental Protection Agency, and has cooperated with the agencies in developing and implementing this program.

d. ERC Pilot Project Research Training Programs:

(1) Relevance of the proposed program, including objectives that are specific and consistent.

(2) Adequacy of the plan proposed to conduct the pilot projects program, including procedures for reviewing and funding projects, the scientific review mechanism, program quality assurance.

(3) *Human Subjects*—Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (*See* Attachment 1 in the application kit, AR–1, Human Subject Requirements.)

(4) Extent to which the applicant demonstrates collaboration with other research training institutions in the region, including NIOSH Training Project Grantees.

(5) Education and experience of the proposed Research Training Program Director and faculty in the occupational safety and health field, including the utilization of pilot projects as a research training mechanism.

(6) Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds.

(7) Adequacy of the plan to evaluate the effectiveness of the proposed pilot projects program.

(8) *Gender and minority issues*—Are plans to include women, ethnic, and racial groups adequately developed (as appropriate for the scientific goals of the pilot projects)? (*See* Attachment 1 in the application kit, AR–2, Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.)

4. TPG evaluation criteria are as follows:

a. Need for training in the program area outlined by the application. This should include documentation of a plan for student recruitment, projected enrollment, job opportunities, regional need both in quality and quantity, and for programs addressing the under-representation of minorities in the profession of occupational safety and health.

b. Potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

c. The establishment of new and innovative programs and approaches to training and education relevant to the occupational safety and health field and based on documentation that the program meets specific regional workforce needs. In reviewing such proposed programs, consideration should be given to the developing nature of the program and its capability to produce graduates who will meet such workforce needs.

d. Curriculum content and design which should include formalized program objectives, minimal course content to achieve degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches. There should also be evidence of integration of research experience into the curriculum, and field and clinical experiences.

e. Previous records of training in this or related areas, including placement of graduates.

f. Methods proposed to evaluate effectiveness of the training.

g. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant? An example of institutional commitment to the long-term stability of TPG programs is the commitment of tenured or tenure-track faculty positions to each academic program.

h. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

i. Competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved. The program director must be a full-time faculty member.

j. *Admission Requirements:* Student selection standards and procedures, student performance standards and student counseling services.

k. *Advisory Committee:* Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need. The Committee should meet at least annually to provide advice and periodic evaluation of TPG activities.

l. Evidence of a strategy to evaluate the impact that the program has had on the region. Examples could include a workforce needs survey and action plan, consultation and research programs provided to address regional occupational safety and health problems, a program graduate data base to track the employment history and contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

m. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

n. Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds.

5. ERC and TPG applications for Occupational Injury Prevention Research Training Programs evaluation criteria are as follows:

a. Evidence of a plan to satisfy the need for training in the area outlined by the application, including projected enrollment, recruitment and job opportunities. Indicators of need may include measures utilized by the Program such as previous record of training and placement of graduates. Indicate the potential contribution of the project toward meeting the need for this specialized training.

b. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the program requirements.

c. Evidence of a plan describing in detail the research training the program proposes. This should include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

d. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to students, time devoted to lecture, and clinical and research experience addressing the relationship with didactic programs in the educational process.

e. The extent to which the program effort is capable of supporting the number and type of students proposed.

f. Extent to which the program has initiated collaborative relationships with external agencies and institutions to expand and strengthen its research capabilities by providing student and faculty research opportunities.

g. Evidence of previous record of training in occupational injury prevention, including placement of graduates and employment history.

h. The extent to which the applicant documents methods in use or proposed methods for evaluating the effectiveness of the training, including the use of feedback mechanisms from graduates and employers, placement of graduates in research positions, research accomplishments of graduates and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

i. Competence, experience and training of the Program Director, faculty

and advisors in relation to the type and scope of research training involved.

j. Degree of institutional commitment to Program goals. An example of institutional commitment to the long-term stability of academic programs is the commitment of tenured or tenure-track faculty positions to each participating academic program.

k. Adequacy of the academic and physical environment in which the training will be conducted, including access to appropriate occupational injury prevention research resources.

l. The extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds.

m. Evidence of a plan for establishment of an Advisory Committee, including meeting times, roles and responsibilities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports (may be incorporated as component of non-competing continuation applications);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and progress reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in Section J, ''Where to Obtain Additional Information''.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1*	Human Subjects Requirements.
AR–2*	Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
AR–3*	Animal Subjects Requirements.
AR–10	Smoke-Free Workplace Requirements.
AR–11	Healthy People 2010.
AR–12	Lobbying Restrictions.

*Applies to ERC Pilot Project Research Training Program applications only.

Data collection initiated under this training grant program has been approved by the Office of Management and Budget under Number 0920–0261. ''NIOSH Training Grants, 42 CFR part 86, Application and Regulations,'' Expiration Date January 31, 2004.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 670(a) of the Occupational Safety and Health Act [29 U.S.C. 670 (a)]. The Catalog of Federal Domestic Assistance number is 93.263.

J. Where to Obtain Additional Information

This and other CDC announcements are available through the CDC homepage at the following Internet address: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.*

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest. Please refer to Program Announcement 03001 and specify ERC or TPG when you request information.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Joseph A. Gilchrist, Procurement and Grants Office, Program Announcement 03001, Centers for Disease Control and Prevention (CDC), 626 Cochrans Mill Rd., Mailstop P05, Pittsburgh, PA 15236. Telephone: (412) 386–6428. E-mail address: *jpgo@cdc.gov.*

For program technical assistance, contact:

John T. Talty, Principal Engineer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop C–7, Cincinnati, OH 45226–1998. Telephone (513) 533–8241. E-mail address: *jtt2@cdc.gov.*

Kathleen M. Rest,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–7991 Filed 4–2–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02041]

Traumatic Injury Biomechanics Research; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds to fund grants for Injury Prevention and Control Research in the priority areas of Injury and Violence Prevention which was published in the **Federal Register** on February 28, 2002, (Volume 67, No. 40, pages 9289–9292). The notice is amended as follows:

On page 9289, second column, under Section A. Purpose, first paragraph (number 1.), line 4 should be changed from ''* * *Programmatic Interests.'' to ''* * *Program Requirements.''

On page 9289, second column, under Section B. Eligible Applicants, first paragraph, line 3, insert after ''organizations'' '', including public and nonprofit faith-based organizations,* * *''

On page 9289, third column, under Section B. Eligible Applicants, third paragraph (number 5.), line 5, should be changed from ''* * * Programmatic Interests.'' to ''* * * Program Requirements.''

On page 9289, third column, under Section C. Availability of Funds, first paragraph, line 7 should be changed from ''* * * Programmatic Interests.'' to ''* * * Program Requirements.''

On page 9290, third column, under Section F. Submission and Deadline, third paragraph, line 1, should be changed to read ''On or before May 6, 2002 * * *''

Dated: March 29, 2002.

Michael J. Detmer,

Branch Chief, Acquisition and Assistance Branch A, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–8020 Filed 4–2–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02040]

Violence-Related Injury Prevention Research; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds to fund grants for Injury Prevention and Control Research in the priority areas of Violence and Abuse Prevention which was published in the **Federal Register** on February 28, 2002, (Volume 67, No. 40, pages 9292–9296). The notice is amended as follows:

On page 9293, first column, under Section B. Eligible Applicants, first paragraph, line 3, insert the following after ''organizations'' '', including public and nonprofit faith-based organizations, * * *''

On page 9293, third column, under Section C. Availability of Funds, the sub-heading, ''Funding Preferences'', line 1 and following paragraph, line 2 through line 14 that reads ''Priority will be given * * * violence in these groups.'' should be deleted.

On page 9294, second column, under Section F. Submission and Deadline, third paragraph, line 1 should be changed to read ''On or before May 6, 2002 * * *''

On page 9296, second column, under section J. Where to Obtain Additional Information, first paragraph, lines 12 and 13 should be changed to read ''Internet address *vbk5@cdc.gov.''*

Dated: March 28, 2002.

Michael J. Detmer,

Branch Chief, Acquisition and Assistance Branch A, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–8019 Filed 4–2–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–43]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; Title of Information Collection: Conditions of Participation for Portable X-ray suppliers and Supporting Regulations in 42 CFR Sections 486.104, 486.106, and 406.110; *Form No.:* CMS–R–43 (OMB# 0938–0338); *Use:* This information is needed to determine if portable X-ray; *Frequency:* Recordkeeping (Disclosure); *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 645; *Total Annual Responses:* 645; *Total Annual Hours:* 1,612.5.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 21, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–7985 Filed 4–2–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Docket Identifier: CMS–10001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Service.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: HIPAA Nondiscrimination Provisions;

Form No.; CMS–10001 (OMB# 0938–0827);

Use: Self-funded nongovernmental plans are required to give individuals who were previously discriminated against an opportunity to enroll, including notice of an opportunity to enroll;

Frequency: Once;

Affected Public: Business or other for-profit, not-for-profit institutions, Individuals or households, State, local, or tribal government; *Number of Respondents:* 18;

Total Annual Responses: 18;

Total Annual Hours: 194.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Julie Brown, CMS–10001 Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 14, 2002.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–7986 Filed 4–2–02; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Medicare and Medicaid Services

[Document Identifier: CMS–R–296]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of currently approved collection;

Title of Information Collection: Home Health Advance Beneficiary Notice of Liability and Supporting Regulations in 42 CFR 484.10(a);

Form No.: HCFA–R–296 (OMB# 0938–0781);

Use: Home health agencies must provide proper written notice to Medicare beneficiaries in advance of furnishing home health care that they believe that Medicare will not pay for before reducing, terminating, or denying services to a Medicare beneficiary;

Frequency: On occasion;

Affected Public: Not-for-profit institutions, business or other for-profit;

Number of Respondents: Federal Register 7,857;

Total Annual Responses: 145,966;

Total Annual Hours: 14,597.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 21, 2002.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–7984 Filed 4–2–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–P–0015SPA]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. Due to the events of September 11, 2001, the timing of this proposed information collection has been negatively affected. We are requesting Emergency OMB review for this supplement since this is a beneficial survey and it can do no harm if OMB acted upon this sooner than the normal timeframe. The 60-day **Federal Register** notice was published on January 8, 2002, for which we solicited public comment. CMS is requesting OMB review and approval of this collection by April 25, 2002, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by April 22, 2002.

Type of Information Collection Request: New collection; *Title of Information Collection:* Medicare Current Beneficiary Survey—Supplement on Patient Activation;

Form No.: CMS–P–0015SPA (OMB# 0938–NEW); *Use:* A primary theme of the NMEP education efforts has been to help Medicare beneficiaries make choices. Simply providing uniform information to an undifferentiated audience is not sufficient. CMS needs to know whether beneficiaries have the communication skills, motivation and basic knowledge of their own health status to be partners in their own health care. The purpose of this survey supplement is to assess the degree to which Medicare beneficiaries participate actively in their own health care decisions.; *Frequency:* One-time; *Affected Public:* Individuals or Households; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 2,666.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be

mailed and/or faxed to the designees referenced below, by April 22, 2002:

Centers for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–0262, Attn: Dawn Willinghan, CMS–P–0015SPA.

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Eydt, CMS Desk Officer.

Dated: March 12, 2002.

John P. Burke III,

CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–7987 Filed 4–2–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Web-based Semi Annual Report (SAR): NEW

The Health Resources and Services Administration (HRSA), Bureau of Primary Health Care (BPHC) plans to collect the annual reporting requirements for the primary care grantees funded by BPHC using a web-based Semi Annual Report (SAR). The SAR includes reporting requirements for grantees of the following primary care programs: State Primary Care Associations and State Primary Care Offices. Authorizing legislation is found in Public Law 104–299, Health Center Consolidation Act of 1996, enacting Section 330 of the Public Health Service Act.

BPHC collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policymakers on program accomplishments. To meet these objectives, BPHC requires a core set of information collected semi-annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The SAR, completed by all grantees, provides data on services, characteristics of populations, leveraged funds, and services that fall within the scope of the grant.

The estimated burden is a follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
SAR	106	2	18	3816

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 28, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–8085 Filed 4–2–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 3, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

Applicant: David Eugene Arledge, Dallas, TX, PRT–053861

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Robert E. Miller, Baltimore, MD, PRT–053942

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Thomas E. Murphy, MD, Wilmette, IL, PRT–053978

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa,

for the purpose of enhancement of the survival of the species.

Applicant: Field Museum of Natural History, Chicago, IL, PRT–053039

The applicant requests a permit to import ninety-five specimens of mouse lemurs (*Microcebus spp.*) and fifty-seven fat-tailed lemurs (*Cheirogaleus spp.*) removed from wild populations in Madagascar for scientific research.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 8, 2002.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–7989 Filed 4–2–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Emergency Exemption Issuance of Endangered Species Recovery Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of emergency exemption issuance.

SUMMARY: The following applicant has been issued a scientific research permit to conduct certain activities with an endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Permits Biologist at 503–231–2063.

SUPPLEMENTARY INFORMATION: The Washington Department of Fish and Wildlife (WDFW) has been authorized via permit number TE–050644, by the U.S. Fish and Wildlife Service's Pacific Region, to increase, the area in which it surveys, captures, and handles individuals from the Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*; pygmy rabbit), and to maintain firebreaks located in their habitat in conjunction with research, a captive propagation program, and to reduce the likelihood of catastrophic fire throughout the species range. We issued this permit for the purpose of enhancing the propagation and survival of the pygmy rabbit. The 30-day public comment period required by the Endangered Species Act (Act) was waived in accordance with section 10(c) of the Act upon a determination that an emergency affecting the health and life of specimens of pygmy rabbit exists, and that no reasonable alternative is available to the applicant.

The pygmy rabbit has undergone dramatic annual declines since 1998, and the entire wild portion of this population now consists of fewer than 50 individuals from just 1 known colony on State land in Douglas County, Washington. As part of a captive breeding program, initiated by the WDFW during the spring of 2001, an additional 14 individuals from this population are being held in captivity, including 5 offspring born at the holding facility. The capture of additional animals from the wild, throughout the species range, will help to ensure genetic diversity of the species by complementing the genetic profiles and potential breeding scenarios of those already in captivity. Any pygmy rabbits that are not considered essential to the captive breeding program will be left in the wild, and ongoing management to protect this portion of the population will continue.

Pygmy rabbits may experience significant mortality due to increased susceptibility to wild fires if fire breaks located within their habitat are not properly maintained. These firebreaks need to be maintained before reproductive behavior is exhibited and especially prior to young of the year being born as early as mid-April.

Delay in the WDFW's planned activities due to the 30-day public comment period could jeopardize the success of the captive breeding program and, ultimately, the long-term security of the pygmy rabbit.

Dated: March 20, 2002.

Rowan W. Gould,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–8021 Filed 4–2–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No.

Aquatic Nuisance Species Task Force Northeast Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces meeting of the Aquatic Nuisance Species (ANS) Task Force Northeast Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Northeastern Regional Panel will meet from 1:00 p.m. to 5:00 p.m. on Tuesday, May 7, 2002, and 8:30 a.m. to 5:00 p.m., Wednesday, May 8, 2002.

ADDRESSES: The Northeast Regional Panel meeting will be held at the Quality Inn and Suites, 1380 Putney Road, Brattleboro, Vermont 05301. Phone 802–254–8701.

FOR FURTHER INFORMATION CONTACT: Susan Snow-Cotter, 617–626–1202 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Northeast Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Northeast Regional Panel was established on July 25, 2001 to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Northeast region of the United States. Geographically, the Northeast region is defined to include the jurisdictions of the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York. The Northeast Regional Panel will discuss several topics at this meeting including: membership of the Panel, updates from the Coastal and Inland subcommittees, updates from the Aquatic Nuisance Species Task Force and Invasive Species Council on national issues, reauthorization of the National Invasive Species Act, updates on the development of State ANS Plans, findings and management recommendations from the ANS Vector Study, and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: March 27, 2002.

Cathleen I. Short,

Co-chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 02–8068 Filed 4–2–02; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–009]

Sunshine Act Meeting; Emergency Postponement of Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

Place: Room 101, 500 E Street SW, Washington, DC 20436. Telephone: (202) 205–2000.

ACTION: Postponement of meeting.

Original Date/Time: April 1, 2002 at 2:00 p.m.

New Date/Time: April 2, 2002 at 9:30 a.m.

Status: Open to the public.

The Commission has determined to postpone the meeting in Inv. No. 731–TA–925 (Final) (Greenhouse Tomatoes from Canada) from April 1, 2002 at 2:00 p.m. to April 2, 2002 at 9:30 a.m.

Earlier announcement of this notice was not possible.

By order of the Commission.

Issued: March 29, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–8135 Filed 4–1–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1400]

Proposed Program Plan for the Missing and Exploited Children's Program for Fiscal Year 2002

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of proposed program plan for Missing and Exploited Children's Program for fiscal year 2002.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this notice of its Proposed Program Plan for the Missing and Exploited Children's Program for fiscal year (FY) 2002, and soliciting public comments on the overall plan and priorities. After analyzing the public comments, OJJDP will issue the Final Program Plan for the FY 2002 Missing and Exploited Children's Program.

DATES: Comments must be received on or before June 3, 2002.

ADDRESSES: Comments should be mailed to Terrence S. Donahue, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531. In the lower left hand corner of the envelope clearly write, ''Proposed Program Plan for the Missing and Exploited Children's Program Comments.''

FOR FURTHER INFORMATION CONTACT: Ronald C. Laney, Director, Child Protection Division, 202–616–3637. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Missing and Exploited Children's Program is administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of Section 406(a)(2) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, 42 U.S.C. 5776, the Acting Administrator of OJJDP is publishing for public comment a Proposed Program Plan for activities authorized by Title IV of the JJDP Act, the Missing Children's Assistance Act, 42 U.S.C. 5771 *et seq.*, that OJJDP proposes to initiate or continue in FY 2002. Taking into consideration comments received on this Proposed Program Plan, the Acting Administrator will develop and publish a Final Program Plan describing the program activities OJJDP intends to fund during FY 2002 using Title IV funds.

Except for programs earmarked by Congress, notices of solicitations for competitive grant applications described in the Final Program Plan will be published in the **Federal Register** at a later date. No proposals, concept papers, or other types of applications should be submitted in response to this proposed plan.

Background

For the purposes of Title IV, the term ''missing children'' refers to children who have been abducted by either a family or nonfamily member, and includes both children who have been abducted within the United States and those who have been abducted from the United States and taken to or illegally retained in a foreign country. The term ''child exploitation'' refers to any criminal activity that focuses on children as sexual objects and includes sexual abuse, child pornography, and prostitution.

Introduction to the Fiscal Year 2002 Proposed Program Plan

In 1984, Congress enacted the Missing Children's Assistance Act, which established the Missing and Exploited Children's Program (MECP) within OJJDP. Under the Act, MECP is responsible for (1) coordinating Federal activities designed to help missing and exploited children; (2) providing a national resource center and clearinghouse; and (3) supporting research, training, technical assistance, and demonstration programs that enhance the Nation's overall response to missing children and their families.

In FY 2001, MECP made significant advances in the course of meeting its responsibilities to provide services to children, parents, educators, prosecutors, law enforcement, and other professionals and persons working on child safety issues. Some of MECP's notable accomplishments are summarized below.

- MECP chairs the Federal Agency Task Force on Missing and Exploited Children as part of its coordination responsibilities. In FY 2001, the task force continued to focus on enhancing and coordinating the U.S. response to international child abduction. The task force developed a parent-to-parent guide that provides important information to families seeking the return of children abducted to or illegally retained in foreign countries, and a publication designed to assist law enforcement officers who investigate international parental abductions. Both publications are expected to be available in the spring of 2002.
- In FY 2001, OJJDP's Internet Crimes Against Children (ICAC) Task Force added 41 new ICAC Investigative Satellites to the 30 regional task forces, and it now provides forensic, investigative, and prevention services in 35 States. Through the ICAC program, more than 140 State and local law enforcement agencies have developed multijurisdictional and multiagency responses to the online victimization of children. Since the program was developed in 1998, task force agencies have issued more than 1,021 search warrants and 1,080 subpoenas, seized more than 900 computers, provided training to prosecutors and law enforcement officers, and reached thousands of children, parents, and educators with information about safe online practices for children and teenagers.
- In FY 2001, the National Center for Missing and Exploited Children's (NCMEC's) CyberTipline reached the 23,000-report mark and played an increasingly important role in ensuring that reports of suspicious online activity made by children, parents, and private citizens were received by the appropriate law enforcement agencies. NCMEC expanded its Protecting Children Online training program by adding a course tailored to the specific

needs of State and local prosecutors, and it provided this training to more than 1,421 law enforcement unit commanders and prosecutors.

• In FY 2001, through a cooperative agreement with Fox Valley Technical College (FVTC), OJJDP provided training and technical assistance to more than 11,725 prosecutors and professionals in law enforcement and social, health, and family services. FVTC integrates current research, state-of-the-art practice and knowledge, and new technologies into courses designed to increase skills and abilities, enhance service coordination and delivery, and improve the investigation and handling of cases involving missing and exploited children. In FY 2001, FVTC also provided specialized technical assistance to State and local practitioners and juvenile justice agencies. This technical assistance addressed Internet crimes against children, information sharing, response planning, child protection legislation, and development of multidisciplinary teams. In FY 2000, FVTC completed the development of a new child fatality investigative course that improves the way child deaths are investigated.

• Finally, John Ashcroft, Attorney General, participated in the annual Missing Children's Day Ceremony to commemorate America's missing children and to recognize the extraordinary efforts made by law enforcement officers who work to reunite children with their families. The Attorney General presented the NCMEC Law Enforcement Officer of the Year Award to Postal Inspector David Dermeyer of the U.S. Postal Inspection Service in Memphis, TN; Postal Inspector Rey Santiago of the U.S. Postal Inspection Service in Tulsa, OK; and Detective Liz Eagan of the Tulsa, OK, Police Department.

Fiscal Year 2002 Programs

In FY 2002, OJJDP proposes to continue its concentration on national programs that promote awareness of and enhance the Nation's response to missing and exploited children and their families. Although no funds are available for new programs in FY 2002, OJJDP is interested in obtaining input from the field on program and service needs to help plan programming for both FY 2002 and the future.

Fiscal Year 2002 Program Listing

National Resource Center and Clearinghouse
Internet Crimes Against Children Regional Task Force Program
Missing and Exploited Children's Training and Technical Assistance Program
National Crime Information Center NISMART 2
Jimmy Ryce Law Enforcement Training Center Program
Missing and Exploited Children Non-Profit Organizations and Family Support Program
National Center on Child Fatality Review
National Child Victimization Conference Support

Continuation Programs

The FY 2002 Title IV continuation programs are summarized below. Available funds, implementation sites, and other descriptive information are subject to change based on the plan review process, grantee performance, application quality, fund availability, and other factors.

National Resource Center and Clearinghouse

In FY 2001, Congress provided funding to continue and expand the programs, services, and activities of NCMEC, a national resource center and clearinghouse dedicated to missing and exploited children and their families. As provided in Title IV, the functions of the Center include, but are not limited to, the following:

• Providing a toll-free hotline (800–843–5678) that citizens can use to report investigative leads and that parents and other interested individuals can use to receive information about missing children.

• Providing technical assistance to parents, law enforcement agencies, and other agencies working on issues involving missing and exploited children.

• Promoting information sharing and providing technical assistance by networking with regional nonprofit organizations, State missing children clearinghouses, and law enforcement agencies.

• Developing publications that contain practical, timely information.

• Providing information regarding programs that offer free or low-cost transportation services to help reunite children with their families.

In FY 2001, NCMEC's toll-free hotline received more than 155,000 calls, ranging from citizens reporting information about missing children to parents and law enforcement officers requesting information and publications. NCMEC also assisted in the recovery of hundreds of children, disseminated millions of photographs of missing children, and sponsored a national training workshop for State missing children clearinghouses and relevant nonprofit organizations. NCMEC also assisted the U.S. Department of State in carrying out its Hague Convention responsibilities by processing incoming applications for children abducted to the United States, and by broadening its efforts to recover American children abducted to foreign countries.

In FY 2001, NCMEC continued to perform functions associated with the national resource center and clearinghouse, and it broadened the Protecting Children Online training program with additional courses for prosecutors. In cooperation with the Federal Bureau of Investigation (FBI), NCMEC released *Child Molesters: A Behavioral Analysis,* a publication designed to help law enforcement officers investigate the sexual exploitation of children by acquaintance molesters.

A 1-year cooperative agreement will be awarded to NCMEC in FY 2002. The award will enable NCMEC to continue the functions of the national resource center and clearinghouse and the operation of the Jimmy Ryce Law Enforcement Training Center, which provides training to improve investigative responses to cases involving missing children. No additional applications will be solicited in FY 2002.

Internet Crimes Against Children Regional Task Force Program

In FY 2001, 41 new awards were given to jurisdictions interested in participating in the ICAC Task Force Program Investigative Satellite Initiative (ISI), which broadens the impact of the ICAC Task Force Program by augmenting the forensic and investigative capacities of smaller State and local law enforcement agencies. Under ISI, agencies lacking the resources to establish full-time regional task forces may still acquire OJJDP funds to train and equip local officers to respond to child pornography and cyber-enticement cases.

Other FY 2001 ICAC Task Force Program activities included partnering with SEARCH Group, Inc., of Sacramento, CA, to deliver a hands-on investigative course and a national 3-day training workshop that focused on emerging technology and its relevance to criminal activities and ICAC investigative efforts.

In FY 2002, OJJDP will continue to fund the 30 regional ICAC Task Forces and will solicit applications for new regional sites in FY 2002.

Missing and Exploited Children's Training and Technical Assistance Program

In FY 1998, FVTC was awarded a cooperative agreement to provide training and technical assistance to law enforcement officers, prosecutors, and health and family services professionals. The Missing and Exploited Children's Training and Technical Assistance Program is designed to ensure that professionals working on issues involving missing and exploited children receive up-to-date, practical training and technical assistance. Training focuses on investigative techniques, interview strategies, comprehensive response planning, media relations, lead and case management, and other topics related to missing and exploited children cases.

The Missing and Exploited Children's Training and Technical Assistance Program offers five courses: Responding to Missing and Abducted Children, Child Sexual Exploitation Investigations, Child Abuse and Exploitation Investigative Techniques, Child Fatality Investigations, and Child Abuse and Exploitation Team Investigation Process. In addition to offering these courses, FVTC provides technical assistance and support to the Federal Agency Task Force on Missing and Exploited Children and its related subcommittees; develops documents and publications related to missing and exploited children; convenes special focus groups or meetings to facilitate communication and problem solving among youth service workers and professionals at the Federal, State, and local levels; and performs special projects, as directed by OJJDP. These special projects include designing protocols for handling and responding to cases involving missing and exploited children, establishing a response planning system, and conducting a case review of child protection legislation. No additional applications will be solicited in FY 2002.

National Crime Information Center

The ability to verify National Crime Information Center (NCIC) entries, communicate with law enforcement through the Interstate Law Enforcement Telecommunication System, and be notified of life-threatening cases through the NCIC flagging system, is crucial to NCMEC's mission. OJJDP proposes to continue to transfer funds to the Department of Justice's Justice Management Division through a reimbursable agreement to continue NCMEC's online access to the FBI's Wanted and Missing Persons files through NCIC. No additional applications will be solicited in FY 2002.

NISMART 2

Under the Missing Children's Assistance Act, Title IV, OJJDP is required to conduct periodic studies to assess the scope of the missing children problem in the United States. The original National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMART 1) was conducted in 1988, with results published in 1990. In FY 1995, OJJDP funded NISMART 2, the second national study to measure the incidence of each category of missing children. Temple University received funding in FY 1995 to conduct the study, which builds on the strengths and addresses some of the weaknesses of NISMART 1. Temple University has contracted with the University of New Hampshire Survey Research Laboratory and Westat, Inc., to implement specific components of the study and provide extensive background knowledge about the particulars of NISMART 1. Specifically, NISMART 2 will do the following:

- Revise and enhance NISMART 1 definitions.
- Survey approximately 23,000 households by telephone to determine how many children are missing on an annual basis.
- Survey law enforcement agencies to determine the annual frequency of child abductions.
- Survey approximately 10,000 youth by telephone to understand what happens during missing children episodes.
- Interview directors of residential facilities and institutions to determine how many residents run away.
- Analyze data on thrownaway children from a related survey of community professionals.

The findings from these surveys will provide updated annual estimates on the number of missing children in the United States. Preliminary findings will be available in the summer of 2002, and a final report will be completed by the end of FY 2002. An OJJDP Bulletin that documents the scope of the research, definition revisions, and methodology changes was published in FY 2000.

OJJDP support for NISMART 2 will continue in FY 2002. No additional applications will be solicited in FY 2002.

Jimmy Ryce Law Enforcement Training Center Program

In FY 1997, OJJDP, in partnership with NCMEC, the FBI, and FVTC, developed and implemented the Jimmy Ryce Law Enforcement Training Center (JRLETC) program. JRLETC offers two law enforcement training tracks designed to improve the national investigative response to cases involving missing children.

JRLETC's Chief Executive Officer (CEO) seminars examine cases involving missing children from a management perspective and offer information about coordination and communication issues, resource assessment, legal concerns, and policy development for police chiefs and sheriffs. The Responding to Missing and Abducted Children (REMAC) course offers modules that focus on comprehensive investigative techniques for cases involving missing children. In FY 2001, 1,864 police chiefs and sheriffs participated in the CEO training and 319 law enforcement officers participated in REMAC.

Congress appropriated $2.3 million in FY 2001 to continue the operation of JRLETC. To respond to the numerous requests for additional assistance from JRLETC graduates, OJJDP, NCMEC, the FBI, and FVTC will continue to provide training and technical assistance through both JRLETC and the onsite technical assistance program.

Under the JRLETC appropriation, OJJDP awarded $300,000 to FVTC to support regional REMAC courses; the remaining $2 million supported NCMEC's CEO seminars and onsite technical assistance program. No additional applications will be solicited in FY 2002.

Missing and Exploited Children Non-Profit Organizations and Family Support Program

The goal of the Missing and Exploited Children Non-Profit Organizations (NPOs) and Family Support Program is to establish a national nonprofit association to (1) provide oversight to a minimum of 25 missing and exploited children NPOs, and (2) develop a mentoring program that provides one-on-one support to parents of missing children. In FY 2001, MECP solicited applications through a competitive process, four applications were received, and the Association of Missing and Exploited Children's Organizations (AMECO) was selected to receive the award. AMECO will provide ongoing oversight, support, and assistance to missing and exploited children NPOs to improve the quality of services for missing and exploited children and their families and to provide ongoing support and parent-to-parent/one-on-one assistance to families of children who have been exploited, abducted, or who are otherwise missing. No

additional applications will be solicited in FY 2002.

National Center on Child Fatality Review

In FY 1997, OJJDP awarded a noncompetitive award to the National Center on Child Fatality Review (NCCFR) in Los Angeles, CA. NCCFR received the award to develop State and local uniform reporting definitions and generic protocols for child fatality review teams that could be considered by communities working to enhance their investigations of child deaths.

NCCFR developed a model for integrating data among the Criminal Justice, Vital Statistics, and Social Services Child Abuse Indices. NCCFR also selected a National Advisory Board composed of representatives from across the country and from relevant disciplines.

In FY 2002, OJJDP will continue to support NCCFR if funds are available. No additional applications will be solicited in FY 2002.

National Child Victimization Conference Support

If funds are available, OJJDP proposes to provide funding in FY 2002 for national conferences that focus on child abduction, exploitation, and victimization issues. This funding support would include conferences sponsored by the National Children's Advocacy Center, the Dallas Police Department and Children's Advocacy Center, the American Professional Society on the Abuse of Children, the Center for Child Protection, and the San Diego Conference on Responding to Child Maltreatment. No additional applications will be solicited in FY 2002.

Dated: March 29, 2002.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–8054 Filed 4–2–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

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 Employment and Training Administration is soliciting comments concerning the proposed extension of approval of Form ETA 581, Contribution Operations. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments be submitted to the office listed in the addressee section below on or before June 3, 2002.

ADDRESSES: Constance I. Peterkin, Room S–4522, 200 Constitution Avenue, NW., Washington, DC 20210; telephone number: 202–693–3221 (this is not a toll-free number); Internet address: *cpeterkin@doleta.gov;* facsimile number: 202–693–3229.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workforce Security (OWS) of the Employment and Training Administration (ETA) has three programs which evaluate the separate functions within the Unemployment Insurance (UI) program. The Benefit Accuracy Measurement (BAM) program assesses the accuracy of paying UI benefits. The Benefit Timeliness and Quality (BTQ) program assesses the quality and timeliness of UI benefit functions; while the Tax Performance System (TPS) evaluates the employer-related or tax functions of the UI program. The Contribution Operations report (Form ETA 581) is a comprehensive report of each State's UI tax operations and is essential in providing quarterly tax performance data to DOL/ETA/OWS, the source of grants funding authority. ETA 581 data are the basis for determining the adequacy of funding of States' UI tax operations and measuring the effectiveness of such operations. These are required Federal functions under the Federal-State UI program.

Using ETA 581 data, the TPS program measures performance, accuracy, and promptness in employer registration (status determination, report delinquency, collections (accounts receivable), and the audit function.

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

It is important that approval of the ETA 581 report be extended because this report is the only vehicle for collection of information required under the TPS program. If ETA 581 data were not collected, there would be no basis for determining the adequacy of funding for States' UI tax operations, making projections and forecasts in the budgetary process, nor measuring program performance and effectiveness. The ETA 581 accounts receivable data are necessary in the preparation of complete and accurate financial statements for the Unemployment Trust Fund (UTF) and the maintenance of a modified accrual system for UTF accounting.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Contribution Operations.

OMB Number: 1205–0178.

Agency Number: ETA 581.

Affected Public: State Government.

Cite/Reference/Form/etc: ETA 581.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 8.5 hours.

Estimated Total Burden Hours: 1,802.

Total Burden Cost (operating/maintaining): $–0–.

Comments submitted in response to this comment request 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: March 27, 2002.

Grace A. Kilbane,

Director, Office of Workforce Security.

[FR Doc. 02–8061 Filed 4–2–02; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COUNCIL ON DISABILITY

Reauthorization of the Individuals With Disabilities Education Act

AGENCY: National Council on Disability.

ACTION: Request for written comments.

SUMMARY: The Individuals with Disabilities Education Act (IDEA) is scheduled to be reauthorized by Congress in 2002. The IDEA statute is made up of four parts, including the Part A General Provisions section, the Part B Grants to States Program (including preschool grants), the Part C Infants and Toddlers program, and the Part D Support Programs. Part B is permanently authorized. Congress must periodically review and reauthorize Parts C and D of IDEA (usually every 5 years) in order to ensure continuation of the activities included under these parts.

The National Council on Disability (NCD) is seeking input from IDEA stakeholders on the reauthorization IDEA by responding to questions in NCD's new working paper on IDEA reauthorization *(http://www.ncd.gov/newsroom/reauthorizations/idea/idea.html).* Specifically, NCD wants feedback on questions related to monitoring and enforcement, full funding, discipline, and, eligibility and over-representation of students from culturally diverse backgrounds.

DATES: NCD would like to receive your written comments on IDEA reauthorization by June 1, 2002.

ADDRESSES: Please send your responses to Martin Gould, Senior Research Specialist, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004, or 202–272–2022 (fax), or *mgould@ncd.gov* (e-mail).

People with disabilities may obtain a copy of this notice in an alternative format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed in the previous paragraph.

FOR FURTHER INFORMATION CONTACT: Martin Gould, Senior Research Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax) *mgould@ncd.gov* (E-mail).

Agency Mission: NCD is an independent Federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

SUPPLEMENTARY INFORMATION:

IDEA Reauthorization—An NCD Working Paper

Background

The National Council on Disability (NCD) is an independent Federal agency making recommendations to the President and Congress on issues affecting 54 million Americans with disabilities. NCD is composed of 15 members appointed by the President and confirmed by the U.S. Senate. NCD's overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society. NCD makes recommendations to the President, Congress and Federal agency officials concerning ways to better promote equal opportunity for all individuals with disabilities. In addition to our statutory mandates, NCD's mission is to provide a voice in the Federal government and to Congress for all people with disabilities in the development of policies and delivery of programs that affect their lives. This was the direction that we received from over 300 disability advocates that convened in Texas in 1996 for a disability policy summit; NCD was charged by these people to investigate their concern regarding the shortcomings in the Federal enforcement of disability civil rights laws. One of those civil rights laws involves public special education.

In 1975, when Congress enacted the Education for All Handicapped Children Act, P.L. 94–142—now known as the Individuals with Disabilities Education Act IDEA—it found that the special education needs of more than eight million students with disabilities were not being met. Some students were entirely excluded from school; others were not receiving an appropriate education; still others had unidentified disabilities or were misclassified. Of those who did receive educational services, many were educated far away from their local schools (20 U.S.C. Sec. 1400(b)(1)–(6)). Still, Congress recognized that educators had the ability to instruct these students (20 U.S.C. Sec. 1400(b)(7)).

In that vein, Congress crafted a statute in 1975 that, if faithfully implemented, is designed to consistently produce quality outcomes for students with disabilities. The United States Code defines special education as ''specially designed instruction'' to meet the ''unique needs'' of these students; each student's individualized education program (IEP) is to set forth his or her unique needs and individually designed instruction; and, each student's placement is to be based on the IEP and no more restrictive than necessary (20 U.S.C. 1402(25); 34 CFR 3000.552(a)(2)(b)). If IEPs are based on the unique needs of students, if instruction is individually designed, if IEPs are faithfully implemented, and if the LRE requirements are followed, students will achieve quality outcomes while enjoying maximum interactions with their nondisabled peers. Compliance with, and enforcement of, these IDEA requirements is a sufficient condition for quality outcomes.

In fact, in the more than two decades since its enactment, IDEA implementation has produced important improvements in the quality and effectiveness of the public education received by millions of American children with disabilities. Today almost 6 million children and young people with disabilities ages 3 through 21 qualify for educational interventions under Part B of IDEA. Some of these students with disabilities are being educated in their neighborhood schools in regular classrooms. These children have a right to have support services and devices such as assistive listening systems, braille text books, paraprofessional supports, curricular modifications, talking computers, and speech synthesizers made available to them as needed to facilitate their learning side-by-side with their nondisabled peers. Post-secondary and employment opportunities are opening up for increasing numbers of young adults with disabilities as they leave high school. Post-school employment rates for youth served under Part B are twice that of older adults with disabilities who did not benefit from

IDEA in school, and self-reports indicate that the percentage of college freshmen with a disability has almost tripled since 1978.

During the course of five studies on the IDEA, from 1989 to 2000, NCD consistently learned that parents of children with disabilities are enthusiastic supporters of the law. They think it's a good law.

As part of its advisory work during the 2002 calendar year, NCD is interested in securing input from people in preparation for the reauthorization of the Individuals with Disabilities Education Act. NCD is using a variety of mechanisms to secure this input: (a) through testimony at quarterly Board meetings; (b) via the Internet and NCD's Web site (*http://www.ncd.gov*); and (c) as a result of teleconferences, to name just a few ways.

This working paper is designed to frame some of the major policy issues that are likely to be addressed during IDEA Reauthorization activities this year. It is intended to be used to outline these issues, and provide a set of questions which NCD is most interested in receiving responses to at this point in time.

Introduction

IDEA is the most far-reaching aspect of the Federal involvement in public education. Rich or poor, urban, suburban, or rural, all schools and districts are affected by special education. IDEA is scheduled to be reauthorized by the US Congress in 2002. The IDEA statute is made up of four parts, including the Part A General Provisions section, the Part B Grants to States Program (including preschool grants), the Part C Infants and Toddlers program, and the Part D Support Programs. Part B is permanently authorized. Congress must periodically review and reauthorize Parts C and D of IDEA (usually every 5 years) in order to ensure continuation of the activities included under these parts.

Nevertheless, judging from the level and intensity of IDEA-related activity in the 107th Congress during the debates on H.R. 1, the No Child Left Behind Act (reauthorization of the Elementary and Secondary Education Act), it is clear that two IDEA amendments (i.e., full funding and discipline of students with disabilities) which occupied a great deal of attention during ESEA debates, but ultimately failed to make it out of a Congressional joint conference, will make their way into the 2002 IDEA reauthorization schedule.

Some of the key policy issues and provisions of the law that are likely to be taken up during IDEA reauthorization during 2002 include: monitoring and enforcement; full funding; discipline; and, eligibility and over-representation of students from culturally diverse backgrounds. The following pages provide an outline to the selected issues.

Monitoring and Enforcement

In January 2000, NCD released its evaluation of nearly two and a half decades of Federal enforcement of IDEA. Entitled Back to School on Civil Rights this report analyzed the data contained in the Department of Education's state monitoring reports from 1975 to 1998 to determine what has been happening over time. The study measured adherence to, or compliance with, IDEA requirements in the areas of free appropriate public education (FAPE), least restrictive environment (LRE), individualized education plans (IEP), transition services, general supervision, procedural safeguards and protection in evaluation of students with disabilities. The findings of that study indicate that every state and the District of Columbia were found to be out of compliance with IDEA requirements to some degree. This study confirmed what children with disabilities have repeatedly told NCD, namely, that too many students: did not receive FAPE, were not educated in the LRE, had not been able to access critical transition services, did not receive the benefits of procedural safeguards and protections in evaluation in some states over many years, placing enormous burdens on children and families.

NCD's findings of 25 years worth of chronic noncompliance translate into real and significant problems for eligible children and their families, including: lack of IEPs for students; non-provision of critical services and supports, such as psychological counseling for students with mental health needs; an absence of procedural safeguards for parents; a lack of any transition planning for students aging out of special education services systems; and, a lack of general supervision by SEAs of LEAs. These types of compliance problems cut to the core of what a special education entitlement is supposed to mean.

For example, students with disabilities must be provided with related services such as occupational therapy, speech therapy, physical therapy, and psychological counseling based on their individual needs as reflected in their IEPs. This requirement recognizes that without these related services, some students with disabilities cannot adequately access and learn their curricular materials.

On pages 93 to 94 of Back to School on Civil Rights NCD's January, 2000 education report, data indicates that:

''* * * OSEP found that 34 states (68%) had failed to ensure compliance with the related services requirements, as shown in the following examples:

In Florida,* * * OSEP was informed in interviews with district and building-based administrators, teachers, and related services personnel in Agencies F, G, and H that psychological counseling, as a related service, is not available to students with disabilities, regardless of need. A building-based administrator in Agency E indicated that many students need psychological counseling but it is not available as a related service.* * * OSEP was informed by two related service providers in Agency G that they were instructed not to list individual therapy on their caseload(s). They stated that they will provide the service informally, but it is not reflected on the student's IEP (there are no goals and objectives) * * * A special education teacher in Agency H told OSEP that students may have to go to a center-based or day program if they need more intense counseling services.

In one agency in Minnesota, OSEP found that psychological counseling was not considered for inclusion in any student's IEP.

An administrator from an agency in Arizona confirmed ''that related services (speech therapy, occupational therapy, and physical therapy) are not based on the individual student's needs but are based upon the availability of the service provider.

Administrators and teachers from two agencies in Oklahoma stated that psychological counseling services are not provided based on an IEP, even if a child needs such services to benefit from special education.

In one district in California, an administrator told OSEP that there were 42 students whose IEPs called for speech services, but who were not receiving the services; in another district, an administrator reported that students whose IEP teams believed they needed mental health services to benefit from special education were referred to outside agencies for the services, rather than receiving the services free of charge through their IEPs.''

These are only very recent examples of what has been a long-standing problem (i.e., the lack or absence of provision of related services and supports) in the successful implementation of IDEA for some of the nation's most vulnerable students with disabilities. When a student does not have an IEP or receive the support

services he or she is deemed eligible for, he or she cannot achieve educational outcomes Those children are destined to be left behind.

NCD needs to hear from stakeholders in response to the following questions:

1. To what extent do existing Federal monitoring and enforcement activities support efforts to provide effective special education and related services to improve results for children and youth with disabilities?

2. To what extent do existing Federal monitoring and enforcement activities inhibit efforts to provide effective special education and related services to improve results for children and youth with disabilities?

3. What, if anything, should be changed to improve Federal IDEA monitoring and enforcement of SEAs and LEAs? What would that/those changes look like?

4. To what extent does local capacity building need to occur for effective monitoring and enforcement of IDEA to be assured? How is local capacity building designed, implemented, and achieved?

Funding

In 1975, when Congress originally enacted the Federal special education law, it authorized the Federal government to pay 40 percent of each state's ''excess cost'' of educating children with disabilities. That amount—often called ''IDEA full funding''—is computed by taking 40 percent of the national average per pupil expenditure (APPE) multiplied by the number of children with disabilities served under IDEA in each state. Federal funding for Part B has significantly increased over the last several years. Initially, the Federal share was about 7 percent; the Federal share is currently at 15 percent, which is the highest Federal contribution to date.

IDEA authorizes a Part B grants-to-states program (accounting for most IDEA funding), state preschool grants, and state grants for infants and families together with various national programs (*e.g.,* funds for research and improvement). Total funding in FY2001 ($7.4 billion) increased by 40 percent over FY1999 and by nearly 25 percent over FY2000. Virtually all of these increases went for grants to states under Part B of IDEA. An ongoing controversy surrounding IDEA funding concerns whether the Federal government is living up to its ''promise to fully fund'' IDEA.

The Part C Infants and Toddlers Program and the Preschool Program under IDEA are critical components of state's efforts to assist young children with special needs in developing to their potential. The importance of the early years in ensuring that children succeed later in school and life has achieved bipartisan recognition in the U.S. Congress and the Administration (See, for example, Congressional Record on No Child Left Behind Act).

Appropriations for the Part B Preschool Grants (for children with disabilities ages 3 through 5, inclusive) and the Part C Infants and Toddlers Program (ages birth through 2 years of age, inclusive) have received virtually no increase over the past several years and have not kept pace with inflation.

The IDEA Part D Support Programs provide the critical infrastructure necessary to drive improvements in all aspects of special education practice. The support programs provide critical funds for professional development, technical assistance, and dissemination of knowledge about promising practices, to improve results for children with disabilities. Funds for these vital programs have remained stagnant for a number of years.

An estimated $16.9 billion would be required to provide states the maximum allotment allowed per student served, about 2.7 times more than the appropriation of $6.3 billion for FY2001. Others argue that the 40 percent figure is an upward limit of funding and as such is a target or goal for Federal funding meant to assist states and local school districts to meet their obligation to serve students with disabilities, not an obligation or an unfulfilled promise.

NCD needs to learn from the community:

1. What, if any, changes should be considered in Federal special education funding formulas?

2. Is the current distribution of the total Part D appropriation appropriate?

3. Should any new Federal funding be linked to particular student outcomes? If so, what should those outcomes be and how would this work?

4. Should any new funding be linked to state/local school districts' compliance with, and enforcement of, IDEA statutory requirements? If so, how would this work?

5. Should funds be used for prevention strategies to reduce the number of referrals to special education? If so, how might this work?

Eligibility and Over-Representation of Students From Linguistically and Culturally Diverse Backgrounds

In its 1993 report entitled Educating Students with Disabilities: Progress and Prospects NCD addressed the issue of over-representation of students from diverse backgrounds. At that time, NCD noted that some school districts had difficulty delivering appropriate services to their increasingly diverse student populations.

''School enrollment trends suggest that some school districts are having difficulty delivering appropriate services to their increasingly diverse student populations. In some states, the percentage of students enrolled in special education has increased while the general school population has declined. For instance, a 1991 report issued by the Massachusetts Department of Education, A Review of the Eligibility Criteria for Children with Special Needs, noted that 17 percent of students ages 3 to 21 were taught in special education classes during the 1990–1991 school year. The report acknowledged that ''over referrals'' to special education are a direct result of imprecise eligibility definitions, nonexistent or ineffective prereferral processes, and untrained or undertrained school personnel.''

In addition, NCD noted that:

''Disproportionate overrepresentation and underrepresentation of culturally and racially diverse student groups in special education programs may be caused by inaccurate perceptions of students' competencies and behaviors. The results of such a set of circumstances could be devastating to those children and youth who are inappropriately placed. * * * a survey of 51 urban school districts in 25 states reported percentage enrollment patterns for students in the special and general education populations (National School Board Association, 1990) * * * disproportionate special education enrollment patterns exist for certain racial groups. These kinds of enrollment, ability-grouping, and/or academic tracking patterns, and the apparent lack of Americans. Once again, it seems that there may be a relationship between school systems' implementation of least restrictive environment mandates—reflected in Table 3—and the disproportionate placement patterns represented in Figures 6A, 6B, and 7. Such a relationship is also suggested by findings from other Federal education research studies. For example, a 1987 study of high school juniors reported that among special education students 66 percent were Caucasian, 25 percent were African American, and 8 percent were Hispanic American, while comparable figures among non-special education students were 72 percent Caucasian, 15 percent African American, and 8.5 percent Hispanic American.''

In the most recent IDEA reauthorization in 1997, the U.S. Congress called for greater efforts to ensure that children from culturally and linguistically diverse backgrounds are classified accurately and appropriately placed.

Based on its own research for Back to School on Civil Rights (2000), the National Council on Disability reported that:

''In addition to the testimony of parents, special education advocates attest that inappropriate placement in separate settings and a lack of services for children with disabilities served in regular classrooms persist in many areas. Testimony of parents at public hearings, consultation with special education advocates serving rural, Native American, and other minority communities around the country, as well as studies by various government and advocacy organizations indicate that minority students are disproportionately represented in separate educational settings.[fn. 82]

''* * * there is a very big need on our reservation to have monitoring of our school districts. We've made it very clear to them that we have a need, that there are problems in our education system, and our children are not getting IDEA implemented there. And we're told by our district people that 'yes, we agree there is a problem.' Well, where do we go after we get the acknowledgment and there's nothing done about it?''—a Native American parent from Montana[fn 83]

Other studies find that minority children are over-represented in institutions such as detention and correctional facilities where access to appropriate educational services is inadequate to nonexistent. That is especially problematic considering that 40 percent of youth held in detention are estimated to have some form of learning disability.[fn 84]''

In October 2001, the House Committee on Education and the Workforce conducted a hearing on Over identification Issues Within the Individuals with Disabilities Education Act and the Need for Reform. According to the Chair of that Committee ''It has become increasingly evident that the IDEA system allows far too many students to be wrongly or mistakenly classified as in need of special education services. As we will learn shortly, this problem strikes particularly hard at minority students. The issue of over identification has prompted great concern in Congress. It is the issue that led our colleague * * * to request this hearing last spring. Whether the subject is the Elementary and Secondary Education Act or IDEA, improving our nation's education system starts with believing that every single American child can learn. To presume that any student is incapable of achieving academic success simply on the basis of race, ethnicity, or special needs is inconsistent with the principles upon which our nation is built.''

According to U.S. Department of Education Secretary Paige who testified during this October 2001 hearing, ''Our third concern is that when you look at State data, you find that the proportion of minority students identified in some disability categories is dramatically greater than their share of the overall population. More specifically, African-American students are labeled as mentally retarded and emotionally disturbed far out of proportion to their share of the student population. Department of Education national data show that 2.2 percent of all black students, but only 0.8 percent of all white students, are identified as mentally retarded. Similarly, 1.3 percent of all black students, and only 0.7 percent of all whites are identified as emotionally disturbed * * * This problem of disproportional identification of some minority groups in some categories of special education occurs in many other States. For minority students, misclassification or inappropriate placement in special education programs can have significant adverse consequences, particularly when these students are being removed from regular education settings and denied access to the core curriculum. Of particular concern is that, often, the more separate a program is from the general education setting, the more limited the curriculum and the greater the consequences to the student, particularly in terms of access to postsecondary education and employment opportunities. The stigma of being misclassified as mentally retarded or seriously emotionally disturbed, or as having a behavioral disorder, may also have serious consequences in terms of the student's self-perception and the perception of others, including family, peers, teachers, and future employers.'' It is useful to note that the most recent 2001 report of the National Academy of Sciences (NAS) entitled, Minority Students in Special and Gifted Education, echoes these themes and findings.

NCD needs input from the community in response to the following questions:

1. What policies, procedures, and/or practices can be established related to prevention or early intervention that can contribute to the elimination of the problem of over-representation?

2. What strategies and/or policies should school districts create or adopt related to culturally and linguistically sensitive and appropriate family centered services?

3. What strategies and/or policies should state systems of higher education implement to prepare, recruit, and retain qualified professionals from culturally and linguistically diverse groups?

4. What strategies and/or policies should state and local school districts adhere to to ensure that students with disabilities from diverse backgrounds are included and accommodated in new statewide and district-wide assessments of student performance?

5. How can we preserve the protections afforded students and parents under Federal and state special education regulations and correct the problems of unnecessary over-referral of students from diverse cultural and linguistic backgrounds for special education?

6. Are there additional policy or implementation barriers that should be considered in order to eliminate problems related to over-representation?

Discipline

In 1997, Congress made significant changes to IDEA and attempted to strike ''a careful balance between the LEA's [local educational agency] duty to ensure that school environments are safe and conducive to learning for all children, including students with disabilities, and the LEA's continuing obligation to ensure that children with disabilities receive a free appropriate public education.'' This current law does not immunize a student with a disability from disciplinary procedures but these procedures may not be identical to those for children without disabilities.

In brief, if a student with a disability commits an action that would be subject to discipline, school personnel have the following options: (a) Suspending the student for up to 10 days with no educational services provided; (b) conducting a manifestation determination review to determine whether there is a link between the student's disability and the misbehavior. If the student's behavior is not a manifestation of a disability, long term disciplinary action such as expulsion may occur, except that educational services may not cease. If the student's behavior is a manifestation of the student's disability, the school may review the student's placement and, if appropriate, initiate a change in placement; placing the student in an interim alternative education setting for

up to 45 days (which can be renewed) for situations involving weapons or drugs; and (c) asking a hearing officer to order a student be placed in an interim alternative educational setting for up to 45 days (which can be renewed) if it is demonstrated that the student is substantially likely to injure himself or others in his current placement. School officials may also seek a Honig injunction as discussed previously if they are unable to reach agreement with a student's parents and they feel that the new statutory provisions are not sufficient.

On January 25, 2001 the General Accounting Office (GAO) submitted a report entitled Student Discipline: Individuals with Disabilities Education Act to the House and Senate Committees on Appropriations. Following the 1997 Amendments to the Individuals with Disabilities Education Act (IDEA), there was a perception of a double standard for student discipline for students with disabilities. As a result, Congress directed the GAO to conduct a study to determine how the IDEA Amendments of 1997 affect the ability of schools to maintain a safe environment conducive to learning. Some of the results of the GAO study, which primarily involved a survey of principals of 272 middle and high schools from around the country, indicate, for example, that (a) students with disabilities are receiving the same punishments as their general education peers for violent acts they commit in school, contrary to what some lawmakers stated in legislation last year; (b) the same proportion of each group of students who commit violence, about one in six, is expelled from school or placed in an alternative educational setting as a consequence of their actions; (c) 74 percent of responding principals generally regarded their overall special education discipline policy, which is essentially a combination of IDEA and local policies, as having a positive or neutral effect on their schools' levels of safety and orderliness; and (d) the remaining 26 percent of responding principals rated the policies as having a negative effect.

During the 2001 calendar year, two ''discipline'' amendments relating to children with disabilities were offered and accepted during Congressional debates on H.R.1 (107th Congress), the No Child Left Behind Act. Both amendments would have altered the scope of protection and procedural safeguards for certain IDEA eligible students. These two amendments did not survive the joint House-Senate Conference on H.R.1 but are sure to make their way into IDEA Reauthorization debates.

NCD needs to hear from the community:

1. Are the discipline procedures under IDEA clear and understandable?
2. To what extent is the current IDEA discipline policy properly implemented?
3. What are challenges and obstacles to implementing the IDEA discipline policy?
4. To what extent are resources available to school districts, educational personnel, and parents to ensure implementation of the IDEA discipline policy?
5. Should changes be considered to the current IDEA discipline policy?
6. To what extent are state and local school districts not complying with the current IDEA discipline policy? How can this policy be enforced?

Conclusions

One of the nation's best tools in promoting education equity and excellence is a public education system that is focused directly on accountability, achievement, and enforcement. To deal with the existing realities when it comes to Federal education policymaking, during IDEA reauthorization, NCD will use a variety of forums and mechanisms to solicit stakeholders' input to advise the Administration and Congress regarding a range of critical policy issues. These policy issues and suggested policy options for reauthorization go to the heart of education reform for over 6 million students with disabilities and involve: (a) Accountability in Federal education spending, (b) achievement and progress in the K–12 arena, and (c) fidelity of implementation in all aspects of the IDEA entitlement program.

Signed in Washington, DC, on March 28, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–8005 Filed 4–2–02; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure (#10719).

Date/Time: Friday, April 19, 2002, 1:00 p.m. to 4:00 p.m. EST.

Place: Room 555 Stafford II, National Science Foundation, 4121 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open Meeting. Persons wishing to attend the meeting at NSF should contact Richard Hilderbrandt to arrange for a visitor's pass.

Contact Persons: Dr. Richard Hilderbrandt, Program Director, Division of Advanced Computational Infrastructure and Research, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel: (703) 292–7093, e-mail: *rhilderb@nsf.gov.*

Purpose of Meeting: To present a first draft of the committee report.

Agenda

(Meeting will begin promptly at 1:00 PM EST)

1. Review of status of the panel's activities and goals for this meeting.
2. Reports from the authoring sub-committees.
3. Review and discussion of the working draft of the report.
4. Discussion of primary recommendations.
5. Stewardship and additional use of the material gathered by the Panel.
6. Summary of additional activities to create final version of report.
7. Matters arising.

Dated: March 28, 2002.

Karen J. York,

Committee Management Officer.

[FR Doc. 02–8006 Filed 4–2–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 33—Specific Domestic Licenses of Broad Scope for Byproduct Material.

2. *Current OMB approval number:* 3150–0015.

3. *How often the collection is required:* There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the information for renewal of the license.

4. *Who is required or asked to report:* All applicants requesting a license of broad scope for byproduct material and all current licensees requesting renewal of a broad scope license.

5. *The number of annual respondents:* 1.

6. *The number of hours needed annually to complete the requirement or request:* 1.

7. *Abstract:* 10 CFR part 33 contains mandatory requirements for the issuance of a broad scope license authorizing the use of byproduct material. The subparts cover specific requirements for obtaining a license of broad scope. These requirements include equipment, facilities, personnel, and procedures adequate to protect health and minimize danger to life or property.

Submit, by June 3, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC World Wide Web site (*http://www.nrc.gov/public-involve/doc-comment/omb/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 28th day of March 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8040 Filed 4–2–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants''.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* One-time submission with application for renewal of an operating license for a nuclear power plant and occasional collections for holders of renewed licenses.

5. *Who will be required or asked to report:* Commercial nuclear power plant licensees who wish to renew their operating licenses.

6. *An estimate of the number of responses:* 20 (an average of 6 responses annually + 14 recordkeepers).

7. *The estimated number of annual respondents:* 14 (6 respondents annually based on an estimate of the receipt of 19 new renewal applications over three years + 8 current recordkeepers).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* Approximately 432,333 hours (405,333 hours one-time reporting burden and 27,000 hours recordkeeping burden).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* 10 CFR part 54 of the NRC regulations, ''Requirements for Renewal of Operating Licensees for Nuclear Power Plants,'' specifies the procedures, criteria, and standards governing nuclear power plant license renewal, including information submittal and recordkeeping requirements, so that the NRC may make determinations that the operation of civilian nuclear power reactors during the extended term of the license will adequately protect the health and safety of the public and the environment.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 3, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0155), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 28th day of March 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8037 Filed 4–2–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation, Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–86, issued to North Atlantic Energy Service Corporation (the licensee), for operation of the Seabrook Station, Unit No. 1, located in Rockingham County, New Hampshire. Therefore, as required by 10

CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would make administrative changes to Technical Specification Sections 1.9, Core Alteration; 1.14, Engineered Safety Features Response Time; and 1.29, Reactor Trip Response Time.

The proposed action is in accordance with the licensee's application dated August 6, 2001, as supplemented by letters dated November 2, 2001, and February 1, 2002.

The Need for the Proposed Action

The proposed action will allow the licensee to implement Technical Specification changes to support refueling outage 08, currently scheduled for spring 2002.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that it has no environmental impact.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Seabrook Station, Unit No. 1, dated December 1982.

Agencies and Persons Consulted

On February 13, 2001, the staff consulted with the New Hampshire State official, Mike Nawoj, of the New Hampshire Office of Emergency Management, and on February 19, 2002, the staff consulted with the Massachusetts State official, James Muckerheid, of the Massachusetts Emergency Management Agency, regarding the environmental impact of the proposed action. The State officials had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 6, 2001, as supplemented by letters dated November 2, 2001, and February 1, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of March 2002.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Section 2 Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–8038 Filed 4–2–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

International Conference on Wire System Aging

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The International Conference on Wire System Aging (ICWSA) will be held April 23–25, 2002, from 8:30 a.m. to 5 p.m. at the DoubleTree Hotel at 1750 Rockville Pike, Rockville, Maryland, USA.

The conference has a three-fold purpose: (1) To review current practices and programs for understanding and managing wire system aging, (2) to exchange information on the current status of research related to the issue, and (3) to identify technical issues and programs of interest for collaborative research. The conference will focus on four specific topics as they relate to wire system aging:

- Reliability Physics Modeling of Wire System Aging;
- Fire Risk Assessment of Wire System Aging;
- Risk Significance of Wire System Aging; and
- Prognostics and Diagnostics for Installed Wire Systems.

Michael Mayfield, Director of the Division of Engineering Technology of the NRC Office of Nuclear Regulatory Research, will open the conference on Tuesday, April 23, and Ashok C. Thadani, Director of the NRC Office of Nuclear Regulatory Research, will be the keynote speaker.

Technical sessions on each of the four topics will be held Tuesday and Wednesday. Each session will include technical papers, followed by question and answer periods. On Thursday morning a general session on initiatives and insights on Wire System Aging will be held. This session will contain presentations by international wire system experts regarding initiatives in their countries to address wire system aging, along with presentations on initiatives in the USA.

On Thursday afternoon, April 25, an expert panel will discuss issues related to wire system aging, along with the future direction of collaborative research to address these issues. Panel members will include Dr. Nilesh Chokshi, NRC Office of Nuclear Regulatory Research; Dr. Elliot Cramer, NASA-Langley; and Dr. John Brewer, Department of Transportation.

Technical exhibits will be on display all three days of the conference. These exhibits will demonstrate state-of-the-art

cable monitoring techniques, as well as new advances in cable construction.

The conference is open to the public and there is no registration fee. However, attendance will be limited to 200 people, and advance registration for the conference is strongly recommended. Those who wish to attend are encouraged to register in advance on the ICWSA Web site (*www.bnl.gov/ICWSA*) or by contacting Susan Monteleone, Brookhaven National Laboratory, Building 130, Upton, NY 11973–5000, telephone (631) 344–7235; or Jit Vora (301) 415–5833, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 27th day of March 2002.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 02–8039 Filed 4–2–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: Yucca Mountain Repository

May 7–8, 2002—Washington, DC: The Nuclear Waste Technical Review Board will hold a meeting to discuss efforts by the Department of Energy (DOE) related to developing a safety case for a potential Yucca Mountain repository. Other topics that will be discussed include staged repository concepts, repository design concepts, issues related to corrosion of waste package materials, and the DOE's plans for continuing technical and scientific investigations if the Yucca Mountain site recommendation is approved.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Tuesday, May 7, and Wednesday, May 8, 2002, the U.S. Nuclear Waste Technical Review Board (Board) will hold a meeting in Washington, D.C., to discuss efforts by the U.S. Department of Energy (DOE) to develop a safety case for a potential repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nevada. Also discussed will be ''staged'' concepts for the development of such a repository, the design of a potential repository, and issues related to corrosion of the materials that would be used for the waste packages at a potential repository. The meeting is open to the public, and opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of DOE activities related to managing spent nuclear fuel and high-level radioactive waste.

The Board meeting will be held at the Washington Marriott Hotel; 1221 22nd Street, NW; Washington, D.C. 20037. The telephone number is 202–872–1500; the fax number is 202–872–9899. The meeting sessions will begin at 8 a.m. on both days.

The morning session on Tuesday will begin with comments by a representative of the State of Nevada, followed by a series of presentations by the DOE on the DOE's technical and scientific program, including scheduling and strategic planning. After lunch, the results of the DOE's Waste Package Materials Performance Peer Review will be presented, followed by an update on the State of Nevada's corrosion studies. The balance of the afternoon will be devoted to a discussion of the DOE's safety case for a potential Yucca Mountain repository, which will include the perspectives of the international community, the Nuclear Regulatory Commission, the DOE, and the State of Nevada.

On Wednesday morning, representatives of the international community, the DOE, and the State of Nevada will present their views on staged repository concepts. These presentations will be followed by a discussion of technical issues related to repository design concepts, including presentations on a flexible design concept and on a ventilation design concept. The afternoon session will begin with a discussion of the DOE's performance-confirmation and test and evaluation planning and activities, including a presentations on performance confirmation by the Electric Power Research Institute. An update on the DOE's performance assessment and design priorities will complete the afternoon agenda.

Opportunities for public comment will be provided before lunch and bore adjournment on both days. Those wanting to speak during the public comment periods are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. As time permits, the questions will be answered during the meeting.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Beginning on June 10, 2002, transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff.

A block of rooms has been reserved at the Washington Marriott Hotel. A meeting rate will be available for reservations made by April 19, 2002. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. For more information, contact the NWTRB; Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201—3367; (tel) 703–235–4473; (fax) 703–235–4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

Dated: March 29, 2002.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 02–8086 Filed 4–2–02; 8:45 am]

BILLING CODE 6820–AM–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Financial Disclosure Statement.

(2) *Forms(s) submitted:* G–423.

(3) *OMB Number:* 3220–0127.

(4) *Expiration date of current OMB clearance:* 6/30/2002.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,200.

(8) *Total annual responses:* 1,200.

(9) *Total annual reporting hours:* 1,700.

(10) *Collection description:* Under the Railroad Retirement and Railroad Unemployment Insurance Acts, the Railroad Retirement Board has authority to secure from an overpaid beneficiary a statement of the individual's assets and liabilities if waiver of the overpayment is requested.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–8022 Filed 4–2–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for a review and approval.

Summary of Proposal(s):

(1) *Collection title:* Statement Regarding Contributions and Support of Children.

(2) *Form(s) submitted:* G–139.

(3) *OMB Number:* 3220–0195.

(4) *Expiration date of current OMB clearance:* 5/31/2002.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 500.

(8) *Total annual responses:* 500.

(9) *Total annual reporting hours:* 125.

(10) *Collection description:* Dependency on the employee for at least one-half support is a condition affecting eligibility for increasing an employee or spouse annuity under the social security minimum overall provisions on the basis of the presence of a dependent child, the employee's natural child in limited situations, adopted children, stepchildren, grandchildren, and step-grandchildren. The information collected solicits financial information needed to determine entitlement to a child's annuity based on actual dependency.

Additional Information or Comments Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–8023 Filed 4–2–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Notification of Meeting

The railroad Retirement Board hereby gives notice that the Board will meet at 10:00 a.m., April 3, 2002, in the Board Room on the 8th floor of the agency's headquarters building located at 844 N. Rush Street, Chicago, Illinois. The subject to be addressed at this meeting is the Selection to Fill Vacancy in the Philadelphia District Office.

The entire meeting will be closed to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: March 29, 2002.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–8123 Filed 4–1–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27512]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 28, 2002.

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 19, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 19, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Conectiv, et al. (70–9095)

Conectiv, a registered holding company, Conectiv's public-utility subsidiaries: Atlantic City Electric Company (''ACE''); Delmarva Power & Light Company (''Delmarva''); Conectiv Atlantic Generation, L.L.C. (''CAG''); Conectiv Delmarva Generation, L.L.C. (''CDG''), and Conectiv Pennsylvania Generation, Inc. (''CPGI'') (collectively, ''Utility Subsidiaries''); and Conectiv's nonutility subsidiaries (''Nonutility Subsidiaries'' and with Utility Subsidiaries, ''Subsidiaries''): ACE REIT, Inc. (''ACE REIT''); ATE Investment, Inc.; ATS Operating Services, Inc.; Atlantic Generation, Inc.; Atlantic Jersey Thermal Systems, Inc.; Atlantic Southern Properties, Inc.; Binghamton General, Inc., Binghamton Limited, Inc.; Conectiv Bethlehem, Inc.; Conectiv Communications, Inc.; Conectiv Energy Holding Company (''CEH''); [1] Conectiv Energy Supply, Inc.; Conectiv Mid-Merit, Inc.; Conectiv Operating Services Company; Conectiv Properties and Investments, Inc.; Conectiv Resource Partners, Inc.; Conectiv Services, Inc.; Conectiv Solutions, LLC; Conectiv Thermal Systems, Inc.; DCI I, Inc.; DCI II, Inc.; DCTC-Burney, Inc.; King Street Assurance, Ltd.; Pedrick Gen., Inc.; Vineland Limited, Inc.; and Vineland General, Inc., all located at 800 King Street, Wilmington, Delaware 19899; and Conectiv Plumbing, L.L.C., located at 621 Chapel Avenue, Cherry Hill, New

[1] ACE REIT and CEH are registered holding companies under the Act.

Jersey 08034 (collectively, ''Applicants''), have filed a post-effective amendment (''Post-Effective Amendment'') under sections 6(a), 7, and 12(b) of the Act and rules 45, 53 and 54 under the Act, to its application-declaration previously filed under the Act.

I. Background

By order dated February 26, 1998 (HCAR No. 26833), and by various supplemental orders [2] (collectively, ''Financing Orders''), the Commission authorized Conectiv and its subsidiaries to effect certain financing transactions through September 30, 2003 (''Authorization Period''). These included: (1) The issuance by Conectiv of short-term debt in an aggregate amount not to exceed $2 billion, less any amount of short-term debt issued by Delmarva under its authorization to issue up to $275 million of short-term debt; (2) the issuance by Conectiv of up to $250 million of long-term debt with the reservation of jurisdiction over an additional $750 million of long-term debt; [3] (3) the reservation of jurisdiction over the issuance by Conectiv of common stock which, when combined with any long-term debt issued, does not exceed $500 million in the aggregate; [4] and (4) the issuance by Conectiv of guaranties, letters of credit, expense agreements or other forms of credit support for the obligations of Subsidiaries in an aggregate amount not to exceed $1.5 billion. Conectiv proposes that the financing parameters approved in the Financing Orders, except the proposal to modify the terms for the allowable cost of funds, discussed below, also apply to all the transactions proposed by this Post-Effective Amendment.

II. Description of Proposed Transactions

A. Summary of Requests

In [5] addition to the existing financing authority granted in the Financing Orders, Applicants request the following in this Post-Effective Amendment: (1) Authorization for Conectiv, CEH, any subsidiary of CEH or a financing entity established by CEH (including any entity established to construct and finance generation assets) [6] (collectively, CEH, any subsidiary of CEH and any financing entity established by CEH are referred to as the ''Genco Financing Entities'') to issue external long-term and short-term debt for the purpose of financing existing and prospective generation assets (collectively, ''Genco Financing''), in an amount not to exceed $1.5 billion outstanding at any one time (the ''Genco Financing Limit'') during the Authorization Period; [7] (2) authorization for CEH to guarantee the obligations of its direct and indirect subsidiaries to third parties and for the Genco Financing Entities to issue guaranties to external lenders in support of their financing activities in an aggregate amount not to exceed $1.0 billion (''CEH Guarantee Limit'') during the Authorization Period; (3) authorization for the Genco Financing Entities to enter into financial risk management arrangements (''Hedging Transactions'') during the Authorization Period; (4) modification of the allowable effective cost of money to 500 basis points above comparable term U.S. Treasury securities in the case of long-term debt securities, and to 500 basis points above comparable term London Interbank Offered Rate (''LIBOR'') in the case of short-term debt securities, from the 300 basis points above either U.S. Treasury securities or LIBOR, as approved in the Financing Orders; and (5) authorization for Conectiv to refund up to $150 million of long-term debt scheduled to mature during the Authorization Period.

B. Proposed Increases in Short-Term and Long-Term-Debt Authority

Applicants request authorization to issue external long-term and short-term debt which, when combined with outstanding short-term debt securities issued, will not exceed $1.5 billion during the Authorization Period. Applicants intend that short-term debt will be issued during the construction of mid-merit generation plants [8] and will be replaced by permanent long-term financing at a later date. Types of short-term debt securities may include, but not be limited to, borrowings under one or more revolving credit facilities or bank loans, commercial paper, short-term notes and bid notes. Applicants state that the specific terms of any short-term borrowings will be determined by the Genco Financing Entities at the time of issuance and will comply in all regards with the financing parameters (as adjusted in any order issued in this filing) authorized in the Financing Orders. The maturity of any short-term debt issued will not exceed 364 days or, if the notional maturity is greater than 364 days, the debt security will include put options at appropriate points in time to cause the security to be accounted for as a current liability under United States generally accepted accounting principles.

Applicants state that the types of long-term debt securities issued by the Genco Financing Entities may include, but not be limited to, notes, medium-term notes or debentures under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders. Applicants further state that the Genco Financing Entities may also enter into project finance arrangements which will be secured by property of CEH or a subsidiary of CEH, and would be non-recourse to Conectiv. Any long-term debt security would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking-fund terms and other terms and conditions as the Genco Financing Entities may determine at the time of issuance. Any long-term debt: (1) May be convertible into any other securities; (2) will have maturities ranging from one to 50 years; (3) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof; (4) may be entitled to mandatory or optional sinking-fund provisions; (5) may provide for reset of the coupon pursuant to a remarketing

[2] These orders were issued on August 21, 1998 (HCAR No. 26907); September 28, 1998 (HCAR No. 26921); October 21, 1998 (HCAR No. 26930); November 13, 1998 (HCAR No. 26941); December 14, 1999 (HCAR No. 27111); August 17, 2000 (HCAR No. 27213); June 7, 2001 (HCAR No. 27415) and March 22, 2002 (HCAR No. 27507).

[3] The Commission released this reservation of jurisdiction on March 22, 2002. (HCAR No. 27507).

[4] *Id.*

[5] The Commission has pending before it an application-declaration proposing a merger between Pepco Holdings, Inc. (''Pepco Holding'') and Conectiv. (HCAR No. 27511) (March 26, 2002). Also pending before the Commission is a financing U–1 filed by Pepco Holdings and Conectiv (''Financing U–1'') requesting, among other things, post-merger financing transactions. All authorizations sought in this Post-Effective Amendment will count against any limits aproved by the Commission in the Financing U–1. Conective states that it is requesting the authorizations in this Posr-Effective Amendment in the even that financing or investment opportunities arise prior to the Commission approving the proposed merger.

[6] The Commission previously authorized the Subsidiaries to organize new comporations, partnerships or other entities for the purpose of facilitating financings. Any such entities established for purposes of facilitating Genco Financing willl be wholly owned direct subsidiaries of CEH. (HCAR No. 26833) (February 26, 1998).

[7] Applicants request that the Commission reserve jurisdiction over the issuance of up of $700 million of Genco Financing pending completion of the record.

[8] Conectiv states that, due to certain state restructuring requirements, it intends to retain and develop additional flexible, low-cost mid-merit generation to address competitive opportunities in the Mid-Atlantic region. The mid-merit market consists of electric generating plants that are fuel-flexible, with the ability to start up and shut down quickly based on customer demand, weather conditions and price fluctuations.

arrangement; (6) may be subject to tender to the issuer for repurchase or be subject to the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event; and (7) may be called from existing investors by a third party.

C. Proposed Increase in Conectiv Guaranties

In addition to the guaranty authority granted in the Financing Orders, Conectiv requests authorization to enter into guaranties, obtain letters of credit, enter into support or expense agreements or otherwise provide credit support with respect to the obligations of CEH's direct and indirect subsidiaries and for Genco Financing Entities to issue guaranties to external lenders in support of their financing activities (''CEH Guarantees'') during the Authorization Period in an aggregate amount up to $1.0 billion. The CEH Guarantees will not exceed the CEH Guarantee Limit at any time during the Authorization Period.

D. Proposed Hedging Transactions

Applicants request authorization for the Genco Financing Entities to enter into, perform, purchase and sell financial instruments intended to reduce or manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements. Hedges may also include the issuance of structured notes (*i.e.,* a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or Agency obligations or LIBOR based swap instruments (collectively referred to as ''Hedge Instruments''). Applicants state that the transactions would be for fixed periods and stated notional amounts. Applicants further state that CEH would employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued pursuant to this authorization or an applicable exemption by, in effect, synthetically: (1) Converting variable-rate debt to fixed-rate debt; (2) converting fixed-rate debt to variable-rate debt; and (3) limiting the impact of changes in interest rates resulting from variable-rate debt. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. Transactions will be entered into for a fixed or determinable period. Applicants further state that the Genco Financing Entities will not engage in speculative transactions. The Genco Financing Entities will only enter into agreements with counterparties whose senior debt ratings, as published by a nationally recognized rating agency, are greater than or equal to ''BBB,'' or an equivalent rating (''Approved Counterparties'').

In addition, the Genco Financing Entities request authorization to enter into interest rate Hedging Transactions with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Such Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through: (1) A forward sale of exchange-traded Hedge Instruments (a ''Forward Sale''); (2) the purchase of put options on Hedge Instruments (a ''Put Options Purchase''); (3) a Put Options Purchase in combination with the sale of call options Hedge Instruments (a ''Zero Cost Collar''); (4) transactions involving the purchase or sale, including short sales, of Hedge Instruments; or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. CEH or its subsidiaries will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. Each of the Genco Financing Entities may decide to lock in interest rates and/or limit their exposure to interest rate increases.

E. Modification of Terms for Allowable Cost of Money

Conectiv states that in order to provide flexibility in times of high interest rate volatility, it requests that the financing parameters authorized in the Financing Orders be modified, from the 300 basis points above either U.S. Treasury securities or LIBOR, to state that the effective cost of money on long-term debt borrowings occurring pursuant to the authorizations granted under this Post-Effective Amendment will not exceed the greater of (1) 500 basis points over the comparable-term U.S. Treasury securities or (2) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The effective cost of money on short-term debt borrowings issued under authorizations granted in this Post-Effective Amendment will not exceed the greater of (1) 500 basis points over the comparable-term LIBOR or (2) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

F. Refunding of Existing Long-Term Debt

In addition, pursuant to the Financing Orders, Conectiv issued $250 million of long-term debt securities. Prior to the expiration of the Authorization Period, $150 million of these long-term debt securities are scheduled to mature by their terms. Conectiv requests authorization to issue up to $150 million of long-term debt securities for the purpose of refunding maturing long-term debt. Applicants state that specific terms of any issuances, such as maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the long-term securities of a particular series, will be determined by Conectiv at the time of issuance and will comply in all regards with the financing parameters authorized in the Financing Orders (as adjusted in any order issued in this filing).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8007 Filed 4–2–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934, Release No. 45668; File No. S7–06–02]

Notice of Intent to Prepare Environmental Assessment

March 28, 2002.

The U.S. Securities and Exchange Commission (Commission) intends to prepare an environmental assessment of its planned lease of approximately 650,000 square feet of office space at the Station Place facility at 100 F Street, NE., Washington, DC, currently being developed by Louis Dreyfus Properties, LLC. This space will consolidate and

replace the Commission's current office space located in its existing headquarters building at 450 5th Street, NW., and in an overflow facility at 901 E Street, NW., in Washington, DC. The Commission plans to lease this replacement space in Station Place because its lease is expiring at its current headquarters at 450 5th Street, and because its space requirements exceed its current capacity at both 450 5th Street and 901 E Street. The environmental assessment will be prepared in accordance with Section 102(2) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Council on Environmental Quality implementing regulations (40 CFR parts 1500–1508), and Section 106 of the National Historic Preservation Act of 1966, as amended. The environmental assessment shall also determine whether the Commission's decision to lease office space in Station Place will significantly affect the quality of the human environment, and hence require an environmental impact statement (EIS), or a finding of no significant impact (FONSI) under NEPA.

Interested individuals and groups and other members of the public are invited to identify environmental concerns that should be addressed during preparation of the environmental assessment. Interested Federal, regional and local agencies have also been solicited for comment. Public comments received on the potential impacts of the proposed action will be considered for the environmental assessment. To be most helpful, comments would clearly describe specific issues or topics that the community believes the environmental assessment should address. All written comments regarding the proposed project must be postmarked no later than April 17, 2002 and should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All comment letters should refer to File Number S7–06–02. Comment letters will be available for inspection and copying in the Public Reference Room at 450 Fifth Street, NW., Washington, DC.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8043 Filed 4–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 15258, March 29, 2002].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, April 2, 2002 at 10:00 a.m.

CHANGE IN THE MEETING: Additional Item.

The following item has been added to the closed meeting scheduled for Tuesday, April 2, 2002: consideration of amicus participation.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: March 29, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8113 Filed 3–29–02; 4:07 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45660; File No. SR–Amex–2002–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Make Permanent a Pilot Program Under Amex Rule 126(g), Commentary .01 Relating to Size Precedence

March 27, 2002.

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 22, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent the existing pilot program under Amex Rule 126(g), Commentary .01 regarding a 5,000 share minimum block cross size to establish size precedence. The text of the proposed rule change is below. There are no changes proposed to the existing rule, other than to make permanent the pilot program.

Rule 126 Precedence of Bids and Offers

* * *

(g) No change.

Commentary .01

Orders to cross 5,000, shares or more, where one or both sides of such cross is for the account of a member or member organization, will be permitted to establish precedence based on size so long as the orders are represented at the post when a sale removing all bids and offers from the Floor takes place. Once the precedence of such orders of 5,000 shares or more has been established, the broker handling the cross must then bid and offer the security in accordance with Rule 152.

* * * * *

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 Exchange 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 Exchange 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

On March 28, 2001, the Commission approved on a one-year pilot basis the Exchange's proposal to reduce from 25,000 to 5,000 shares the minimum size block cross that will be permitted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

to establish size precedence.[3] In SR–Amex–2002–22, the Exchange proposes to extend the pilot program for an additional six months, through September 27, 2002.

In the instant filing, the Amex proposes that the pilot program be approved on a permanent basis. The block cross procedures under Amex Rule 126(g) have facilitated executions of large size orders on the Amex as one transaction at a single price, without such orders losing shares to other orders in the trading crowd or on the specialist's book due to Exchange parity rules. In addition, by facilitating the execution of large blocks on the Amex, the rule reduces the incentive of member firms to route such orders to regional exchanges or the third market in order to avoid losing an excessive number of shares to other orders under existing Amex parity rules. With start-up of decimal quoting in equities, with a minimum price variation of one cent, it has become less expensive for members to break up proposed block crosses on the Amex Floor, which may result in such crosses being routed to markets in which size precedence is not taken into account in the manner required by Amex rules.

The Exchange believes the reduction in size parameters continues to have the potential to enhance primary market liquidity and that permanent approval of Amex Rule 126(g) Commentary .01 is appropriate. The Exchange believes that the size reduction to 5,000 shares from 25,000 shares in establishing precedence has the potential to alleviate some of the competitive burden associated with current Exchange priority and precedence rules that are stricter than those applied in other markets with respect to crosses in block size. Under the previous 25,000 share size parameter, such crosses would have been more difficult to effect without being broken up, particularly in view of the start of decimal pricing. The revised size parameter may facilitate greater liquidity in the primary market by reducing routing of block cross transactions to other markets. The Exchange believes this fosters improved price discovery and execution of investor orders at more favorable prices. The Exchange notes that the broker handling the cross is required to bid and offer the security in accordance with Amex Rule 152, and, therefore, that it is still possible for all or a portion of at least one side of a proposed block cross to be effected at a price better than the proposed cross price. In addition, confining the Exchange's size precedence threshold to 5,000 shares will continue to limit the effects of the rule primarily to active, liquid issues.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–23 and should be submitted April 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8009 Filed 4–2–02; 8:45 am]

BILLING CODE 8010–01–P

[3] Securities Exchange Act Release No. 44122 (March 28, 2001), 66 FR 18125 (April 5, 2001)(SR–Amex–2001–01).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] CFR 200.30–(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45658; File No. SR–Amex–2002–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend a Pilot Program Relating to Amex Rule 126 (Size Precedence)

March 27, 2002.

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 22, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

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 Amex proposes a six-month extension of the existing pilot program under Amex Rule 126(g), Commentary .01 regarding a 5,000 share minimum block cross size to establish size precedence. The current pilot is scheduled to expire on March 28, 2002. The proposed rule change would extend the pilot through September 27, 2002. No other changes to the pilot are proposed at this time. The text of the proposed rule change is available at the Amex and at the Commission.

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 Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 28, 2001, the Commission approved on a one-year pilot basis the Exchange proposal to reduce from 25,000 to 5,000 shares the minimum size block cross that will be permitted to establish size precedence.[6] The block cross procedures under Amex Rule 126(g) have facilitated executions of large size orders on the Amex as one transaction at a single price, without such orders losing shares to other orders in the trading crowd or on the specialist's book due to Exchange parity rules. In addition, by facilitating the execution of large blocks on the Amex, the pilot reduces the incentive of member firms to route such orders to regional exchanges or the third market in order to avoid losing an excessive number of shares to other orders under existing Amex parity rules. With start-up of decimal quoting in equities, with a minimum price variation of one cent, it has become less expensive for members to break up proposed block crosses on the Amex Floor, which may result in such crosses being routed to markets in which size precedence is not taken into account in the manner required by Amex rules.

The Exchange believes the reduction in size parameters continues to have the potential to enhance primary market liquidity and that it is appropriate to extend the pilot for an additional six months to permit the Commission to consider the Exchange's separate filing under Rule 19b–4 requesting permanent approval of Amex Rule 126(g), Commentary .01 (SR–Amex–2001–23). The Exchange believes that the size reduction to 5,000 shares from 25,000 shares in establishing precedence has the potential to alleviate some of the competitive burden associated with current Exchange priority and precedence rules that are stricter than those applied in other markets with respect to crosses in block size. Under the previous 25,000 share size parameter, such crosses would have been more difficult to effect without being broken up, particularly in view of the start of decimal pricing. The revised size parameter may facilitate greater liquidity in the primary market by reducing routing of block cross transactions to other markets. The Exchange believes this fosters improved price discovery and execution of investor orders at more favorable prices. The Exchange notes that the broker handling the cross is required to bid and offer the security in accordance with Rule 152, and, therefore, that it is still possible for all or a portion of at least one side of a proposed block cross to be effected at a price better than the proposed cross price. In addition, confining the Exchange's size precedence threshold to 5,000 shares will continue to limit the effects of the rule primarily to active, liquid issues.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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.

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] 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.

The Amex has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission finds good cause to waive the 5-day pre-filing notice requirement and the 30-day operative delay, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted for an additional six months, while the Amex seeks comment on a separate proposal to make permanent the pilot program. For these reasons, the Commission finds good cause to waive both the 5-day pre-filing requirement and the 30-day operative waiting period.[11]

[6] Securities Exchange Act Release No. 44122 (March 28, 2001), 66 FR 18125 (April 5, 2001)(SR–Amex–2001–01).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–22 and should be submitted by April 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8010 Filed 4–2–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45652; File No. SR–MSRB–2002–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Professional Qualifications of Municipal Fund Securities Limited Principals

March 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') and Rule 19b–4 thereunder,[1] notice is hereby given that on March 21, 2002, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MSRB–2002–03) (''proposed rule change'') described in Items, I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB has filed with the Commission a proposed rule change consisting of an amendment to Rule G–3, on professional qualifications. Additions are italicized; deletions are bracketed. The proposed rule change is as follows:

Rule G–3—Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements

(a) No change.

(b) Municipal Securities Principal*; Municipal Fund Securities Limited Principal.*

(i) No change.

(ii) Qualification Requirements.

(A) No change.

(B) Any person seeking to become qualified as a municipal securities principal in accordance with subparagraph (b)(ii)(A) of this rule[,] must, prior to being qualified as a municipal securities principal:

(1) Have been duly qualified as either a municipal securities representative or a general securities representative; *provided, however, that any person who qualifies as a municipal securities representative solely by reason of subparagraph (a)(ii)(C) shall not be qualified to take the Municipal Securities Principal Qualification Examination on or after October 1, 2002;* or

(2) No change.

(C)–(D) No change.

(iii) No change.

(iv) Municipal Fund Securities Limited Principal.

(A) Definition. The term ''municipal fund securities limited principal'' means a natural person (other than a municipal securities principal or municipal securities sales principal), associated with a broker, dealer or municipal securities dealer that has filed with the Board in compliance with rule A–12, who is directly engaged in the functions of a municipal securities principal as set forth in paragraph (b)(i), but solely as such activities relate to transactions in municipal fund securities.

(B) Qualification Requirements.

(1) Every municipal fund securities limited principal shall take and pass the Municipal Fund Securities Limited Principal Qualification Examination prior to being qualified as a municipal fund securities limited principal. The passing grade shall be determined by the Board.

(2) Any person seeking to become qualified as a municipal fund securities limited principal in accordance with clause (b)(iv)(B)(1) of this rule must, as a condition to being qualified as a municipal fund securities limited principal:

(a) have been duly qualified as either a general securities principal or an investment company/variable contracts limited principal; or

(b) have taken and passed either the General Securities Principal Qualification Examination or the Investment Company and Annuity Principal Qualification Examination.

(3) Any person who ceases to act as a municipal fund securities limited principal for two or more years at any time after having qualified as such shall meet the requirements of clauses (b)(iv)(B)(1) and (2) prior to being qualified as a municipal fund securities limited principal.

(4) For the first 90 days after becoming a municipal fund securities limited principal, the requirements of clauses (b)(iv)(B)(1) and (2) shall not apply to any person who is qualified as a general securities representative, investment company/variable contracts limited representative, general securities principal or investment company/variable contracts limited principal, provided, however, that such person shall meet the requirements of clauses (b)(iv)(B)(1) and (2) within that period.

(C) Actions as Municipal Securities Principal. Any municipal fund securities limited principal may undertake all actions required or permitted under any Board rule to be taken by a municipal securities principal, but solely with respect to activities related to municipal fund securities.

(D) Numerical Requirements. Any broker, dealer or municipal securities dealer whose municipal securities activities are limited exclusively to municipal fund securities may count any municipal fund securities limited principal toward the numerical requirement for municipal securities principal set forth in paragraph (b)(iii).

(E) [(iv)] Temporary Provisions for Municipal Fund Securities Limited Principal. *Notwithstanding any other provision of this rule, until December 31, 2002,* [Until July 31, 2002,] the following provisions shall apply to any broker, dealer or municipal securities dealer whose municipal securities activities are limited exclusively to municipal fund securities:

[(A)] *(1)* [notwithstanding the provisions of paragraph (b)(ii),] the broker, dealer or municipal securities dealer may designate any person who

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[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

has taken and passed the General Securities Principal Qualification Examination or Investment Company and Annuity Principal Qualification Examination as a municipal fund securities limited principal.

[(B)] *(2)* any municipal fund securities limited principal designated as provided in *clause* [subparagraph] (b)(iv)[(A)] *(E)(1)* may undertake all actions required or permitted under any Board rule to be taken by a municipal securities principal *to the same extent as set forth in subparagraph (b)(iv)(C).*

[(C)] *(3)* the broker, dealer or municipal securities dealer may count [one] any municipal fund securities limited principal *designated as provided in clause (b)(iv)(E)(1)* toward the numerical requirement for municipal securities principal *to the same extent as set forth in subparagraph (b)(iv)(D).* [set forth in paragraph (b)(iii); provided that, if such broker, dealer or municipal securities dealer is only required to have one municipal securities principal, such broker, dealer, or municipal securities dealer may count one municipal fund securities limited principal toward the numerical requirement only if the broker, dealer or municipal securities dealer is described in subparagraph (b)(iii)(B).]

(4) On and after January 1, 2003, all municipal fund securities limited principals (including any municipal fund securities limited principals designated as provided in clause (b)(iv)(E)(1)) must be qualified as provided in subparagraph (b)(iv)(B).

(c)–(f) No change.

(g) Waiver of Qualification Requirements.

(i) The requirements of paragraphs (a)(ii), (a)(iii), (b)(ii), *(b)(iv)(B)* and (c)(ii) may be waived in extraordinary cases for any associated person of a broker, dealer or municipal securities dealer who demonstrates extensive experience in a field closely related to the municipal securities activities of such broker, dealer or municipal securities dealer. Such waiver may be granted by

(A)–(B) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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

(a) Rule G–3, on professional qualifications, requires that a broker, dealer or municipal securities dealer (''dealer'') have at least one municipal securities principal (and in some cases two municipal securities principals), even if the dealer's only municipal securities transactions are sales of municipal fund securities. [2] In order to provide small dealers seeking to enter the market for municipal fund securities relief from the requirement to immediately obtain a municipal securities principal, the MSRB amended Rule G–3 in July 2001 to provide a temporary alternative method for qualification of principals in connection with municipal fund securities.[3] Under this temporary provision, until July 31, 2002, if a dealer's municipal securities activities are limited exclusively to municipal fund securities and the dealer has fewer than 11 associated persons engaged in such activities, it may fulfill its obligation to have a municipal securities principal by designating a general securities or investment company/variable contracts limited principal to act as a limited principal.[4] During this period, any designated limited principal has all of the powers and responsibilities of a municipal securities principal under MSRB rules with respect to transactions in municipal fund securities. Under the current transition provision, on and after August 1, 2002, dealers effecting transactions in municipal fund securities are required to comply with the same municipal securities principal requirements applicable to all other dealers effecting transactions in municipal securities.

The MSRB understands that many dealers that wish to participate in the market for municipal fund securities do not currently, and do not plan to, engage in any municipal securities activities other than with respect to municipal fund securities. Since these dealers will not participate in the market for municipal debt securities and the features of municipal fund securities differ significantly from those of debt securities, the MSRB believes that no investor protection purpose is served by requiring principals responsible for supervision of such firms' municipal fund securities activities to demonstrate their understanding of the application of MSRB rules other than with respect to municipal fund securities.

Thus, the MSRB is proposing the creation of a new category of principals to serve permanently as municipal fund securities limited principals. Qualification as a municipal fund securities limited principal would be by an examination consisting of questions on the broad range of MSRB-specific topics that are relevant to municipal fund securities activities. [5] The examination would require that the individual taking it have previously or concurrently taken and passed the general securities principal qualification examination (Series 24) or investment company and annuity principal qualification examination (Series 26) administered by the National Association of Securities Dealers, Inc. (''NASD''). The qualification examination for municipal fund securities limited principals is scheduled to become available on October 1, 2002. MSRB staff is currently in the process of developing the qualification examination and will file the study outline and specifications with the Commission under separate cover.

An individual qualified as a municipal fund securities limited principal would be permitted to supervise only the municipal fund securities activities of the dealer and would have no authority to supervise the activities of the dealer with respect

[2] A municipal fund security is defined in MSRB's Rule D–12 as a municipal security issued by an issuer that, but for Section 2(b) of the Investment Company Act of 1940 (the ''Investment Company Act''), would constitute an investment company within the meaning of the Investment Company Act. Section 2(b) exempts states and political subdivisions, and agencies, authorities, and instrumentalities thereof, from the Investment Company Act.

[3] *See* SR–MSRB 2001–05; Exchange Act Release No. 44584 (July 23, 2001); 66 FR 39541 (July 31, 2001).

[4] Dealers that have 11 or more associated persons engaged in municipal fund securities activities may also designate a general securities or investment company/variable contracts limited principal to act as a limited principal. If a dealer is required to have two municipal securities principals under Rule G–3(b)(iii), then it may count one such limited principal toward this numerial requirement but must still have one municipal securities principal qualified other than by reason of being a general securities or investment company/variable contracts limited principal. If any dealer having 11 or more associated persons engaged in municipal fund securities activities is permitted to have only one municipal securities principal by virtue of Rule G–3(b)(iii)(A), the numerical requirements may not be satisfied by designation of a limited principal.

[5] Since the qualification examination would be tailored specifically to the application of MSRB rules to municipal fund securities, rather than to all types of municipal securities, the MSRB expects that this examination would not be as lengthy as the existing qualification examination for municipal securities principals (Series 53).

to any other type of municipal securities. However, an individual qualified as a municipal securities principal (Series 53) would continue to be qualified to supervise all municipal securities activities of the dealer, including activities relating to municipal fund securities. Thus, an individual wishing to supervise municipal fund securities activities could qualify to do so either (i) by becoming a municipal securities principal through the municipal securities principal qualification examination (Series 53) or (ii) by becoming a municipal fund securities limited principal through this new qualification examination if the individual is already or concurrently becomes a general securities or investment company/variable contracts limited principal.

If a dealer's municipal securities activities are limited to municipal fund securities, the proposed rule change also would count all municipal fund securities limited principals toward the numerical requirement for principals regardless of the number of associated persons engaging in such activities. Thus, any dealer that does not engage in any municipal securities activities other than with respect to municipal fund securities could fully discharge its obligation with respect to municipal securities principals with individuals qualified as municipal fund securities limited principals.

Further, existing rule language indirectly permits investment company/variable contracts limited representatives (Series 6) to take the Series 53 examination to become qualified as municipal securities principals.[6] Although this was appropriate when there was no other provision under Rule G–3 for qualifying a principal to supervise municipal fund securities activities, the proposed rule change discontinues this method of qualification on October 1, 2002 when the new municipal fund securities limited principal qualification examination becomes available.[7] An investment company/variable contracts limited representative would be able to qualify as a municipal fund securities limited principal by taking both the Series 26 examination and the new municipal fund securities limited principal examination.

In addition, the proposed rule change extends the existing temporary provision permitting general securities principals and investment company/variable contracts limited principals to supervise municipal fund securities activities from July 31, 2002 to December 31, 2002 in order to provide dealers with an adequate opportunity to prepare potential candidates for the new examination. During this extended transition period, the numerical requirement with respect to principals would be simplified so that all dealers, not just those with fewer than 11 associated persons engaged in municipal fund securities activities, could fully meet their principal requirements with principals acting in the temporary capacity permitted under the transition provisions. The proposed rule change makes clear that, beginning on January 1, 2003, all municipal fund securities limited principals (including general securities principals and investment company/variable contracts limited principals supervising municipal fund securities activities under the temporary transition period who wish to continue such supervisory activities after December 31, 2002) must be qualified by taking the new qualification examination.

Finally, the proposed rule change would give the NASD or any other appropriate regulatory agency the power to waive qualification requirements with respect to municipal fund securities limited principals, as with all other qualification categories. As provided in Rule G–3(g)(i), such waivers are to be granted solely in extraordinary cases.

(b) The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Exchange Act, which provides that it is the MSRB's responsibility to propose and adopt rules which:

> provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless * * * such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

Section 15B(b)(2)(A) of the Exchange Act also provides that the MSRB may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the MSRB.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On December 19, 2001, the MSRB published for comment a draft amendment designed to establish a permanent category of municipal fund securities limited principals and to establish permanent professional qualification requirements for dealers that limit their municipal securities activities to municipal fund securities. A municipal fund securities limited principal would have the same authority as a municipal securities principal under MSRB rules, but only with respect to municipal fund securities activities. A general securities principal or an investment company/variable contracts limited principal could qualify as a municipal fund securities limited principal by passing a new qualification examination relating specifically to municipal fund securities.[8] The draft amendment would allow any dealer that limits its municipal securities activities to municipal fund securities, regardless of size, to comply with Rule G–3's numerical requirement for principals solely with municipal fund securities limited principals that have passed the new exam. In addition, the draft amendment would make explicit an existing provision that implicitly allows an investment company/variable contracts limited representative to take the Series 53 exam without first taking the municipal securities representative qualification examination (Series 52).

The MSRB received comments from seven commentators.[9] After reviewing

[6] Rule G–3 permits an investment company/variable contracts representative to act as a municipal securities representative solely with respect to municipal fund securities.

[7] Qualification of an investment company/variable contracts limited representative as a full municipal securities principal allows that individual to supervise any securities activities, including debt securities. The MSRB is concerned that an individual who is solely qualified as an investment company/variable contracts limited representative prior to becoming a municipal securities principal may not have an adequate understanding of municipal debt securities to provide effective supervision under all circumstances.

[8] A general securities representative (Series 7) or investment company/variable contracts limited representative (Series 6) also could qualify as a municipal fund securities limited principal by simultaneously passing the new qualification examination and either the general securities principal or investment company principal examination.

[9] Letter from Erich Sokolower, Repex & Co., Inc. (''Repex''), to the MSRB, dated January 11, 2002;

these comments, the MSRB approved the draft amendment, with certain modifications, for filing with the Commission.[10] The comments and the MSRB's responses are discussed below.

AG Edwards, ICI and TBMA support the draft amendment. ICI commends the MSRB for ''continuing to tailor its regulatory requirements applicable to municipal fund securities in a manner that recognizes the differences between such securities and traditional municipal securities.'' TBMA states that the draft amendment ''appropriately tailors registration requirements to the nature of the business conducted and provides firms with needed flexibility in adapting their compliance programs as their business evolves.'' AG Edwards states, ''the new limited principal category is an appropriate vehicle whereby persons whose activities are limited to the supervision of municipal fund securities activities may be qualified to supervise those activities.''

However, both AG Edwards and TBMA are concerned that the draft amendment might suggest that municipal securities sales principals (Series 8 or Series 9/10) may not supervise sales activities with respect to municipal fund securities and request clarification to the contrary. The MSRB wishes to make clear that it does not intend to limit the power of municipal securities sales principals to supervise sales activities with respect to municipal fund securities by creating the new municipal fund securities limited principal classification. However, municipal securities sales principals may undertake only certain limited types of supervisory functions relating to sales activities in satisfaction of MSRB rules. Many supervisory responsibilities under MSRB rules must be undertaken by municipal securities principals or, in the case of municipal fund securities activities, by municipal fund securities limited principals.

Forest, MetLife, Repex and VBC oppose the draft amendment. MetLife argues that the differences between municipal fund securities and registered investment company securities that justify the need for regulation in this market should be addressed by issuer regulation rather than dealer regulation. MetLife states that ''guiding issuers toward thorough documentation of unique aspects of their municipal fund offerings would help to better educate both the selling agents and the purchasers as to differences among plans—a result that we believe would ultimately be more effective than the addition of a back-office limited principal.'' MetLife further states, ''these issues are better addressed by the selling agent or by field office series 26 or 24 registered principals who are closer to the point of sale, with more applicable knowledge to lend to the review process.'' MetLife recommends that ''the MSRB not create a limited municipal securities principal category to address issues that . . . would be better resolved at the issuer level.''

The MSRB understands MetLife's concern that some issues relating to municipal fund securities might best be resolved through issuer regulation. However, the MSRB has no authority with respect to issuers; rather, the MSRB is charged with protecting investors through dealer regulation.[11] Since MSRB rules do apply to dealers' municipal fund securities activities, the MSRB believes that the ultimate supervision of such activities must be conducted by someone who knows these rules. Contrary to MetLife's characterization of the municipal fund securities limited principal as a ''back-office limited principal,'' the municipal fund securities limited principal would provide dealers with a second (and in many cases easier) means of fulfilling the appropriate top-level supervisory requirement established under MSRB rules which otherwise would be met by a municipal securities principal. With regard to personnel at the point of sale, dealers are permitted under Rule G–3 to use investment company/variable contracts limited representatives to sell municipal fund securities and sales principals to directly supervise such sales activities.

Forest, Repex and VBC believe that the draft amendment would increase their regulatory burden. VBC mistakenly believes that its general securities principals are currently qualified to supervise municipal securities activities and should also be qualified to supervise municipal fund securities activities. VBC states that the ''new proposal would require more testing and sure to follow CE credits. This is unjust, too time consuming and unnecessary.'' Repex views the qualification provisions as an ''absolutely new burden on industry & reps: entirely unnecessary'' and believes that ''more of these rules will force more of the smaller firms to leave the business.'' Forest argues that dealers conducting business in municipal fund securities should not be required to become members of the MSRB, noting that dealers that are ''not currently approved to conduct municipal securities business, would have to enter into a Membership Continuance Request under NASDR Membership Rule 1017. This is an arduous, time consuming and expensive process that would be especially felt by smaller Broker/Dealers.'' Forest also argues that dealers selling securities similar to municipal fund securities, such as mutual fund IRA accounts and municipal bond mutual funds, are not required to be registered with the MSRB.

The MSRB believes that the proposed rule change would in fact decrease dealers' regulatory burden. Without the amendment, dealers would be required to use fully qualified municipal securities principals to meet their Rule G–3 principal requirement. As stated above, the creation of the municipal fund securities limited principal category provides dealers with an alternative means of meeting this requirement. For dealers that do not otherwise engage in municipal securities activities, allowing their general securities principals or investment company principals to take a shorter, more focused examination than the Series 53 exam in order to qualify as a municipal fund securities principal should be less burdensome. The further reduction in regulatory burden that these commentators most likely desire—*i.e.,* no MSRB qualification requirements—is inappropriate since activities regulated

letter from Tamara K. Reed, Associate Counsel, Investment Company Institute (''ICI''), to Ernesto A. Lanza, Senior Associate General Counsel of the MSRB, dated January 15, 2002; letter from Gabriel Borthwick, Compliance Consultant and Molly Diggins, Attorney, Metropolitan Life Insurance Company (''MetLife''), to Ernesto A. Lanza, dated January 18, 2002; letter from Vincent S. Comperatore, Principal, VBC Securities, LLC (''VBC''), to Ernesto Lanza, dated January 23, 2002; letter from E. Allen Cole, VP—Compliance Counsel, A.G. Edwards & Sons, Inc. (''AG Edwards''), to Ernesto A. Laza and Jill C. Finder, Assistant General Counsel of the MSRB, dated January 24, 2002; letter from Warren A. Forest, President, Forest Brokerage Advisers, Inc. (''Forest''), to Ernie Lanza, dated January 25, 2002; and letter from John M. Ramsey, The Bond Market Association (''TBMA''), To Ernesto A. Lanza, dated January 28, 2002.

[10] After reviewing the comments and further considering existing professional qualification provisions under Rule G–3, the MSRB modified the draft amendment by (i) establishing a time frame for implementing the new municipal fund securities limited principal qualification examination, (ii) extending the temporary transition period to December 31, 2002 and simplifying the numerical requirement to permit dealers to make appropriate preparations for qualification under the new category, (iii) phasing out the ability of investment company/variable contracts limited representatives to take the Series 53 examination, and (iv) allowing waivers of the qualification requirements for this category in extraordinary cases.

[11] Because issuers of municipal fund securities are state or local governmental entities, the Commission has restricted regulatory authority over such issuers under the Securities Act of 1933, the Exchange Act and the Investment Company Act. The NASD's dealer rules also do not apply to municipal fund securities because they are issued by state or local governmental entities.

by MSRB rules require ultimate supervision by someone who knows these rules.

The fact that MSRB rules apply at all results, of course, from the Exchange Act and not because the MSRB has sought to regulate municipal fund securities. Dealers selling mutual fund IRA accounts and municipal bond mutual funds are not required to comply with MSRB rules because these securities are not municipal securities and are instead subject to regulation under other regulatory schemes. In contrast, municipal fund securities are municipal securities and therefore are subject to MSRB rules and exempt from most other provisions of federal securities laws (such as the Securities Act and the Investment Company Act).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2002–03 and should be submitted by April 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8041 Filed 4–2–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45663; File No. SR–NASD–2002–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Replacement of an Arbitrator Upon Disqualification or Other Disability of an Arbitrator

March 27, 2002.

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 13, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), 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 NASD Dispute Resolution. NASD Dispute Resolution amended its proposal on March 22, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend the procedure followed upon the disqualification or other disability of an arbitrator on a three-person arbitration panel under Rule 10313 of the Code of Arbitration Procedure (''Code''). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

CODE OF ARBITRATION PROCEDURE

* * * * *

10313. Disqualification or Other Disability of Arbitrators

(a) In the event that any arbitrator, after the commencement of the earlier of [(a)] *(1)* the first pre-hearing conference or [(b)] *(2)* the first hearing but prior to the rendition of the award, should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, [the remaining arbitrator(s) shall continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within 5 days of notification of the vacancy on the panel. Upon objection,] the Director shall appoint a replacement arbitrator to fill the vacancy and the hearing shall continue. *In the alternative, if all parties agree to proceed with any remaining arbitrator(s), they shall inform the Director in writing within 5 business days of notification of the vacancy, and the remaining arbitrator(s) shall continue with the hearing and determination of the controversy.*

(b) The Director shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past 10 years, as well as information disclosed pursuant to Rule 10312. A party may make further inquiry of the Director concerning the replacement arbitrator's background. If the arbitration proceeding is subject to Rule 10308, the party may exercise his or her right to challenge the replacement arbitrator within the time remaining prior to the next scheduled hearing session by notifying the Director in writing of the name of the arbitrator challenged and the basis for such challenge. If the arbitration proceeding is not subject to Rule 10308, within the time remaining prior to the next scheduled hearing session or the 10 day period provided under Rule 10311, whichever is shorter, a party may exercise the party's right to challenge the replacement arbitrator as provided in Rule 10311.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution included statements concerning the purpose of

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Barbara Z. Sweeney, Senior Vice President, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated March 22, 2002 (''Amendment No. 1''). In Amendment No. 1, NASD Dispute Resolution replaced the original rule filing in its entirety and changed the filing to become immediately effective upon filing pursuant to section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b–4. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6).

and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Dispute Resolution 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

NASD Dispute Resolution proposes to amend the procedure followed upon the disqualification or other disability of an arbitrator on a three-person arbitration panel under Rule 10313 of the Code. Currently, Rule 10313 of the Code provides that, when an arbitrator becomes disqualified, resigns, dies, refuses or otherwise becomes unable to perform as an arbitrator, the arbitration proceeds with the remaining arbitrators unless a party objects within five days of notification of the vacancy.[4] If there is an objection, the arbitrator is replaced.

Under the proposed rule change, NASD Dispute Resolution will send the name of a replacement arbitrator along with notification of the vacancy. After having this information, parties then will have five business days in which to decide whether to continue with only the remaining two arbitrators or accept a replacement.

NASD Dispute Resolution staff has indicated that, in their experience, parties almost never want to proceed with only the two remaining arbitrators. Therefore, NASD Dispute Resolution believes that providing a replacement arbitrator immediately, without waiting for an objection, would save the parties time and reduce the administrative costs of producing a letter and waiting for responses when, in most cases, there will be an objection to continuing with only two arbitrators.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change, as amended, is consistent with section 15A(b)(6) of the Act[5] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that the proposed rule change will protect investors and the public interest by providing parties with an immediate replacement arbitrator, thereby reducing delays in the arbitration process and reducing the forum's administrative costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change, as amended, 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, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, 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, and NASD Dispute Resolution provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,[6] it has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, as amended, 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–38 and should be submitted by April 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8008 Filed 4–2–02; 8:45 am]

BILLING CODE 8010–01–P

[4] In very unusual circumstances, two arbitrators may have been disqualified or otherwise unable to serve at the same time, and the parties would have to decide whether to proceed with the one remaining arbitrator or seek two replacements.

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] On March 13, 2002, NASD Dispute Resolution submitted the original rule filing under section 19(b)(2) of Act. 15 U.S.C. 78s(b)(2). In Amendment No. 1, NASD Dispute Resolution requested that the proposed rule change become effective upon filing pursuant to section 19(b)(3)(A) of Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6). The Commission has agreed to accept the original rule filing as satisfying the 5-day pre-filing requirement pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45667; File No. SR–Phlx–2002–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to an Extension of the Interim Intermarket Linkage Program

March 28, 2002.

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 25, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been prepared by the Phlx. Phlx submitted Amendment No. 1 to the proposed rule change on March 27, 2002.[3] The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] 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

The Phlx proposes to extend until January 31, 2003 the pilot program authorizing implementation of ''interim linkages'' with the other options exchanges.

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 Phlx 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to request an extension of an intermarket options linkage on an ''interim'' basis. Currently, the Exchange is operating this interim linkage as a pilot program pursuant to Phlx Rule 1081.[6] The interim linkage utilizes existing market infrastructure to facilitate the sending and receiving of order flow between Phlx Specialists, and may later include Registered Options Traders and their counterparts on the other options exchanges as an interim step towards development of a ''permanent'' linkage. The Exchange now proposes that the interim linkage would remain in effect on a pilot basis until January 31, 2003.

By way of background, the Commission has approved a linkage plan that now includes all five options exchanges.[7] The options exchanges continue to work towards implementation of this linkage, which include contracting with a third party to build a linkage infrastructure. In the meantime, the options exchanges have implemented this interim linkage.

The key component of the interim linkage is the participating exchanges opening their automated customer execution systems, on a limited basis, to market maker orders. Specifically, market makers, such as Phlx Specialists, and later Registered Options Traders, are able to designate certain orders as ''customer'' orders, and thus receive execution under the automatic execution parameters of participating exchanges pursuant to the interim linkage.[8]

The interim linkage authorizes the Phlx to implement bilateral or multilateral interim arrangements with the other exchanges to provide for equal access between market makers on our respective exchanges. Currently the interim linkage pilot program allows Phlx Specialists and their equivalents on the other exchanges, when they are holding customer orders, to send orders reflecting the customer orders to the other market for execution when the other market has a better quote. Such orders are limited in size to the lesser of the size of the two markets' ''firm'' quotes for customer orders. The Exchange expects that the interim linkage may expand to include limited access for pure principal orders of no more than 10 contracts.

All interim linkage orders must be ''immediate or cancel'' (that is, they cannot be placed on an exchange's limit order book), and a market maker can send a linkage order only when the other (receiving) market is displaying the best national bid or offer and the sending market is displaying an inferior price. This allows a Phlx Specialist to access the better price for its customer. In addition, if the interim linkage includes principal orders, it would allow market makers to attempt to ''clear'' another market displaying a superior quote.

Phlx Specialists' participation in the interim linkage is voluntary. Only when a Phlx Specialist and its equivalent on another exchange believe that this form of mutual access is advantageous will the exchanges employ the interim linkage procedures. The Exchange believes that the interim linkage benefits investors and provides useful experience to help the exchanges in implementing the full linkage. For these reasons, the Exchange requests an extension of the pilot program until January 31, 2003.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it should prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30

[3] In Amendment No. 1, the Exchange made a technical correction to its rule text. *See* letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 26, 2002 (''Amendment No. 1'').

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). The Phlx requested that the Commission waive the rule's requirements of a 30-day operative delay and a five-day pre-filing notice.

[6] *See* Securities Exchange Act Release Nos. 44311 (May 16, 2001), 66 FR 28768 (May 24, 2001) (immediate effectiveness of interim linkage as a pilot program until January 31, 2002); and 45288 (January 16, 2002), 67 FR 3525 (January 24, 2002) (approval of an extension of interim linkage pilot until April 1, 2002).

[7] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000). The Exchange intends and believes that the other options exchange intend to file an amendment to the ''permanent'' linkage plan setting, among other things, the final implementation date for ''permanent'' linkage to be no later than April 30, 2003.

[8] As with other orders that are executed under the automatic execution parameters of the Exchange, when a limit order constitutes the Exchange's best bid or offer, the specialist executes the incoming order against that order.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

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; provided that the self-regulatory organization has provided the Commission with 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 days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designated if such action is consistent with the protection of investors and the public interest. The Phlx has requested, in order to allow the Exchange to continue to participate in the interim options linkage, that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b–4(f)(6)(iii).[14] The Exchange believes that this request for an extension of Phlx Rule 1081 is substantially similar to the proposed rule changes filed by the other options exchanges and approved by the Commission.[15] Further, this extension should allow the Exchange to participate in the interim linkage until the ''permanent'' linkage is closer to being operational. The Commission finds that the proposed rule change is consistent with the protection of investors and the public interest and, therefore, has determined to make the proposed rule change operative as of the date of this notice.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally requires that a self-regulatory organization give 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. However, Rule 19b–4(6)(iii)[18] permits the Commission to designate a shorter time. The Phlx seeks to have the five-business-day pre-filing requirement waived with respect to the proposed rule change. The Commission has determined to waive the five-business-day pre-filing requirement.

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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference, Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–20 and should be submitted by April 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8042 Filed 4–2–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] *Id.*

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* Securities Exchange Act Release Nos. 45373 (January 31, 2002), 67 FR 5860 (February 7, 2002) (approval of extension of interim linkage program on the American Stock Exchange LLC until December 31, 2002); 45336 (January 25, 2002), 67 FR 5137 (February 4, 2002) (approval of extension of interim linkage program on the Chicago Board Options Exchange, Inc. until the earlier of January 31, 2003 or the complete implementation of ''permanent'' linkage); 45337 (January 25, 2002), 67 FR 5018 (February 1, 2002) (approval of extension of interim linkage program on the International Securities Exchange LLC until the earlier of January 31, 2003 or the complete implementation of ''permanent'' linkage); and 45374 (January 31, 2002), 67 FR 5869 (February 7, 2002) (approval of extension of interim linkage program on the Pacific Exchange, Inc. until the earlier of January 31, 2003 or the complete implementation of ''permanent'' linkage).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks

ACTION: Notice of extension of application deadline.

FOR FURTHER INFORMATION CONTACT: George Camp, Supervisory Program Analyst, Office of Disaster Assistance, 202–205–6734.

SUPPLEMENTARY INFORMATION:

In response to the President's major disaster declarations with respect to the World Trade Center and the Pentagon and the widespread economic impact caused by the terrorist attacks and the related Federal actions taken directly thereafter, the SBA revised its disaster loan regulations on October 22, 2001. Under the revised regulations, SBA can make economic injury disaster loans (EIDL) to eligible small business concerns outside the declared disaster areas that suffered substantial economic injury as a direct result of the destruction of the World Trade Center or the damage to the Pentagon on September 11, 2001, or as a direct result of any related Federal action taken between September 11, 2001 and October 22, 2001.

As authorized by 13 CFR 123.605, SBA is extending the application deadline for good cause. On March 15, 2002, SBA published in the **Federal Register** (67 FR 11874) an interim final rule that changes the date upon which the size of a business is determined for purposes of this expanded EIDL program. In addition, SBA published in the **Federal Register** on January 23, 2002 (67 FR 3041) an interim final rule which makes adjustments in its monetary-based size standards in recognition of the effect of inflation since 1994. An extension of time to file for expanded EIDL assistance is appropriate and necessary to enable businesses to ascertain if they are now eligible in light of these recent **Federal Register** publications. Accordingly, with this Notice, the SBA extends the filing deadline for expanded economic injury disaster loans under this disaster program from April 22, 2002 to May 22, 2002.

Applications for economic injury disaster loans may be obtained and filed at the SBA disaster office servicing the applicant's state.

The disaster numbers assigned are:

Area 1

Connecticut 9TCT, District of Columbia 9TDC, Delaware 9TDE, Maryland 9TMD, Maine 9TME, Massachusetts 9TMA, New Hampshire 9TNH, New Jersey 9TNJ, New York 9TNY, Pennsylvania 9TPA, Rhode Island 9TRI, Virginia 9TVA, Vermont 9TVT, West Virginia 9TWV, Puerto Rico 9TPR, Virgin Islands 9TVI

Area 2

Alabama 9TAL, Florida 9TFL, Georgia 9TGA, Illinois 9TIL, Indiana 9TIN, Kentucky 9TKY, Michigan 9TMI, Minnesota 9TMN, Mississippi 9TMS, North Carolina 9TNC, Ohio 9TOH, South Carolina 9TSC, Tennessee 9TTN, Wisconsin 9TWI

Area 3

Arkansas 9TAR, Colorado 9TCO, Iowa 9TIA, Kansas 9TKS, Louisiana 9TLA, Missouri 9TMO, Montana 9TMT, North Dakota 9TND, Nebraska 9TNE, New Mexico 9TNM, South Dakota 9TSD, Oklahoma 9TOK, Texas 9TTX, Utah 9TUT, Wyoming 9TWY

Area 4

Alaska 9TAK, Arizona 9TAZ, California 9TCA, Hawaii 9THI, Idaho 9TID, Nevada 9TNV, Oregon 9TOR, Washington 9TWA, American Samoa 9TAS, Federated States of Micronesia 9TFM, Guam 9TGU, Republic of the Marshall Islands 9TMH, Commonwealth of Northern Mariana Islands 9TMP

The interest rate for eligible small businesses is 4 percent.

Authority: 13 CFR part 123, subpart G.

Dated: March 28, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–8015 Filed 4–2–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3969]

Culturally Significant Object Imported for Exhibition; Determinations: ''Treasures From an Unknown Reign: Shunzhi Porcelain''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition ''Treasures from an Unknown Reign: Shunzhi Porcelain,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Honolulu Academy of Arts, Honolulu, Hawaii from on or about May 2, 2002 to on or about September 8, 2002, The Trammell & Margaret Crow Collection of Asian Art, Dallas, TX from on or about September 28, 2002 to on or about January 5, 2003, and the University of Virginia Art Museum, Charlottesville, VA from on or about January 25, 2002 to on or about March 23, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: March 25, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–8057 Filed 4–2–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3957]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 1 p.m. on Friday, May 3, 2002, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. This meeting will discuss the upcoming 45th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on July 22–26, 2002, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. Harmonization of damage stability provisions in the IMO instruments,

b. Revision of technical regulations of the 1966 International Load Line Convention,

c. Revisions to the Fishing Vessel Safety Code and Voluntary Guidelines,

d. Large Passenger Vessel Safety,

e. Matters relating to Bulk Carrier Safety, and

f. Review of the Intact Stability Code

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), Room 1308, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: March 28, 2002.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–8055 Filed 4–2–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 3958]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Friday, May 3, 2002, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC, 20593–0001. The purpose of this meeting will be to finalize preparations for the 75th Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 15–24, 2002, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

—Adoption of amendments to the Convention for the Safety of Life at Sea (SOLAS)
—Large passenger ship safety
—Bulk carrier safety
—Piracy and armed robbery against ships
—Prevention and suppression of acts of terrorism against shipping
—Reports of eight subcommittees—Training and watchkeeping, Stability,

load lines and fishing vessel safety, Radiocommunications and search and rescue, Fire protection, Safety of navigation, Flag State implementation and Ship design and equipment and Dangerous goods, solid cargoes and containers.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: March 23, 2002.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–8056 Filed 4–2–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–23

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 Revenue Procedure 2002–23, Taxation of Canadian Retirement Plans Under U.S.-Canada Income Tax Treaty.

DATES: Written comments should be received on or before June 3, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the Internet *(CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* **TAXATION OF CANADIAN RETIREMENT PLANS UNDER U.S.-CANADA INCOME TAX TREATY.**

OMB Number: 1545–1773.

Revenue Procedure Number: Revenue Procedure 2002–23.

Abstract: Revenue Procedure 2002–23 provides guidance for the application by U.S. citizens and residents of the U.S.-Canada Income Tax Treaty, as amended by the 1995 protocol, in order to defer U.S. Income taxes on income accrued in certain Canadian retirement plans.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 20,000.

Estimated Average Time Per Respondent: 30 minutes.

Estimated Total Annual Reporting Hours: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 27, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–8075 Filed 4–2–02; 8:45 am]

BILLING CODE 4830–01–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of a Finding of No Significant Impact on the Final Environmental Assessment for the Diamond Fork System 2002 Proposed Action Modifications Documenting the Commission's Approval for the Central Utah Water Conservancy District To Proceed With Constructing the Diamond Fork System 2002 Proposed Action Modifications

AGENCIES: Office of the Assistant Secretary—Water and Science, Department of the Interior and the Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice of availability of a Finding of No Significant Impact on the Final Environmental Assessment for the Diamond Fork System 2002 Proposed Action Modifications.

SUMMARY: On March 28, 2002, Michael C. Weland, Executive Director of the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission), signed a FONSI. The FONSI documents selection of the Proposed Action Modifications as presented in the Final Environmental Assessment for the Diamond Fork System 2002 Proposed Action Modifications (2002 Modifications EA). The Mitigation Commission determined that implementing the modifications to the Proposed Action Alternative described in the 2002 Modifications EA will not have a significant impact on the quality of the human environment and that an environmental impact statement is not required.

The Commission's FONSI also approves the Central Utah Water Conservancy District (CUWCD) proceeding with construction of the Diamond Fork System, in accordance with statutory and contractual obligations. The following features will be constructed as part of the modifications to the Proposed Action: (1) Sixth Water Connection; (2) Tanner Ridge Tunnel; (3) Upper Diamond Fork Pipeline; (4) Upper Diamond Fork Flow Control Structure; (5) Upper Diamond Fork Shafts; (6) Aeration Chamber and Connection to Upper Diamond Fork Tunnel; (7) Upper Diamond Fork Tunnel; and (8) Diamond Fork Flow Control Facility.

The Proposed Action Modifications will be operated on an interim basis the same as described in the July 1999 Diamond Fork System Final Supplement to the Final Environmental Impact Statement, including the quantity and timing of minimum streamflows and the flexibility to other operational scenarios, except for the discharge location of the minimum streamflows into Diamond Fork Creek. The potential for generating hydroelectric power would remain the same as described in the FS–FEIS.

ADDRESSES: Address requests for further information to Mark Holden, Projects Manager, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, UT 84101.

FOR FURTHER INFORMATION CONTACT: Mark Holden, Projects Manager, 801–524–3146. mholden@uc.usbr.gov.

Dated: March 28, 2002.

Michael C. Weland,

Utah Reclamation Mitigation and Conservation Commission Executive Director.

[FR Doc. 02–8050 Filed 4–2–02; 8:45 am]

BILLING CODE 4310–05–P

Notices

Federal Register
Vol. 67, No. 64
Wednesday, April 3, 2002

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the paperwork Reduction Act for 1995. Comments are requested concerning: whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau of Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: 0412–.
Form No.: AID 1570–14.
Title: Report on Commodities.
Type of Review: New.

Purpose

The purpose of this information collection is to properly respond to the annual competition among applicants who apply on behalf of their sponsored overseas institutions and independent reviewers. ASHA needs to assess the strength and capability of the U.S. organizations, the overseas institutions and the merits of their proposed projects. Easily accessible historical records on past accomplishments and performance by repeat USOs, would speed the grant making process and provide documented reasons for both successful and unsuccessful applications.

Annual Reporting Burden

Respondents: 45.
Total annual responses: 1120.
Total annual hours requested: 613 hours.

Dated: March 21, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–7970 Filed 4–2–02; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: whether the proposed or continuing collection of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, D.C., 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB NO: OMB 0412–.
Form No.: AID 1570–13.
Title: Narrative/Time-Line Report.
Type of Review: New.

Purpose

This collection is a management and monitoring report used by the Bureau for Democracy, Conflict and Humanitarian assistance, Office of American Schools and Hospitals Abroad. The collection will ascertain that grant financed programs meet authorized objectives within the terms of agreements between its office and the recipients, which are United States Organizations that sponsor Overseas Institutions.

Annual Reporting Burden

Respondents: 80.
Total annual responses: 380.
Total annual hours requested: 200 hours.

Dated: March 21, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–7971 Filed 4–2–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–02–04]

National Advisory Committee for Tobacco Inspection Services; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of a forthcoming meeting of the National Advisory Committee for Tobacco Inspection Services.

DATES: April 16, 2002, 9:00 a.m.

ADDRESSES: The meeting will be held at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW, Washington, DC 20250–0280, Telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), and discuss the level of service (number of sets of graders) AMS will provide for the 2002–2003 tobacco marketing season. The Committee will recommend the desired level of service to be provided to producers by AMS and an appropriate fee structure to fund the recommended services for the 2002–2003 selling season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW, Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by April 10, 2002, and inform us of your needs.

Dated: April 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–8167 Filed 4–1–02; 3:05 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–020–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Application for Inspection and Certification of Animal Byproducts.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by June 3, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–020–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–020–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–020–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on the Application for Inspection and Certification of Animal Byproducts, contact Dr. Joyce Bowling, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 734–3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION

Title: Application for Inspection and Certification of Animal Byproducts.

OMB Number: 0579–0008.

Type of Request: Extension of approval of an information collection.

Abstract: U.S. exporters who wish to export certain animal byproducts to other countries must, in some instances, furnish the importing country with certificates that have been issued or endorsed by Veterinary Services (VS) of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture. VS Form 16–24, Application for Inspection and Certification of Animal Byproducts, is one such certificate. The form also serves as a written agreement under which the exporter pays for services we render in connection with documenting the certification statements required by the importing country.

The exporter provides VS with the information requested on VS Form 16–24, including a detailed description of the processing techniques that are used to make the product eligible to enter the importing country. VS uses this information to monitor and certify the processing techniques. After monitoring the processing technique, VS issues or endorses the certificate attesting to the class and quality of the products and that the products have been processed according to the conditions and requirements of the importing country.

Without this certification, the importing country would not accept the product, and the exporter would be unable to conduct business with that country. The use of VS Form 16–24 has no impact on animal disease prevention or eradication activities in the United States. The form was developed to meet the importation requirements of other countries.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of

information is estimated to average 1.5 hours per response.

Respondents: U.S. exporters of animal byproducts.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 20.

Estimated total annual burden on respondents: 30 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–8059 Filed 4–2–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan for the Shawnee National Forest (Alexander, Gallatin, Hardin, Jackson, Johnson, Massac, Pope, Saline, Williamson, and Union Counties, IL)

AGENCY: Forest Service, USDA.

ACTION: Notice of intent supplement.

SUMMARY: On March 20, 2002 the USDA Forest Service published in the **Federal Register**, a Notice of Intent (NOI) to prepare an Environmental Impact Statement and to revise the Shawnee National Forest Land and Resource Management Plan (Forest Plan). Several public meetings were listed in the NOI. Since these meetings were scheduled fairly early in the comment period, everyone may not have had sufficient notice prior to the meetings. To ensure adequate advance notification, two additional meetings are being scheduled, and the comment period is being extended.

SUPPLEMENTARY INFORMATION: The Shawnee National Forest is scheduling two public meetings in addition to the meetings that were scheduled in the NOI of March 20, 2002. All information shared by the Forest Service at these meetings will be identical to that shared at the previously scheduled meetings. These additional meetings will be held as follows:

May 28, 2002, 2–7 p.m., Township Davis-McCann Center, 15 North 14th Street, Murphysboro, IL 62966

May 29, 2002, 2–7 p.m.; Ralph Metcalf Federal Building, 77 West Jackson Blvd., Chicago, IL 60404.

The period for accepting comments from the public is also being extended. We need to receive your comments on the NOI in writing within 60 days after this NOI Supplement is published in the **Federal Register**. All other information in the March 20, 2002 NOI remains the same.

Dated: March 27, 2002.

Donald L. Meyer,

Acting Regional Forester.

[FR Doc. 02–7990 Filed 4–02–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Idaho Panhandle National Forests' Idaho Panhandle Resource Advisory Committee will meet Wednesday, April 17, 2002 in Coeur d'Alene, Idaho for a business meeting. The meeting is open to the public.

DATES: April 17, 2002.

ADDRESSES: The meeting location is the Idaho Panhandle National Forests' Supervisor's Office, located at 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Officer, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: Agenda topics include hearing presentations of project proposals, review of project proposals and receiving public comment.

Dated: March 28, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 02–8018 Filed 4–2–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

[Docket No.

Notice of Resource Advisory Committee Meeting

AGENCY: Southwest Idaho Resource Advisory Committee, Boise, ID, Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet Wednesday, April 17, 2002 in Boise, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on April 17, begins at 10:30 a.m., at the Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho. Agenda topics will include review and approval of project proposals and an open public forum.

FOR FURTHER INFORMATION CONTACT: Randy Swick, McCall District Ranger and Designated Federal Officer, at (208) 634-0400.

Dated: March 26, 2002.

Robert Giles,

Acting Forest Supervisor, Payette National Forest.

[FR Doc. 02–8049 Filed 4–2–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Rural Utilities Service

Inviting Preapplications for Rural Cooperative Development Grants

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business—Cooperative Service (RBS) announces the availability of approximately $5.3 million in competing Rural Cooperative Development Grant (RCDG) funds for fiscal year (FY) 2002. Of this amount, approximately $1.5 million will be reserved for preapplications which focus on assistance to small, minority producers through their cooperative businesses. Applicants for the reserved amount must have a governing board or

membership base comprised of at least 75 percent minority members. This action will comply with legislation which authorizes grants for establishing and operating centers for rural cooperative development. The intended effect of this notice is to solicit preapplications for FY 2002 and award grants before September 1, 2002.

DATES: The deadline for receipt of a preapplication is May 17, 2002. Preapplications received after that date will not be considered. Preapplications should be sent to the Rural Development State offices. State offices will forward the preapplications to the National office by May 31, 2002.

ADDRESSES: Entities wishing to apply for assistance should contact their USDA Rural Development State office to receive further information and copies of the preapplication package.

FOR FURTHER INFORMATION CONTACT: James E. Haskell, Assistant Deputy Administrator, Cooperative Services, Rural Business—Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250. Telephone (202) 720–8460.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements continued in this regulation were previously approved by the Office of Management and Budget (OMB) and were assigned OMB control number 0570–0006.

General Information

Rural Cooperative Development Grants (RCDG) are authorized by section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932). Regulations are contained in 7 CFR part 4284, subpart F. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. The program is administered through USDA Rural Development State offices acting on behalf of RBS.

Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria. Approximately $1.5 million is reserved for preapplications which focus on assistance to small, minority producers through their cooperative businesses. Applicants for the reserved amount must have a governing board or membership base comprised of at least 75 percent minority members. The priorities described in this paragraph will be used by RBS to rate preapplications. Points will be distributed in comparison to other preapplications on hand. Up to five points will be awarded to each factor. Each factor will receive equal weight. Preference will be given to applications that:

(1) Demonstrate a proven track record in administering a nationally coordinated, regionally or State-wide operated project;

(2) Demonstrate previous expertise in providing technical assistance to cooperatives in rural areas;

(3) Demonstrate the ability to assist in the retention of business, facilitate the establishment of cooperatives and new cooperative approaches, and generate employment opportunities that will improve the economic conditions of rural areas;

(4) Demonstrate the ability to create horizontal linkages among cooperative businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets;

(5) Commit to providing technical assistance and other services to underserved and economically distressed rural areas of the United States;

(6) Commit to providing greater than a 25 percent matching contribution, with private funds and in-kind contributions;

(7) Demonstrate transferability or demonstration value to assist rural areas outside of project area; and

(8) Demonstrate that any cooperative development activity is consistent with positive environmental stewardship.

Fiscal Year 2002 Preapplication Submission

Preapplications must include a clear statement of the goals and objectives of the project and a plan which describes the proposed project as required by the statute and 7 CFR part 4284, subpart F. Each preapplication received in the State office will be reviewed to determine if the preapplication is consistent with the eligible purposes outlined in 7 CFR part 4284, subpart F. Preapplications without supportive data to address selection criteria will not be considered.

Since the primary objective of the cooperative center concept is to provide technical assistance services, including feasibility analysis, preapplications that do not propose development or continuation of the cooperative center concept will not be considered. Also, preapplications that focus on assistance to only one cooperative within the project area will not be considered. To enhance the long-term viability of cooperative development centers, strengthening of technical assistance capacity within new and existing centers is strongly encouraged.

Copies of 7 CFR part 4284, subpart F, will be provided to any interested applicant by making a request to the Rural Development State office or RBS National office. Preapplications must be completed and submitted to the State Rural Development Office as soon as possible, but no later than May 17, 2002. Preapplications received after May 17 will not be considered.

For ease of locating information and in addition to the preapplication requirements contained in 7 CFR part 4284 subpart F, each preapplication should contain the following:

(1) A detailed Table of Contents containing page numbers for each component of the reapplication.

(2) A project summary of 250 words or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals, relevance of the project, and a listing of all organizations involved in the project. The project summary should immediately follow the Table of Contents.

(3) A separate one-page information sheet which lists each of the eight evaluation criteria followed by the page numbers of all relevant material and documentation contained in the preapplication which supports that criteria. This page should immediately follow the project summary.

(4) An additional requirement for those applicants who have received funding under the RCDG program in Fiscal Years 1997 through 2001 is a summation, not to exceed three pages, of progress and results for all projects funded fully or partially by the RCDG program in those years. This summary should include the status of cooperative businesses organized and all eligible grant purpose activities listed under 7 CFR 4284.515. The summary should immediately follow the page described above in (3) documenting the location of evaluation criteria supporting material.

Preapplications requesting Federal funds in excess of $300,000 will not be considered. The National office will score preapplications based on the grant selection criteria contained in 7 CFR part 4284, subpart F, and will select awardees subject to the availability of funds and the awardee's satisfactory submission of a formal application and related materials in accordance with

subpart F. Entities submitting preapplications that are selected for awards will be invited by the Rural Development State office to submit a formal application prior to September 1. It is anticipated that grant awardees will be selected by September 1, 2002.

In the event that the applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or de-obligate the award, if acceptable modifications are not submitted by the awardees within 15 working days from the date the application is returned to the applicant. Any modifications must be within the scope of the original application.

All applicants and grants must be in compliance with the requirements of 7 CFR parts 3015 and 3019.

Dated: March 27, 2002.

John Rosso,

Administrator, Rural Business—Cooperative Service.

BILLING CODE 3410–XY–U

U. S. DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT STATE OFFICES

ALABAMA Steve Pelham Sterling Center, Suite 601 4121 Carmichael Road Montgomery, AL 36106-3683 T: (334) 279-3400 F: (334) 279-3403	**GEORGIA** F. Stone Workman Stephens Federal Building 355 E. Hancock Avenue Athens, GA 30601-2768 T: (706) 546-2162 F: (706) 546-2152	**LOUISIANA** Michael B. Taylor 3727 Government Street Alexandria, LA 71302 T: (318) 473-7921 F: (318) 473-7829
ALASKA Bill Allen 800 West Evergreen, Suite 201 Palmer, AK 99645 T: (907)761-7705 F: (907) 761-7783	**HAWAII** Loraine Shin Federal Building, Room 311 154 Waianuenue Avenue Hilo, HI 96720 T: (808) 933-8302 F: (808) 933-8327	**MAINE** Michael W. Aube 967 Illinois Ave., Suite 4 P.O. Box 405 Bangor, ME 04402-0405 T: (207) 990-9106 F: (207) 990-9165
ARIZONA Eddie Browning 3003 North Central Avenue, Suite 900 Phoenix, AZ 85012 T: (602) 280-8700 F: (602) 280-8770	**IDAHO** Michael A. Field 9713 West Barnes Drive Suite A1 Boise, ID 83709 T: (208) 378-5600 F: (208) 378-5643	**MASS/RI/CONN** David H. Tuttle 451 West Street Amherst, MA 01002 T: (413) 253-4300 F: (413) 253-4347
ARKANSAS John M. Allen Federal Bldg. 700 W. Capitol Ave., Room 3416 Little Rock, AR 72201-3225 T: (501) 301-3200 F:(501) 301-3278	**ILLINOIS** Douglas A. Wilson Illini Plaza, Suite 103 1817 South Neil Street Champaign, IL 61820 T: (217) 403-6200 F: (217) 403-6243	**MICHIGAN** Joanne C. DeVuyst 3001 Coolidge Road, Suite 200 East Lansing, MI 48823 T: (517) 324-5188 F: (517) 324-5225
CALIFORNIA D. Paul Venosdel 430 G Street, Agcy. 4169 Davis, CA 95616-4169 T: (530) 792-5800 F: (530) 792-5837	**INDIANA** Robert White 5975 Lakeside Boulevard Indianapolis, IN 46278 T: (317) 290-3100 F: (317) 290-3127	**MINNESOTA** Stephen G. Wenzel 410 AgriBank Building 375 Jackson Street St. Paul, MN 55101 T: (651) 602-7800 F: (651) 602-7824
COLORADO Ginette Dennis 655 Parfet Street, Room E-100 Lakewood, CO 80215 T:720-544-2903 F:720-544-2970	**IOWA** Daniel W. Brown, Ph.D. Federal Building, Room 873 210 Walnut Street Des Moines, IA 50309 T: (515) 284-4663 F: (515) 284-4859	**MISSISSIPPI** Nick Walters Federal Building, Suite 831 100 West Capitol Street Jackson, MS 39269 T: (601) 965-4316 F: (601) 965-5384

U. S. DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT STATE OFFICES

DELAWARE-MARYLAND Marlene B. Elliott 4607 South Dupont Hwy P.O. Box 400 Camden, DE 19934-9998 T: (302) 697-4300 F: (302) 697-4390	**KANSAS** Charles "Chuck" R. Banks 1200 SW Executive Drive P.O. Box 4653 Topeka, KS 66604 T: (785) 271-2700 F: (785) 271-2708	**MISSOURI** Gregory C. Branum 601 Business Loop 70 West Parkade Center, Suite 235 Columbia, MO 65203 T: (573) 876-0976 F: (573) 876-0977
FLORIDA Charles W. Clemmons, Sr. 4440 NW 25th Place P.O. Box 147010 Gainesville, FL 32614-7010 T: (352) 338-3402 F: (352) 338-3405	**KENTUCKY** Kenneth Sloan 771 Corporate Drive, Suite 200 Lexington, KY 40503 T: (859) 224-7300 F:(859) 224-7340	**MONTANA** W. T. (Tim) Ryan Unit 1, Suite B 900 Technology Boulevard Bozeman, MT 59715 T: (406) 585-2580 F: (406) 585-2565
NEBRASKA M. James Barr Federal Building, Room 152 100 Centennial Mall N Lincoln, NE 68508 T: (402) 437-5551 F: (402) 437-5408	**OKLAHOMA** Brent J. Kisling 100 USDA, Suite 108 Stillwater, OK 74074 T: (405) 742-1000 F: (405) 742-1005	**UTAH** John R. Cox Wallace F. Bennett Fed. Bldg. 125 South State Street, Room 4311 Salt Lake City, UT 84138 T: (801) 524-4320 F: (801) 524-4406
NEVADA Larry J. Smith 1390 South Curry Street Carson City, NV 89703-5405 T: (775) 887-1222 F: (775) 885-0841	**OREGON** Lynn Schoessler 101 SW Main Street, Suite 1410 Portland, OR 97204-3222 T: (503) 414-3300 F: (503) 414-3385	**VERMONT/NH/** Jolinda H. LaClair City Center, 3rd Floor, 89 Main Street Montpelier, VT 05602 T: (802) 828-6002 F: (802) 828-6018
NEW JERSEY Andrew M. G. Law Tarnsfield Plaza, Suite 22 790 Woodlane Road Mt. Holly, NJ 08060 T: (609) 265-3600 F: (609) 265-3651	**PENNSYLVANIA** Byron E. Ross 1 Credit Union Place, Suite 330 Harrisburg, PA 17110-2996 T: (717) 237-2184 F: (717) 237-2191	**VIRGINIA** Joseph W. Newbill Culpeper Building, Suite 238 1606 Santa Rosa Road Richmond, VA 23229 T: (804) 287-1552 F: (804) 287-1721
NEW MEXICO Roberto Salazar 6200 Jefferson Street, Room 255 Albuquerque, NM 87109 T: (505) 761-4950 F: (505) 761-4976	**PUERTO RICO** Jose Otero Garcia IBM Building - Suite 601 654 Munos Rivera Avenue Hato Rey, PR 00918-6106 T: (787) 766-5095 F: (787) 766-5844	**VIRGIN ISLANDS** Glenn E. Walden, Acting 4400 NW 25th Place P.O. Box 147010 Gainesville, FL T: (352) 338-3402 F: 338-3405

U. S. DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT STATE OFFICES		
NEW YORK Patrick Brennan The Galleries of Syracuse 441 South Salina Street Syracuse, NY 13202 T: (315) 477-6435 F: (315) 477-6438	**SOUTH CAROLINA** Charles D. Sparks Strom Thurmond Federal Building 1835 Assembly Street, Room 1007 Columbia, SC 29201 T: (803) 765-5163 F: (803) 765-5633	**WASHINGTON** Jackie J. Gleason 1835 Blacklake Boulevard, SW. Suite B Olympia, WA 98512-5715 T: (360) 704-7715 F: (360) 704-7742
NORTH CAROLINA John J. Cooper 4405 Bland Road, Suite 260 Raleigh, NC 27609 T: (919) 873-2000 F: (919) 873-2075	**SOUTH DAKOTA** Lynn D. Jensen Federal Building, Room 210 200 4th Street SW Huron, SD 57350 T: (605) 352-1100 F: (605) 352-1146	**WEST VIRGINIA** Jenny N. Phillips 75 High Street P.O. Box 678 Morgantown, WV 26505 T: (304) 284-4861 F: (304) 284-4893
NORTH DAKOTA Clare Carlson Federal Building, Room 208 220 East Rosser, P.O. Box 1737 Bismarck, ND 58502-1737 T: (701) 530-2037F: (701) 530-2111	**TENNESSEE** Mary (Ruth) Tackett 3322 West End Avenue, Suite 300 Nashville, TN 37203-1071 T: (615) 783-1300 F: (615) 783-1301	**WISCONSIN** Frank Frassetto 4949 Kirschling Court Stevens Point, WI 54481 T: (715) 345-7600 F: (715) 345-7669
OHIO Randall Hunt Federal Building, Room 507 200 North High Street Columbus, OH 43215-2477 T: (614) 255-2400 F: (614) 255-2559	**TEXAS** R. Bryan Daniel Federal Building, Suite 102 101 South Main Temple, TX 76501 T: (254) 742-9700 F: (254) 742-9709	**WYOMING** John E. Cochran 100 East B, Federal Building, Rm 1005 P.O. Box 820 Casper, WY 82602 T: (307) 261-6300 F: (307) 261-6327

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the availability of $12 million of grant funds for the RCDI program through the Rural Housing Service (RHS), herein referred to as the Agency, USDA. Applicants must provide matching funds in an amount at least equal to the Federal grant. These grants will be made to qualified intermediary organizations that will provide financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing, community facilities, or community and economic development. This Notice lists the information needed to submit an application for these funds.

DATES: The deadline for receipt of an application is 4 p.m. EST on July 2, 2002. The application deadline is firm as to date and hour. The agency will not consider any application received after the deadline.

ADDRESSES: Entities wishing to apply for assistance may download the application requirements delineated in this Notice from the RCDI Web site at: *www.rurdev.usda.gov/rhs/rcdi/index.htm.* Applicants may also request application packages from: Beth Jones, Rural Housing Service, STOP 0787, Room 0183, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1498, e-mail: *epjones@rdmail.rural.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Beth Jones, Senior Loan Specialist, Community Programs, RHS, USDA, STOP 0787, Room 0183, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1498, Facsimile (202) 690–0471, e-mail: *epjones@rdmail.rural.usda.gov.* You may also obtain information from the RCDI Web site at: *www.rurdev.usda.gov/rhs/rcdi/index.htm.*

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.446. This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

The paperwork burden has been cleared by the Office of Management and Budget under OMB Control Number 0575–0180.

Background

Congress created the Rural Community Development Initiative (RCDI) in Fiscal Year (FY) 2000 with an appropriation of $6 million under the Rural Community Advancement Program (RCAP). Congress appropriated $6 million in FY 2001 for the RCDI. The funds from FY 2001 are being carried over to FY 2002 for utilization. Congress appropriated $6 million in FY 2002 for

the RCDI. These funds are to be used solely to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas. Qualified private and public (including tribal) intermediary organizations proposing to carry out financial and technical assistance programs will be eligible to receive the funding. The intermediary will be required to provide matching funds in an amount at least equal to the RCDI grant.

Definitions for RCDI Purposes

Agency—the Rural Housing Service (RHS) or its successor.

Beneficiary—entities or individuals that receive benefits from assistance provided by the recipient.

Capacity—the ability of a recipient to finance and implement housing, community facilities, or community and economic development projects or provide financial and technical assistance to enhance a community's potential.

Federally recognized tribes—tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs, based on the Notice in the **Federal Register** published by the Bureau of Indian Affairs on March 13, 2000, volume 65, number 49, page 13298. Tribally Designated Housing Entities, (TDHEs), are eligible RCDI recipients.

Financial Assistance—Funds used by the intermediary to pay for the technical assistance program being delivered. Funds that pass through the intermediary to the recipient for eligible RCDI purposes.

Fund—the RCDI grant and matching money.

Intermediary—a qualified private nonprofit or public (including tribal) organization that provides financial and technical assistance to multiple recipients. The applicant entity must have been organized for a minimum of three years.

Low-income community—an authority, district, economic development authority, regional council, or unit of government representing an incorporated city, town, village, county, township, parish, or borough. The location of the low-income community's office that will be receiving the financial and technical assistance must be in a community with a median household income at, or below, 80 percent of either the state or national median household income.

Matching Funds—cash or confirmed funding commitments. Matching funds must be at least equal to the grant amount. These funds can only be used for eligible RCDI activities. In-kind contributions cannot be used as matching funds.

Nonprofit organization—a private community-based housing or community development entity with a valid 501(c)(3) letter from the Internal Revenue Service (IRS) designating their nonprofit status.

Recipient—the entity that receives the financial and technical assistance from the intermediary. The recipient must be a nonprofit organization, a low-income rural community, or a federally recognized tribe.

Rural and Rural Area—a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than urbanized areas immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants. Urbanized area data will be based on 1990 census data because 2000 census data is not available for urbanized areas.

Technical Assistance—skilled help in improving the recipient's abilities in the areas of housing, community facilities, or community and economic development. The Agency will determine whether a specific activity qualifies as technical assistance.

Eligibility Requirements

1. The recipient and beneficiary, but not the intermediary, must be located in an eligible rural area. The applicable Rural Development State Office can assist in determining the eligibility of an area. A listing of Rural Development State Offices is included in this Notice.

2. The name and location of recipients must be included in the grant application.

3. The recipients must be nonprofit organizations, low-income rural communities, or federally recognized tribes based on the RCDI definitions of these groups.

4. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient: a 501(c)(3) letter from the IRS is required for nonprofit recipients; for low-income community recipients, the Agency needs (a) evidence that the entity is a public body and (b) census data verifying that the median household income of the community, where the office receiving the financial and technical assistance is located, is at, or below, 80 percent of the state or national median household income; for federally recognized tribes, the Agency needs the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (see the definition of federally recognized tribes for details on this list).

5. Individuals cannot be recipients.

6. The intermediary must provide matching funds at least equal to the amount of the grant.

7. The intermediary must provide a program of financial and technical assistance to the recipient.

8. The intermediary organization must have at least three years prior experience working with nonprofit organizations, low-income rural communities, or tribal organizations in the areas of housing, community facilities, or community and economic development.

9. The respective minimum and maximum grant amount per intermediary is $50,000 and $1 million.

10. Proposals must be structured to utilize the grant funds within 3 years from the date of the award.

11. Each intermediary, whether singularly or jointly, may only submit one application for RCDI funds under this NOFA unless the intermediary's participation is limited to providing all or part of the matching funds.

12. Recipients can participate in more than one RCDI application; however, after grant selections are made, the recipient can only participate in multiple RCDI grants if the type of financial and technical assistance they will receive is not duplicative.

13. The intermediary and the recipient cannot be the same entity. The recipient can be a related entity to the intermediary, if it meets the definition of a recipient.

14. A nonprofit entity must already have their 501(c)(3) letter from the IRS when the intermediary applies for the RCDI grant. Organizations with pending requests for this designation are not considered eligible.

15. If the recipient is a low-income community, identify the unit of government to which the financial and technical assistance will be provided (i.e., town council or village board). The financial and technical assistance must be provided to the organized unit of government representing that community, not the community at large.

16. Nonprofits located in census designated places (CDPs) are eligible. CDPs are not considered eligible rural areas under low-income communities because they do not have a unit of government to receive the financial and technical assistance.

Eligible Fund Uses

Fund uses must be consistent with the RCDI purpose (see ''Background'' section of this Notice). A nonexclusive list of eligible grant uses includes the following.

1. Provide financial and technical assistance to develop recipients' capacity and ability to undertake projects related to housing, community facilities, or community and economic development (e.g., the intermediary hires a staff person to provide technical assistance to the recipient, or the recipient hires a staff person, under the supervision of the intermediary, to carry out the financial and technical assistance provided by the intermediary).

2. Develop the capacity of recipients to conduct community development programs (e.g. home-ownership education or training for minority business entrepreneurs).

3. Develop the capacity of recipients to conduct development initiatives (e.g., programs that support micro-enterprise and sustainable development).

4. Increase leveraging ability and access to alternative funding sources by providing training and staffing.

5. Provide the financial and technical assistance component for essential community facilities projects.

6. Assist recipients in completing predevelopment requirements for housing, community facilities, or community and economic development projects by providing resources for professional services (i.e., architectural, engineering, or legal).

7. Improve recipient's organizational capacity by providing training and resource material on developing strategic plans, board operations, management, financial systems, and information technology.

8. Purchase computers, software, and printers at the recipient level.

9. Provide funds to recipients for training-related travel costs and training expenses related to RCDI.

Ineligible Fund Uses

1. Funding a revolving loan fund.

2. Construction (in any form).

3. Intermediary preparation of strategic plans for recipients.

4. Funding illegal activities.

5. Grants to individuals.

6. Funding a grant where there may be a conflict of interest or an appearance of a conflict of interest involving any action by the Agency.

7. Paying obligations incurred before the beginning date or after the ending date of the grant agreement.

8. Purchasing real estate.

9. Improvement or renovation of the grantee's office space or for the repair or maintenance of privately owned vehicles.

10. Any other purpose prohibited in 7 CFR parts 3015, 3016, and 3019, as applicable.

11. Funds cannot be used for recipient's general operating costs.

Program Examples

The purpose of this initiative is to develop or increase the recipient's capacity through a program of financial and technical assistance to perform in the areas of housing, community facilities, or community and economic development. Strengthening the recipient's capacity in these areas will benefit the communities they serve. The RCDI structure requires the intermediary (grantee) to provide a program of financial and technical assistance to recipients. The recipients will in turn provide programs to their communities (beneficiaries). Following are examples of eligible and ineligible purposes under the RCDI program. These examples are illustrative and are not meant to limit the activities you may propose in your application. Activities that meet the objective of the RCDI program will be considered eligible.

1. The intermediary must work directly with the recipient, not the beneficiaries. An example would be that the intermediary provides training to the recipient on how to conduct home-ownership education classes. The recipient then provides ongoing home-ownership education to the residents of the community, the ultimate beneficiaries. This ''train the trainer'' concept fully meets the intent of this initiative. The intermediary is providing financial and technical assistance that will build the recipient's capacity by enabling them to conduct home-ownership education classes for the public. This is an eligible purpose. However, if the intermediary directly provided home-ownership education classes to individuals in the recipient's service area, this would not be an eligible purpose because the recipient would be bypassed.

2. If the intermediary is working with a low-income community as their recipient, the intermediary must provide the financial and technical assistance to the entity that represents the low-income community and is identified in the application. Examples of entities representing a low-income community are a village board or a town council. If the intermediary provides technical assistance to the Board of Directors of the low-income community on how to establish a cooperative, this would be an eligible purpose. However, if the intermediary works directly with individuals from the community to establish the cooperative, this is not an eligible purpose. The recipient's capacity is built by learning skills that will enable them to support sustainable economic development in their communities on an ongoing basis.

3. The intermediary may provide technical assistance to the recipient on how to create and operate a revolving loan fund (RLF). The intermediary may not monitor or operate the RLF. RCDI funds, including matching funds, cannot be used to fund RLFs.

Application Selection Process

Rating and ranking. Applications will be rated and ranked by a review panel based on the ''Evaluation Criteria and Weights'' contained in this Notice. If there is a tie score after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for ''Building Capacity'' and the applicant with the highest score in that category will receive a higher ranking. If the scores for ''Building Capacity'' are the same, the scores will be compared for the next criterion, in sequential order, until one highest score can be determined.

Initial screening. The Agency will screen each application to determine eligibility during the period immediately following the application deadline. Listed below are many of the reasons for rejection from our previous round of funding to help you prepare a better application. The following reasons for rejection are not all inclusive; however, they represent the majority of the applications previously rejected.

1. Recipients were not located in eligible rural areas based on the definition in this Notice.

2. Applicants failed to provide required documentation for recipients (*i.e.,* 501(c)(3) letter for nonprofit recipients).

3. Application did not follow the RCDI structure with an intermediary and recipients.

4. Recipients were not identified in the application.

5. Recipients cannot be individuals.

6. Intermediary did not provide evidence that they had been incorporated for at least three years as the applicant entity.

7. Applicants failed to address the ''Evaluation Criteria'' and were unable to compete.

8. The purpose of the proposal did not qualify as an eligible RCDI purpose.

9. Funds cannot be used for construction or renovations.

10. Financial and technical assistance cannot be provided directly to individuals.

The State Office will review their copy of the application and provide the State Director's written comments and recommendations to the National Office.

Evaluation Criteria and Weights

This information should be presented in narrative form. Documentation must be limited to three pages per criterion with the exception of the attachments for ''Population'' and ''Income.''

1. Building Capacity '' Maximum 60 Points

The applicant must demonstrate how they will improve the recipients' capacity, through a program of financial and technical assistance, as it relates to the RCDI purposes. Capacity-building technical assistance should provide new functions to the recipients or expand existing functions that will enable the recipients to undertake projects in the areas of housing, community facilities, or community and economic development, which will benefit the community. The program of financial and technical assistance you will provide, how you will deliver the program, and the ability to measure the program's effectiveness will determine the merit of your application. All applications will be competitively ranked with the applications providing the most improvement in capacity development and measurable activities being ranked the highest. Capacity-building technical assistance may include, but is not limited to: training to conduct community development programs (*i.e.,* home ownership education, minority business entrepreneurs, establish cooperatives, and establish micro-enterprises); organizational development (*i.e.,* board operations, management, and financial systems); instruction on how to develop and implement a strategic plan; instruction on how to access alternative funding sources to increase leveraging opportunities; staffing (*i.e.,* hire a person at intermediary level to provide technical assistance to recipient or hire person at recipient level to carry out financial and technical assistance provided by intermediary); and purchase technology equipment at the recipient level (*i.e.,* computers, printers, and software).

Your narrative response must address the following items:

a. Describe in detail the type of financial and technical assistance you will provide to the recipients and the activities you will conduct to deliver the financial and technical assistance.

b. Explain how financial and technical assistance will develop or increase the recipient's capacity. Indicate whether a new function is being developed or if existing functions are being expanded or performed more effectively.

c. Identify which RCDI purpose areas will be addressed with this assistance: housing, community facilities, or community and economic development.

d. Describe how the results of the financial and technical assistance will be measured. What benchmarks will be used to measure effectiveness?

Scoring—maximum of 60 points

1. Type of financial and technical assistance and implementation activities: 0–35 points

a. How well defined is the purpose of this proposal?

b. Are the implementation activities specifically defined?

c. Will the proposed implementation activities actually develop the recipient's capacity?

2. How financial and technical assistance will develop capacity: 0–10 points

a. Is a new function being developed and will it build capacity at the recipient level?

b. Is an existing function being expanded or performed more effectively and will it build capacity at the recipient level?

3. RCDI purpose: 0–5 points

a. Housing,

b. Community facilities, or

c. Community and economic development.

4. Measuring outcomes: 0–10 points

a. What benchmarks will be used to measure outcomes and effectiveness?

b. Are the proposed benchmarks an effective measurement for the type of financial and technical assistance provided?

2. Expertise—Maximum 30 Points

The applicant must demonstrate that they have conducted programs of financial and technical assistance and achieved measurable results in the areas of housing, community facilities, or community and economic development in rural areas. All applications will be competitively ranked using the following criteria:

List the types of financial and technical assistance your organization has provided for the last five years, for the following questions.

a. Have you worked with nonprofit organizations in rural areas? If yes, list the organizations, contact information, and type of assistance that was provided.

b. Have you worked with low-income communities in rural areas? If yes, list the communities, the type of entity you worked with (i.e., city government, town council, or village board), contact information, and the type of financial and technical assistance provided.

c. Have you worked with federally recognized tribes or any other culturally diverse organizations? If yes, list the names of the tribes or organizations, contact information, and the type of financial and technical assistance provided.

d. Provide a synopsis of what your organization does.

Scoring—maximum 30 points

1. The applicant has worked with groups in at least one of the three categories: 0–6 points

2. The types of financial and technical assistance provided are similar to the RCDI purposes: 0–15 points

3. The applicant demonstrates experience in working with the types of entities that they have listed as recipients in their application: 0–9 points

3. Population—Maximum 30 Points

Population is based on the 2000 Census Data for the community the recipient is located in. Community is defined for scoring purposes as a city, town, village, county, parish, borough, or census designated place where the recipient's office is physically located. The applicant must submit a copy of the census data from the following Web site to verify the population figures being used for each recipient. The data can be accessed on the Internet at *www.census.gov;* click on ''American FactFinder'' from the left menu; click on drop down menu for ''Show Me''; select ''Population, Race and Hispanic or Latino (GCT)''; click on drop down menu under ''for''; select ''State—Place and (in selected states) County Subdivision''; select state from next drop down menu; click on ''Go''; print information for submission and highlight recipient locations. The average population of the recipient locations will be used and will be scored as follows:

Population	Scoring
5,000 or less	30 points
5,001 to 10,000	20 points
10,001 to 20,000	10 points
20,001 to 50,000	5 points

4. Income—Maximum 30 Points

The average of the median household incomes for the communities where the recipients are physically located will

determine the points awarded. Applicants may compare the average recipient median household income to the state median household income or the national median household income; whichever yields the most points. The national median household income to be used is $30,056. The applicant must submit a copy of the income data from the following Web site to verify the income for each recipient. The data being used is from the 1990 census. The data can be accessed from the Internet at *www.census.gov;* click on ''American FactFinder'' from left menu; click on drop-down menu for ''Show Me''; select ''Income and Poverty (1990 QT); click on drop-down menu under ''for''; select ''a Place''; select state from next drop-down menu; select the place from the next drop-down menu; click on ''Go''; print information for submission. Points will be awarded as follows:

Average recipient median income is:	Scoring (points)
Less than 60 percent of the State or National median household income	30
Between 60 and 70 percent of the State or National median household income	20
Greater than 70 percent of the State or National median household income	10

5. Innovative Approach—Maximum 20 Points

The applicant must demonstrate that they have developed an innovative approach that can be used by other organizations as a model. To be considered innovative, the approach must propose an easily replicated new or useful service or method of providing service to recipients that builds their capacity to improve their communities in the areas of housing, community facilities, or community and economic development. Points will be awarded to applications that have the highest score on the following factors:

a. Ease of replication by nonprofit organizations, low-income rural communities, or federally recognized tribes;

b. Uniqueness of proposal;

c. Financial return to rural communities; and

d. Need by nonprofit organization, low-income rural community, or federally recognized tribe.

If warranted, up to twenty applicants will be eligible to receive points in this category.

The application ranking and scoring are:

Ranking	Scoring
10 highest-ranking applications for this criterion	20 points
Next 10 highest-ranking applicationsfor this criterion	10 points

If there is a tie score, it will be resolved by using the format listed under ''Rating and Ranking'' under ''Application Selection Process'' elsewhere in this Notice.

6. Soundness of Approach—Maximum 50 Points

The applicant can receive up to 50 points for soundness of approach. The overall proposal will be considered under this criterion. Applicants must list the page numbers in the application that address these factors.

a. Has the applicant demonstrated their ability to provide the proposed financial and technical assistance based on prior accomplishments? 0–5 points

b. The proposed financial and technical assistance program is clearly stated and the applicant has defined how this proposal will be implemented. The plan for implementation is viable: 0–20 points

c. Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount and matching funds should be utilized to maximize capacity building at the recipient level: 0–15 points

d. How closely the proposal fits the objectives for which applications were invited: 0–10 points

7. Geographic Distribution Points—20 Points

Applicant must provide a map that specifically describes the areas covered by their recipients. After applications have been evaluated and awarded points under the first six criteria, the Agency may award 20 points per application to promote a broad geographic distribution of RCDI funds.

8. Purpose Distribution Points—20 Points

Applicant must state the primary purpose of their application (i.e., housing, community facilities, or community and economic development). After applications have been evaluated and awarded points under the first six criteria, the Agency may award 20 points per application to promote diversity of RCDI purposes.

9. Proportional Distribution Points—20 Points

Applicant must state the amount of their grant request. After applications have been evaluated and awarded points under the first six criteria, the Agency may award 20 points per application to promote dispersion of grant awards between the range of $50,000 to $1,000,000.

Deliverables

Grant funds and matching funds must be used in equal proportions. This does not mean funds have to be used equally by line item. The request for reimbursement and supporting documentation must show that RCDI fund usage does not exceed the cumulative amount of matching funds used. Grant funds will be disbursed pursuant to relevant provisions of 7 CFR parts 3015, 3016, and 3019, as applicable. Matching funds must be used to support the overall purpose of the RCDI program. RCDI funds will be disbursed on a reimbursable basis only. No advances will be made. Matching funds cannot be expended prior to execution of the RCDI Grant Agreement. No reimbursement will be made for any funds expended prior to execution of the RCDI Grant Agreement unless the grantee has requested and received written Agency approval of the costs prior to the actual expenditure. This exception is applicable for up to 90 days prior to grant closing and only applies to grantees that have received written approval but have not executed the RCDI Grant Agreement. The Agency cannot retroactively approve reimbursement for expenditures prior to execution of the RCDI Grant Agreement.

Grant Amounts

In the event that the applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or de-obligate the award if acceptable modifications are not submitted by the awardee within 15 working days from the date the request for modification is made. Any modifications must be within the scope of the original application.

Program Requirements

1. A Civil Rights Impact Analysis Certification must be completed by the Agency prior to grant approval.

2. A pre-award compliance review will be conducted by the Agency prior to closing the grant.

3. The intermediary and recipient must comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and Executive Order 12250.

4. The grantee must comply with the applicable requirements of 7 CFR part 3015, ''Uniform Federal Assistance Regulations,'' part 3016, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' and part 3019, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.''

Program Restrictions

Meeting expenses. In accordance with 31 U.S.C. 1345, ''Expenses of Meetings,'' appropriations may not be used for travel, transportation, and subsistence expenses for a meeting. RCDI grant funds cannot be used for these meeting-related expenses. Matching funds may be used to pay for these expenses. RCDI funds may be used to pay for a speaker as part of a program, equipment to facilitate the program, and the actual room that will house the meeting. RCDI funds can be used for travel, transportation, or subsistence expenses for training and technical assistance purposes. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345. Travel and per diem expenses will be similar to those paid to Agency employees. Rates are based upon location. Rate information can be accessed on the Internet at *http://policyworks.gov/perdiem.* Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Grantees and recipients may exceed the Government rate for lodging by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees. Mileage and gas reimbursement will be the same rate used by Agency employees. The current mileage and gas reimbursement rate is 36.5 cents per mile.

Grantee Requirements

Grantees will be required to do the following.

1. Execute a Rural Community Development Initiative Grant Agreement, which is published at the end of this NOFA.

2. Execute Form RD 1940–1, ''Request for Obligation of Funds.''

3. Use Form SF 270, ''Request for Advance or Reimbursement'' to request reimbursements.

4. Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

5. Maintain a financial management system that is acceptable to the Agency.

6. Ensure that records are maintained to document all activities and expenditures utilizing RCDI grant funds and matching funds. Receipts for expenditures will be included in this documentation.

7. Provide annual audits or management reports on Forms RD 442–2, ''Statement of Budget, Income, and Equity,'' and RD 442–3, ''Balance Sheet,'' depending on the amount of Federal funds expended and the outstanding balance.

8. Collect and maintain data provided by recipients on race, sex, and national origin and ensure that their recipients collect and maintain the same data on their beneficiaries.

9. Provide a final project performance report.

10. Identify and report any association or relationship with Rural Development employees on a format provided by the Agency.

Contents of Application Package

A complete application for RCDI funds must include the following.

1. A summary page listing the following items. This information should be double-spaced between items and not in narrative form.

a. Applicant's name,

b. Applicant's address,

c. Applicant's telephone number,

d. Name of applicant's contact person and telephone number,

e. Applicant's fax number,

f. County where applicant is located,

g. Congressional district number where applicant is located,

h. Amount of grant request,

i. Number of recipients, and

j. Source and amount of matching funds.

2. A detailed Table of Contents containing page numbers for each component of the application.

3. A project overview, no longer than five pages, which should include the following items. Please note that these items will also need to be addressed separately and in detail under ''Building Capacity'' of the ''Evaluation Criteria.''

a. The type of financial and technical assistance to be provided and how it will be implemented.

b. How the capacity and ability of the recipients will be improved.

c. The overall goal to be accomplished.

d. The benchmarks to be used to measure the success of the program.

4. Organizational documents for the intermediary, which confirm their existence for a minimum of three years as the applicant entity.

5. Verification of matching funds (e.g., a copy of a bank statement if matching funds are in cash or a copy of the confirmed funding commitment from the funding source). The applicant will be contacted by the Agency prior to grant award if verification of matching funds was not submitted with the application. The applicant will have 10 working days, from the date of contact, to submit verification of matching funds. If the applicant is unable to provide the verification within that timeframe, their application will be considered ineligible.

6. Recipient information must include:

a. Recipient entity name,

b. Complete address (mailing and physical location, if different),

c. County where located,

d. Number of congressional district where recipient is located,

e. Contact person's name and telephone number, and

f. Documentation on the population composition of the service area of the recipient, including race, sex, and national origin.

7. Submit evidence that the recipient entity is eligible.

a. Nonprofits—provide a valid 501(c)(3) letter from the IRS.

b. Low-income community—provide a copy of the 2000 census data to verify the population and evidence that the median household income is at, or below, 80 percent of either the state or national median household income. We will only accept data from *www.census.gov.* The specific instructions to retrieve data from this site are detailed under the ''Evaluation Criteria'' for ''Population'' and ''Income.''

c. Federally recognized tribes—provide the page listing their name from the current **Federal Register** list of tribal entities published on March 13, 2000, volume 65, number 49, page 13298.

8. Each of the ''Evaluation Criteria'' must be addressed specifically and individually by category. Present these criteria in narrative form. Documentation must be limited to three pages per criterion with the exception of attachments for ''Population'' and ''Income.''

9. A timeline identifying specific activities and proposed dates for completion.

10. A detailed project budget that includes the RCDI grant amount and matching funds for the duration of the grant. This should be a line item budget, by category. Categories such as salaries, administrative, other, and indirect costs must be clearly defined. Supporting documentation listing the components of these categories must be included.

11. Form SF–424, ''Application for Federal Assistance.'' (Do not complete Form SF–424A, ''Budget Information.'' A separate line item budget should be presented as described in No. 10 of this section.)

12. Form SF–424B, ''Assurances—Non-Construction Programs.''

13. Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

14. Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''

15. Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements.''

16. Certification of Non-Lobbying Activities.

17. Standard Form LLL, ''Disclosure of Lobbying Activities'', if applicable.

18. Form RD 400–1, ''Equal Opportunity Agreement,'' for the applicant and each recipient.

19. Form RD 400–4, ''Assurance Agreement,'' for the applicant and each recipient.

20. Identify and Report any Association or Relationship with Rural Development Employees.

The required forms and certifications can be downloaded from the RCDI Web site at: *www.rurdev.usda.gov/rhs/rcdi/index.htm.*

What and Where To Submit

The original application package must be submitted to: Beth Jones, Rural Housing Service, STOP 0787, Room 0183, 1400 Independence Ave. SW., Washington, DC 20250–0787 and a copy of the application must be submitted to the Rural Development State Office where the applicant is located. A listing of Rural Development State Offices is included in this Notice. Applications sent electronically or by facsimile will not be accepted.

When To Submit

The deadline for receipt of an application is 4 p.m. EST on July 2, 2002. The application deadline is firm as to date and hour and applies to submission of the original application to the National Office in Washington, DC. The Agency will not consider any application received after the deadline. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7722, TDD (907) 761–8905, Dean Stewart

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8747, TDD (602) 280–8706, Leonard Gradillas

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3257, TDD (501) 301–3279, Jesse Sharp

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5825, TDD (530) 792–5848, Charles M. Clendenin

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 136), TDD (303) 236–1590, Leroy W. Cruz

Connecticut, Served by Massachusetts State Office, Delaware and Maryland State Office, 4607 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4324, TDD (302) 697–4303, James E. Waters

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3440, TDD (352) 338–3499, Glenn E. Walden

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2171, TDD (706) 546–2034, Jerry M. Thomas

Guam, Served by Hawaii State Office, Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309, TDD (808) 933–8321, Thao Khamoui

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5617, TDD (208) 378–5644, Daniel H. Fraser

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200 (ext. 6209), TDD (217) 403–6240, Gerald A. Townsend

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3109 (ext. 431), TDD (317) 290–3343, Gregg Delp

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4152, TDD (515) 284–4858, Dorman Otte

Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2730, TDD (785) 271–2767, Gary L. Smith

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7415, TDD (606) 224–7422, Vernon Brown

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7940, TDD (318) 473–7655, Danny H. Magee

Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9125, TDD (207) 942–7331, Alan C. Daigle

Maryland, Served by Delaware State Office, Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4318, TDD (413) 253–7068, Daniel R. Beaudette

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip H. Wolak

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7810, TDD (651) 602–3799, James Maras

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0995, TDD (573) 876–9480, D. Clark Thomas

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 585–2562, Deborah Chorlton

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5559, TDD (402) 437–5093, Denise Brosius-Meeks

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 26), TDD (775) 885–0633, Mike Holm

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6037, TDD (603) 223–6083, William W. Konrad

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3640, TDD (609) 265–3687, Michael P. Kelsey

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM

87109, (505) 761–4955, TDD (505) 761–4938, Clyde F. Hudson

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6427, TDD (315) 477–6447, David Miller

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2061, TDD (919) 873–2003, Thurman E. Burnette

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2044, TDD (701) 530–2113, Donald Warren

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2391, TDD (614) 255–2554, David M. Douglas

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1060, TDD (405) 742–1007, Rock W. Davis

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3360, TDD (503) 414–3387, Jerry W. Sheridan

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2187, TDD (717) 237–2261, Gary Rothrock

Puerto Rico State Office, IBM Building—Suite 601, 654 Munos Rivera Avenue, Hato Rey, PR 00918–6106, (787) 766–5095 (ext. 236), TDD (787) 766–5332, Pedro Gomez

Rhode Island, Served by Massachusetts State Office, South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashvile, TN 37203–1084, (615) 783–1345, TDD (615) 783–1397, Keith Head

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9760, TDD (254) 742–9712, Eugene G. Pavlat

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4329, TDD (801) 524–3309, Bonnie Carrig

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6030, TDD (802) 223–6365, Rhonda Shippee

Virgin Islands, Served by Florida State Office, Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1600, TDD (804) 287–1753, Carrie Schmidt

Washington State Office, Suite B, 1835 Black Lake Boulevard, SW, Olympia, WA 98512–5715, (509) 664–0203, TDD (360) 704–7760, Sandi Boughton

Western Pacific Territories, Served by Hawaii State Office, West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4868, TDD (304) 284–5941, Dianne Crysler

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615 (ext. 131), TDD (715) 345–7614, Mark Brodziski

Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles Huff

Dated: March 28, 2002.

James C. Alsop,

Acting Administrator, Rural Housing Service.

OMB NO. 0575–0180

United States Department of Agriculture

Rural Housing Service

Rural Community Development Initiative Grant Agreement

This grant agreement (Agreement), effective the date the Agency official signs the document, is a contract for receipt of grant funds under the Rural Community Development Initiative (RCDI).

Between _____ a private or public or tribal organization, (Grantee or Intermediary) and the United States of America acting through the Rural Housing Service (the Agency), Department of Agriculture, (Grantor), for the benefit of recipients listed in Grantee's application for the grant.

Witnesseth:

The principal amount of the grant is $_____ (Grant Funds). Matching funds, in an amount equal to the grant funds, will be provided by Grantee. The Grantee and Grantor will execute Form RD 1940–1, ''Request for Obligation of Funds''.

Whereas,

Grantee will provide a program of financial and technical assistance to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas;

Now, therefore, in consideration of said grant;

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0180. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Grantee agrees that Grantee will:

A. Provide a program of financial and technical assistance in accordance with the proposal outlined in the application, (see Attachment A), the terms of which are incorporated with this Agreement and must be adhered to. Any changes to the approved program of financial technical assistance must be approved in writing by the Grantor;

B. Use Grant Funds only for the purposes and activities specified in the application package approved by the Agency including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance;

C. Charge expenses for travel and per diem that will not exceed the rates paid Agency employees for similar expenses. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Lodging rates may exceed the Government rate by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees, which is based upon location. Mileage and gas will be reimbursed at the existing Government rate. Rates can be accessed on the Internet at http://policyworks.gov/perdiem;

D. Charge meeting expenses in accordance with 31 U.S.C. 1345. Grant funds may not be used for travel, transportation, and subsistence expenses for a meeting. Matching funds may be used to pay these expenses. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345.

E. Request quarterly reimbursement for grant activities during the previous quarter. Reimbursement will be made on a pro rata basis with matching funds. Form SF 270, ''Request for Advance or Reimbursement,'' will be used to request reimbursement. A project performance report, in narrative form, and a financial report, reflecting the activities conducted, must accompany the request for reimbursement. Matching fund usage must be included in all reports.

F. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (due 15 working days after each calendar quarter). The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include, but are not limited to, the following:

1. Describe the activities that the funds reflected in the financial status report were used for;

2. A comparison of actual accomplishments to the objectives for that period;

3. Reasons why established objectives were not met, if applicable;

4. Problems, delays, or adverse conditions which will affect attainment of overall

program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation;

5. Objectives and timetables established for the next reporting period;

6. If available, a summary of the race, sex, and national origin of the recipients and a summary from the recipients of the race, sex, and national origin of the beneficiaries; and

7. The final report will also address the following:

(a) What have been the most challenging or unexpected aspects of this program?

(b) What advice would you give to other organizations planning a similar program? Please include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(c) Are there any post-grant plans for this project? If yes, how will they be financed?

(d) If an innovative approach was used successfully, the grantee must describe their program in detail for replication by other organizations and communities.

G. Consider potential recipients without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability;

H. Ensure that any services or training offered by the recipient, as a result of the financial and technical assistance received, must be made available to all persons in the recipient's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability at reasonable rates, including assessments, taxes, or fees. Programs and activities must be delivered from accessible locations. The recipient must ensure that where there are non-English speaking populations that materials are provided in the language that is spoken;

I. Ensure recipients are required to place nondiscrimination statements in advertisements, notices, pamphlets and brochures making the public aware of their services. The Grantee and recipient are required to provide widespread outreach and public notification in promoting any type of training or services that are available through grant funds;

J. The Grantee must collect and maintain data on recipients by race, sex, and national origin. The grantee must ensure that their recipients also collect and maintain data on beneficiaries by race, sex, and national origin as required by title VI of the Civil Rights Act of 1964 and must be provided to the Agency for compliance review purposes;

K. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor the Grant Funds with any legally permitted interest from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, at its option and without regard to prior waivers of this Agreement or by such other proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to assure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made;

L. Provide Financial Management Systems that will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis;

2. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income related to Grant Funds and matching funds;

3. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

4. Accounting records supported by source documentation; and

5. Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. The grantee will provide verifiable documentation regarding matching fund usage, i.e., bank statements or copies of funding obligations from the matching source.

M. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts;

N. Provide an A–133 audit report if $300,000 or more of federal funds are expended in a one-year period. If federal funds expended during a one-year period are less than $300,000 and there is an outstanding loan balance of $300,000 or more, an audit in accordance with generally accepted government auditing standards is required. If federal funds expended during a one year period are less than $300,000 and there is an outstanding loan balance of less than $300,000, a management report may be submitted on Forms RD 442–2, ''Statement of Budget, Income and Equity'' and 442–3, ''Balance Sheet'';

O. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of a State are not held accountable for interest earned on grant funds pending their disbursement;

P. Not encumber, transfer or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor; and

Q. Not duplicate other program activities for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees that:

A. It will make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds. The funds will be disbursed to Grantee on a pro rata basis with the Grantee's matching funds; and

B. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be:

1. Advisable to further the purpose of the grant or to protect Grantor's financial interest therein; and

2. Consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Both Parties Agree:

A. Extensions of this grant agreement may be approved by the Agency, in writing, provided in the Agency's sole discretion the extension is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the application package during the extension period;

B. The Grantor must approve any changes in recipient or recipient composition;

C. The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor: *Provided, however,* That any Grant Funds actually disbursed and not needed for grant purposes be returned immediately to the Grantor. This agreement shall terminate three years from this date unless extended or unless terminated beforehand due to default on the part of the Grantee or for convenience of the Grantor and Grantee. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulations;

D. As a condition of the Agreement, the Grantee certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR 3015.205(b), which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Grantee will comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Executive Order 12250;

E. The Grantee will ensure that the recipients comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and Executive Order 12250. Each recipient must sign Form RD 400–1, ''Equal Opportunity Agreement'' and Form RD 400–4, ''Assurance Agreement'';

F. The provisions of 7 CFR part 3015, ''Uniform Federal Assistance Regulations,''

part 3016, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' or part 3019, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations,'' and the fiscal year 2002 ''Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)'' are incorporated herein and made a part hereof by reference; and

G. This Agreement may be terminated for cause in the event of default on the part of the Grantee or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the program will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof, Grantee has this day authorized and caused this Agreement to be executed by

_____
Attest

_____
By _____
(Grantee)
(Title) _____
Date _____

United States of America

Rural Housing Service

By _____
(Grantor) (Name) (Title)
Date _____

Attachment A

[Application proposal submitted by grantee.]

[FR Doc. 02–8024 Filed 4–2–02; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Competitive Enhancement Needs Assessment Survey Program.

Agency Form Number: N/A.

OMB Approval Number: 0694–0083.

Type of Request: Renewal of an existing collection of information.

Burden: 3,000 hours.

Average Time Per Response: 30 minutes per response.

Number of Respondents: 3,000 respondents.

Needs and Uses: The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense and to develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs. The information collected from voluntary surveys will be used to assist small and medium-sized firms in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal Laboratories. The goal is to improve regions of the country adversely by cutbacks in defense spending and military base closures.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: March 29, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8026 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: BXA Program Evaluation.

Agency Form Number: None.

OMB Approval Number: 0694–xxxx.

Type of Review: Emergency clearance.

Burden: 667 hours.

Average Time Per Response: 10 minutes per response.

Number of Respondents: 4,000 respondents.

Needs and Uses: This form is used by BXA seminar instructors at seminar programs throughout the year. Seminar participants are asked to fill out the evaluation form during the program and turn it in at the end of the program. The responses to these questions provide useful and practical information that BXA can use to determine that it is providing a quality program and gives BXA information useful to making recommended improvements. It also shows attendees that BXA cares about their training experience and values their viewpoint.

Affected Public: Businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 5 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: March 29, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8027 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Export Controls of High Performance Computers.

Agency Form Number: None.

OMB Approval Number: 0694–0073.

Type of Request: Extension of a currently approved collection of information.

Burden: 78 hours.

Average Time Per Response: 42 to 107 minutes per response.

Number of Respondents: 5 respondents.

Needs and Uses: These provisions are established in recognition of the strategic significance of these high performance computers, in particular

their potential to make substantial contributions to activities of national security and weapons proliferation concerns. BXA will conduct annual reviews of the HPC definition, the threshold levels, the safeguards, the HPC country Tier groupings and variable safeguard requirements to be consistent with our national security and proliferation concerns, technical advancements, and changes in market conditions. In addition, recommendations from the public for revising the controls will be considered.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: March 29, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8028 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Census Bureau

Census Employment Inquiry

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 3, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kathleen A. Garcia, Bureau of the Census, Room 1727, Building #3, Washington, DC 20233, or (301) 457–2868.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BC–170, Census Employment Inquiry, is used to collect information such as personal data and work experience from job applicants. The BC–170 is used throughout the census and intercensal periods for the Special Censuses and decennial census pretests and dress rehearsals for time limited appointments. Applicants completing the form for a census related position are applying for temporary jobs in office and field positions (clerks, enumerators, crew leaders, supervisors). In addition, as an option to the OF–612, Optional Application for Federal Employment, the BC–170 may be used when applying for temporary/permanent office and field positions (clerks, field representatives, supervisors) on a recurring survey in one of the Census Bureau's 12 Regional Offices (ROs) throughout the United States. This form is completed by job applicants before or at the time they are tested. Selecting officials review the information shown on the form to evaluate applicant's eligibility for employment.

During the decennial census, the BC–170 is intended to expedite hiring and selection in situations requiring large numbers of temporary employees for assignments of a limited duration. The form has been demonstrated to meet our recruitment needs for temporary workers and requires significantly less burden than the Office of Personnel Management Optional Forms that are available for use by the public when applying for Federal positions.

II. Method of Collection

We collect this information at the time of testing for temporary and permanent positions. Potential employees being tested complete a four-page paper application provided at the testing site.

III. Data

OMB Number: 0607–0139.

Form Number: BC–170.

Type of Review: Regular submission.

Affected Public: Individuals.

Estimated Number of Respondents: 176,000.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 44,000.

Estimated Total Annual Cost: The only cost to the individual is his/her time for completing the BC–170.

Respondent's Obligation: Required to obtain a benefit.

Legal Authority: Title 13, U.S.C. Section 23.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 29, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8029 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–874]

Notice of Initiation of Antidumping Duty Investigation: Certain Ball Bearings and Parts Thereof From the People's Republic of China

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

ACTION: Initiation of antidumping duty investigation.

EFFECTIVE DATE: April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson or Geoffrey Craig at (202) 482–3797 or (202) 482–4161, respectively; Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (''the Act''), by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are references to the provisions codified at 19 CFR Part 351 (2001).

The Petition

On February 13, 2002, the Department received a petition filed in proper form by the American Bearing Manufacturers Association (''ABMA'' or ''the petitioner''). On February 21, 2002, we sent the petitioner a letter with questions regarding the petition. The Department received information supplementing the petition on February 27, 2002.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of ball bearings and parts thereof from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party, as defined in sections 771(9)(E) and 771(9)(F) of the Act and has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department to initiate. (*See* the *Determination of Industry Support for the Petition* section below.)

Scope of Investigation

The scope of the investigation includes all antifriction bearings, regardless of size, precision grade or use, that employ balls as the rolling element (whether ground or unground) and parts thereof (inner ring, outer ring, cage, balls, seals, shields, etc.) that are produced in China. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts and parts thereof, ball bearings (including thrust, angular contact, and radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. The scope includes ball bearing type pillow blocks and parts thereof; and wheel hub units incorporating balls as the rolling element. With regard to finished parts, all such parts are included in the scope of the petition. With regard to unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the petition are those that will be subject to heat treatment after importation.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.93.30, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4000, 8708.99.4960, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Specifically excluded from the scope are unfinished parts that are subject to heat treatment after importation. Also excluded from the scope are cylindrical roller bearings, mounted or unmounted, and parts thereof (''CRB'') and spherical plain bearings, mounted and unmounted, and parts thereof (''SPB''). CRB products include all antifriction bearings that employ cylindrical rollers as the rolling element. SPB products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends. Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''Customs'') purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation.

The petition covers ball bearings and parts thereof (''BB&P'') as defined in the *Scope of the Investigation* section, above, a single class or kind of merchandise. The Department has no basis on the record to find the petitioner's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set

[1] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

forth in the petition. However, the Department will take into account any comments submitted by parties in connection with this issue during the course of the proceeding, and revisit the issue, if appropriate.

On March 4, 2002, the Department received comments regarding industry support from the following six PRC producers of the merchandise subject to this investigation: Ningbo MOS Group, Ningbo Cixin Bearing, Ningbo Huanchi Group, Wangxiang China, Ningbo General Bearing Co., Limited, and Jiangsu General Ball & Roller Co., Limited.

On March 5, 2002, the above six PRC producers filed additional information regarding their challenge to the standing of the petitioner. Specifically, they asserted that many products covered by the scope of the product definition are not represented by ABMA member companies.

On March 5, 2002, the Department also received a submission from the petitioner to correct a ''software sorting error'' with respect to the shipment volumes reported for certain ABMA member companies. It claimed that this error does not affect the reported shipments to production ratio of ABMA member companies.

The petitioner submitted another response on March 13, 2002, to rebut the industry support challenge filed by the six foreign producers on March 4 and 5, 2002. In this submission, the petitioner revised its ABMA member companies' production volume, and the shipments volume and value for ''complete bearings.'' It also provided similar information for ''parts.'' It demonstrated that the industry support for its petition is over 50 percent either by ''parts,'' or by ''complete bearings,'' or by ''ball bearings and parts thereof.'' In addition, it rebutted the six PRC producers' March 5, 2002, allegations by showing that none of the named products in the foreign producers' submission, (*i.e.,* casters, constant velocity joints, hardware, and linear bearings (used, for example, in furniture and desk drawers)) are covered by the scope of the petition.

On March 15, 2002, the above six PRC producers filed additional information regarding their challenge to the standing of the petitioner. Specifically, they state that if the petition excludes those products referenced in the March 5 submission (*i.e.,* casters, constant velocity joints, hardware, and linear bearings) then the petition should be amended to say so explicitly. Further, they submitted a list of companies that they believe manufacture ball bearings or ball bearing parts that are not listed in the petition, and assert that by failing to provide the Department with a complete listing of the U.S. producers of ball bearings and ball bearings parts, the ABMA has complicated our effort to rule on its standing to petition for antidumping relief.

On March 19, 2002, the petitioner filed a rebuttal to the PRC producers' March 15, 2002 submission. The petitioner states that given its reported industry support figures, there is no need for the Department to poll individual companies since there is no possibility that the remaining companies represent more than a small minority of the domestic ball bearing industry. Further, the petitioner takes issue with the list of companies submitted by foreign producers, and notes that in any event none of the companies has registered opposition to the petition.

The Department has reviewed the comments of these PRC producers and the petitioner's revision to its petition. For further discussion of the comments and the petitioner's revision to its petition, *see* the Industry Support Attachment to the *Import Administration AD Investigation Checklist,* dated March 25, 2002 (*''Initiation Checklist''*) (public version on file in the Central Records Unit of the Department of Commerce, Room B–099) for further description.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied on the petition. The only industry-wide data available was shipment data for calendar year (''CY'') 2000. Thus, the petition contained production and shipment data (by volume) of its members for CY 2000. To estimate industry-wide production, the petitioner compared its member companies' shipment data by volume with their production data by volume and derived a shipment to production ratio. The petitioner then divided the total industry-wide shipment figure by this ratio to derive an estimated total industry-wide ball bearing production.

Foreign producers contend that the petitioners' calculation of industry support, in using ''complete bearings'' figures, would be inaccurate by not taking into account ''parts.'' The petitioner subsequently provided industry support information taking into account ''parts'' as well as ''complete bearings.'' Based on this information, the petitioner has demonstrated that industry support was greater than 50 percent. *See Initiation Checklist.*

Accordingly, we find that information contained in the petition and its supplements demonstrate that the domestic producers or workers who support the petition account for over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) and section 732(c)(4)(D) are met. *See Initiation Checklist* at Attachment I. Furthermore, because the Department received no domestic opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. *See Initiation Checklist.* Thus, the requirement of section 732(c)(4)(A)(ii) is met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Period of Investigation

The anticipated period of investigation is July 1, 2001, through December 31, 2001.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to home market and U.S. price are detailed in the *Initiation Checklist.*

The Department has analyzed the information in the petition and considers the country-wide import statistics for the anticipated period of investigation (''POI'') and pricing information used to calculate the estimated margin to be sufficient for purposes of initiation. Based on the information submitted in the petition, adjusted where appropriate, we are initiating this investigation, as discussed below and in the *Initiation*

Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we will re-examine the information and may revise the margin calculation, if appropriate.

Export Price

The petitioner based export prices [2] on price lists and quotes of four representative sample products (6201–2RS, 6201ZZ, 6203–2RS, and 6203ZZ) from Chinese distributors of Chinese ball bearings and U.S. distributors of Chinese ball bearings for the period October to December 2001. Some prices were FOB Chinese port, for which the petitioner made no deductions to arrive at a net-price. In most instances, the prices were FOB from a U.S. location. In these instances, the petitioner calculated a net price by deducting from the price movement expenses and a U.S. distributor markup of 15 percent. Movement expenses include costs for duties, ocean insurance and freight, and other import charges. *See Initiation Checklist.*

Normal Value

The petitioner asserts that the PRC is a nonmarket economy country (''NME'') within the meaning of section 771(18) of the Act. In previous investigations, the Department has determined that the PRC is an NME. *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 22183 (May 31, 2001); *Steel Wire Rope from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 66 FR 12759 (February 28, 2001). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product appropriately is based on the producer's factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act.

In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

For the normal value calculation, the petitioner based the factors of production, as defined by section 773(c)(3) of the Act, on the quantities of inputs used to produce four representative ball bearings reported by one of its major member companies. The petitioner uses the actual usage rates of a U.S. production facility in accordance with 19 CFR 351.202(b)(7)(B) because information on actual usage rates of representative Chinese bearing producers is not reasonably available to the petitioner. The petitioner claims that this company was selected because it is one of the most efficient ball bearing producers in the world. Therefore, this company's usage rates should yield conservative estimates of the degree of dumping for the selected products. The petitioner asserts that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per capita gross national product. Based on the information provided by the petitioner, we believe that the petitioner's use of India as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioner valued factors of production, where possible, on reasonably available, public surrogate country data. Specifically, the factor costs for all but one of the material inputs, including inner and outer rings, retainers, shields, and seats, were based on the Monthly Statistics of the Foreign Trade of India for the period January to December 2000. The petitioner did not rely on Indian import values for the factor cost of balls because it claims that such Indian import values are not reliable. Therefore, for balls, the petitioner conservatively used the value of steel used to produce rollers derived during the twelfth administrative review of tapered roller bearings. The value was adjusted for inflation. The petitioner asserts that using this value is appropriate because the balls used in the representative products, like the rollers reviewed, are made of AISI 52100 chrome steel.

Where scrap from the production process is recyclable, the recovery value for the scrap is subtracted from the gross cost. Values for scrap steel and the scrap offset were based on Indian imports of scrap. Unit energy costs were obtained from publicly available Indian energy prices, TERI Energy Data Directory and Yearbook 1999/2000, adjusted for inflation.

Labor was valued using the regression-based wage rate for China provided by the Department, in accordance with 19 CFR 351.408(c)(3).

The factory overhead rate, selling, general & administrative expenses (''SG&A'') rate, and profit rate, were based on the average respective rates derived from the 1999 financial statements of three surrogate Indian ball bearing producers. The petitioner did not include costs of packing in its normal value calculation.

Based on the information provided by the petitioner, we believe that the petitioner's factors of production methodology represents information reasonably available to the petitioner and is appropriate for purposes of initiating this investigation.

Based on comparisons of export price to normal value, the petitioner calculated dumping margins ranging from 17 to 249 percent. *See Initiation Checklist.*

Fair Value Comparisons

The Department has examined the adequacy and accuracy of the information the petitioner used in its calculations of U.S. and home market prices and has found that it represents information reasonably available to the petitioner supporting the allegation of dumping.

Based on the data provided by the petitioner, there is reason to believe that imports of ball bearings and parts thereof from the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioner contends that the industry's injured condition is evident in the decline of U.S. producers' output, sales, market share, profits, productivity, return on investment, and capacity utilization, as well as negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, investment, and existing development and production efforts. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, and lost sales, and pricing information. We have examined the accuracy and adequacy of the evidence provided in the petition and

[2] The petitioner states that its dumping analysis proceeded under the conservative assumption that the vast majority of Chinese ball bearing sales in the Untied States are export price transactions.

have determined that the petition alleges the elements necessary for the imposition of a duty under section 731 of the Act and contains information reasonably available to the petitioner supporting the allegations (see *Initiation Checklist* at Attachment II).

Initiation of Antidumping Investigation

Based upon our examination of the petition on ball bearings and parts thereof from the PRC and the petitioner's responses to our supplemental questionnaire clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. See *Initiation Checklist.* Therefore, we are initiating an antidumping duty investigation to determine whether imports of ball bearings and parts thereof from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is postponed, we will make our preliminary determination no later than 140 days after the date of this initiation. See ''Case Calendar'' section of the *Initiation Checklist.*

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than April 1, 2002, whether there is a reasonable indication that imports of ball bearings and parts thereof from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 25, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8071 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–817]

Initiation of Antidumping Duty Investigation: Silicon Metal From the Russian Federation

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

EFFECTIVE DATE: April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Aishe Allen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6412, (202) 482–0172, respectively.

INITIATION OF INVESTIGATION

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations are to 19 CFR Part 351 (2002).

The Petition

On March 7, 2002, the Department received a petition on imports of silicon metal from the Russian Federation (''Russia'') filed in proper form by Globe Metallurgical Inc., Simcala Inc., the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, I.U.E.–C.W.A., AFL–CIO, C.L.C., Local 693, The Paper, Allied–Industrial, Chemical and Energy Workers International Union, Local 5–89, and the United Steel Workers of America, AFL–CIO, Local 9436, hereinafter referred to as ''the petitioners.'' On March 13, 2002, the Department requested clarification of certain areas of the petition and received a response on March 18, 2002.

In accordance with section 732(b) of the Act, the petitioners allege that imports of silicon metal from Russian are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States.

The petitioners are domestic producers of silicon metal and account for over 25 percent of domestic production of silicon metal, as defined in the petition. Therefore, the Department finds that the petitioners have standing to file the petition because they are interested parties as defined under section 771(9)(C) of the Act, with respect to the subject merchandise. The petitioners have demonstrated sufficient industry support with respect to the antidumping duty investigation they are requesting the Department to initiate (*see* ''Determination of Industry Support for the Petition'' below).

Scope of Investigation

For purposes of this investigation, the product covered is silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by this investigation also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal currently is classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (''HTSUS''). This investigation covers all silicon metal meeting the above specification, regardless of tariff classification.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (1997). The Department encourages all interested parties to submit such comments within 20 calender days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the

petition account for: (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the domestic like product referred to in the petition is the single domestic like product defined in the ''Scope of Investigation'' section, above. At this time, the Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Moreover, the Department has determined that the petition contains adequate evidence of industry support; therefore, polling was unnecessary (*see Initiation Checklist* Re: Industry Support, March 27, 2002) (''*Initiation Checklist*''). To the best of the Department's knowledge, producers supporting the petition represent over 50 percent of total production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9) (A), (C), (D), (E), or (F) of the Act has expressed opposition to the petition.

Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and factors of production are also discussed in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

The petitioners identified the following Russian companies as major producers of silicon metal in Russia: Bratsk Aluminum Plant (''Bratsk''), JSC Russian Aluminum, Uralsky Aluminum Plant (''Uralsky''), and Irkutsk Aluminum Plant (''Irkutsk'').

The petitioners based export price (''EP'') on import values declared to the U.S. Customs Service (''Customs''). In calculating import values declared to Customs, the petitioners used the HTSUS category under which subject merchandise is currently classified (i.e., 2804.69.10 and 2804.69.50). The petitioners calculated EP based on the average unit values (''AUVs'') for entries of subject merchandise during July through December 2001. For purposes of initiation, we re–calculated the average U.S. price based on HTSUS by using a quantity based weighted–average of each HSTUS subheading. *See Initiation Checklist*. In order to obtain ex–factory prices, the petitioners deducted foreign inland freight from the Customs value. For purposes of calculating foreign inland freight, the petitioners used the surrogate value for rail because of the large distances involved and the lower expense of shipping by rail, as compared to shipments by truck.

To determine export price, we relied on the data in the petition except that we adjusted the petitioners' estimate for foreign inland freight. *See Initiation Checklist*. To value foreign inland freight, the petitioners first calculated an average distance of three known producers of silicon metal in Russia to each producer's nearest port. *See Initiation Checklist*. The petitioners reported that the average distance for the three known producers of silicon metal in Russia to the nearest port was 4,149 kilometers. The petitioners multiplied this distance by an Egyptian surrogate value for rail freight that was based on an average of rates for distances ranging from 98 to 884 kilometers. For purposes of initiation, we revalued freight by multiplying the average distance to the port by the Egyptian surrogate value for rail freight for 884 kilometers only, as this is the closest distance to 4,149 kilometers.

Non–Market Economy Status

The petitioners asserted that Russia is a non–market economy country (''NME'') and no determination to the contrary has yet been made by the Department. In previous investigations, the Department has determined that Russia is an NME. *See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Russian Federation* (''*Magnesium from Russia*''), 66 FR 49347 (September 27, 2001). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the Russian Federation has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product appropriately is based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of Russia's NME status and the granting of separate rates to individual exporters.

Normal Value

The petitioners provided a dumping margin calculation using the Department's NME methodology as required by 19 C.F.R. § 351.202(b)(7)(i)(C). For the normal value (''NV'') calculation, petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor and energy), for silicon metal on information from Russian producers. *See Initiation Checklist*.

The petitioners selected Egypt as their surrogate country. The petitioners argued that pursuant to 773(c)(4) of the Act, Egypt is an appropriate surrogate

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

because it is a market–economy country that is at a comparable level of economic development to the NME and is a significant producer of comparable merchandise. Based on the information provided by the petitioners, we believe that the petitioners' use of Egypt as a surrogate country is appropriate for purposes of initiation of this investigation. *See Initiation Checklist*.

In accordance with section 773(c)(4) of the Act, the petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain raw materials, the petitioners used import statistics from Egypt, as reported in the United Nations Statistical Division Commodity Trade Database System (''UNCTS'') for 1999, excluding those values from countries previously determined by the Department to be NME countries. For inputs valued in Egyptian pounds and not contemporaneous with the period of investigation (''POI'') (*i.e.*, July – December 2001), we used information from the wholesale price indices (''WPI'') in Egypt as published in the International Financial Statistics (''IFS''), December 2001, to determine the inflation adjustment. The surrogate values calculated by the petitioners for raw materials were recently used in the antidumping duty investigation of silicomanganese from Kazakhstan, with the exception of electrode paste, charcoal and wood chips. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Siliconmanganese from Kazakhstan*, (''*Silicomanganese from Kazakhstan*'') 66 FR 56639 (November 9, 2001) and *Initiation Checklist*.

Labor was valued using the regression–based wage rate for Russia provided by the Department, which is available on the Import Administration's website, in accordance with 19 CFR 351.408(c)(3). Petitioners valued electricity using the same Egyptian surrogate value used in *Silicomanganese from Kazakhstan*.

Factory overhead, selling, general and administrative expenses (SG&A), interest, and profit were derived from the 1999–2000 financial statements of Sinai Manganese Company (''Sinai''), an Egyptian ferro–manganese alloys producer.

We made adjustments to NV for electrode paste, charcoal, wood chips, and the surrogate ratios. For further information, see the *Initiation Checklist*.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margin for silicon metal from Russia is 97.17 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of silicon metal from Russia are being, or are likely to be, sold in the United States at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in (1) declines in production, (2) declines in shipments, and (3) declines in prices (4) capacity utilization, and (5) employment.

The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see* Attachments to *Initiation Checklist*, Re: Material Injury).

Initiation of Antidumping Investigation

Based upon our examination of the petition on silicon metal imports from Russia, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of silicon metal from Russia are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the government representatives of Russia. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than April 22, 2002, whether there is a reasonable indication that imports of silicon metal from Russia are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: March 27, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8069 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–813]

Notice of Extension of Time Limit of Preliminary Results of New Shipper Review: Stainless Steel Butt–Weld Pipe Fittings from Korea

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

ACTION: Notice of Extension of Time Limit of Preliminary Results of New Shipper Review.

EFFECTIVE DATE: April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924 or Robert James at (202) 482–0649; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 2001).

Background

On February 23, 1993, the Department published the antidumping duty order on stainless steel butt–weld pipe fittings from Korea. *See Antidumping Duty Order: Certain Welded Stainless Steel Butt–Weld Pipe Fittings from Korea*, 58 FR 11029 (February 23, 1993). On August 31, 2001, TK Corporation, a

producer and exporter of the subject merchandise during the period of review (POR), requested that the Department conduct an antidumping duty new shipper review of the antidumping duty order. On October 5, 2001, the Department initiated the requested review. *See Stainless Steel Butt–Weld Pipe Fittings from Korea: Notice of Initiation of New Shipper Antidumping Duty Review*, 66 FR 51017 (October 5, 2001).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act, the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Tariff Act further provides, however, that the Department may extend that 245–day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

In the course of this proceeding the Department has determined, through consultation with the U.S. Customs Service, that there is an issue as to whether TK Corporation's U.S. sales fall within the period of investigation. Due to the need to analyze this question, it is not practicable to complete this review by the current deadline of March 27, 2002.

Therefore, in accordance with section 751(a)(3)(A) of the Tariff Act, the Department is extending the time limit for the preliminary results by 120 days, until no later than July 25, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published in accordance with section 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: March 27, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–8070 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

Docket Number: 02–007. *Applicant:* National Institutes of Health, NIAMS/LSBR, 6 Center Drive, Building 6, Room B2–34, Bethesda, MD 20892–2717. *Instrument:* Electron Microscope, Model Tecnai 30 He. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to collect state-of-the-art cryo-electron microscopy for a variety of projects aimed at determining the structures of macromolecular complexes at high spatial resolution. Two immediate projects are Capsid Assembly of Hepatitis B Virus and Maturation of Bacteriophage Capsids. *Application accepted by Commissioner of Customs:* March 5, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–8074 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Vermont; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–001. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* Upgrade for X-ray based Motion Analysis System. *Manufacturer:* RSA BioMedical Innovations AB, Sweden. *Intended Use:* See notice at 67 FR 8939, February 27, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant.

The National Institutes of Health advises in its memorandum dated February 1, 2002, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–8073 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure and Alloy Magnesium From Canada: Notice of Initiation of New Shipper Countervailing Duty Review

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

ACTION: Notice of initiation of new shipper countervailing duty review.

SUMMARY: On February 28, 2002, the Department of Commerce received a request to conduct a new shipper review of the countervailing duty orders on pure and alloy magnesium from Canada. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating this new shipper review.

EFFECTIVE DATE: April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Craig Matney, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3464 or (202) 482–1778, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of Commerce's (''the Department's'') regulations are to 19 CFR Part 351 (April 2001).

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2002, the Department received a request from Magnola Metallurgy Inc. (''Magnola''), to conduct a new shipper review of the countervailing duty orders on pure and alloy magnesium, issued August 31, 1992 (57 FR 39392). These orders have a February semi-annual anniversary month. Magnola's request was made pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d).

Initiation of Review

In accordance with 19 CFR 351.214(b)(2) of the Department's regulations, Magnola provided certification that (1) it did not export subject merchandise to the United States during the period of investigation (''POI''), and (2) since the investigation was initiated, it never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI, including those not individually examined during the investigation. Also, in accordance with 19 CFR 351.214(b)(2), Magnola submitted documentation establishing: (1) The date on which it first shipped the subject merchandise for export to the United States; (2) the volume of its first and subsequent shipments; and, (3) the date of the first sale to an unaffiliated customer in the United States. In addition, Magnola provided a certification stating that it has informed the Government of Canada (''GOC'') that the GOC will be required to provide a full response to the Department's countervailing duty questionnaire.

Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, we are initiating a new shipper review of the countervailing duty orders on pure and alloy magnesium from Canada. Pursuant to 19 CFR 351.214(h)(i), we intend to issue the preliminary results of this review not later than 180 days from the date of publication of this notice. All provisions of 19 CFR 351.214 will apply to Magnola throughout the duration of this new shipper review.

In a countervailing duty proceeding, the standard period of review (''POR'') in a new shipper review is the same as the period specified in 19 CFR 213(e)(2) for an administrative review. Therefore, the POR for this new shipper review is January 1, 2001, through December 31, 2001, and we will review the subsidies received by the company during that period.

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer, and to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise exported by Magnola.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a) of the Act and 19 CFR 351.214.

Dated: March 27, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–8072 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020314060-2060-01; I.D. 022502B]

RIN 0648–ZB15

Financial Assistance for Research and Development Projects in Chesapeake Bay to Strengthen, Develop and/or Improve the Stock Conditions of the Chesapeake Bay Fisheries

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

ACTION: Notice of availability of funds.

SUMMARY: A total of up to $1,400,000 in Fiscal Year (FY) 2002 funds is available through the NOAA/NMFS Chesapeake Bay Office to assist in carrying out research and development projects that address various aspects of Chesapeake Bay fisheries (commercial and recreational), including coastal and estuarine research, monitoring, modeling, and assessment; fisheries research and stock assessments; data management; and, multiple species interactions through cooperative agreements. About $750,000 of the base amount is available to initiate new projects in FY 2002, as described in this announcement. It is the intent of the NOAA Chesapeake Bay Office to continue with several existing relationships and to make awards through this program for projects pending acceptable scientific review. These projects include the multispecies monitoring programs. NMFS issues this document to set forth instructions on how to apply for financial assistance, and how NMFS will determine which applications will be selected for funding.

DATES: Applications for funding under this program must be received by 5 p.m. eastern daylight savings time on May 3, 2002. Applications received after that time will not be considered for funding. Applications will not be accepted electronically nor by facsimile machine submission.

ADDRESSES: You can obtain an application package from, and send completed applications to: Derek Orner, National Marine Fisheries Service, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403. You can also obtain the application package from the Chesapeake Bay Fisheries Research Program Home Page http://noaa.chesapeakebay.net/cbfrp

FOR FURTHER INFORMATION CONTACT: Mr. Derek Orner, National Marine Fisheries Service, NOAA Chesapeake Bay Office, 410/267-5660; or e-mail: derek.orner@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. *Authority.* The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753a, authorizes the Secretary of Commerce (Secretary), for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several states, and with non-profit organizations relating to cooperative research units. The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661-666c, to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of fisheries, resources thereof, and for fisheries habitat restoration. The Departments of Commerce (DOC), Justice, State, the Judiciary, and Related Agencies Appropriations Act of 2002 makes funds available to the Secretary.

B. *Catalog of Federal Assistance (CFDA).* The Chesapeake Bay Fisheries Research Program is listed in the ''Catalog of Federal Domestic Assistance'' under number 11.457, entitled Chesapeake Bay Studies.

C. *Program Description.* The Chesapeake Bay Stock Assessment

Committee (CBSAC) was established in 1985 to plan and review Baywide resource assessments, coordinate relevant actions of state and Federal agencies, report on fisheries status and trends, and determine, fund and review research projects. The program implements a Baywide plan for the assessment of commercially, recreationally, and selected ecologically important species in the Chesapeake Bay. In 1988, CBSAC developed a Baywide Stock Assessment Plan, in response to provisions in the Chesapeake Bay Agreement of 1987. The Plan identified that key obstacles to assessing Bay stocks was the lack of consistent, Baywide, fishery-dependent and fishery-independent data. Research projects funded since 1988 have focused on developing and improving fishery-independent surveys and catch statistics for key Bay species, such as striped bass, oysters, blue crabs and alosids. Stock assessment research is essential, given the recent declines in harvest and apparent stock condition for many of the important species of the Chesapeake Bay. The Fisheries Steering Committee was established in 2001 to guide the various Chesapeake Bay fisheries' issues including management and research.

D. *Funding Availability.* This document describes how interested persons can apply for funding under the Chesapeake Bay Fisheries Research Program, and how funding decisions will be made.

This solicitation announces that funding of up to $1,400,000 may be available through the Chesapeake Bay Fisheries Research Program. This announcement does not guarantee that sufficient funds will be available to make awards for all selected applications submitted under this program.

II. Funding Priorities

Proposals should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multi-disciplinary. Coordinated efforts involving multiple eligible applicants or persons are encouraged. Proposals must address one of the priorities listed here. If the proposal addresses more than one priority, it should list first on the application the priority that most closely reflects the objective of the proposals.

(A) *Stock Assessment Research.* Consideration for funding will be given to applications that address the following stock assessment research and management priorities for the Chesapeake Bay. These priorities are not listed in any particular order:

(1) Assessments of the abundance, productivity, distribution, and exploitation patterns of important Chesapeake Bay finfish and shellfish resources. Proposals may include research on life history characteristics, stock-recruitment relationships, and schedules of vital rates. Descriptions of stock structure, demographics and spatial distribution would also be appropriate. It is anticipated that proposals will combine analyses of existing fishery-dependent and fishery-independent data.

(2) Development and/or implementation of a program to provide a reliable data base for estimating the impact of recreational fishing on living marine resources in Chesapeake Bay. Projects should:

a. Conduct a review of the work previously conducted on the development of methods for conducting a Baywide recreational survey;

b. Implement on a Baywide scale based on earlier work (if applicable);

c. Provide reliable estimates of recreational catch, fishing effort, catch rates, size composition, and sex ratios for all components of the recreational fishery.

(3) Blue Crab Stock Assessment Analyses

a. Analyses which may corroborate the results of the length-based estimates of fishing mortality rates (current estimates based on 120 mm or greater carapace width) and investigations into the relative exploitation rates on peeler size blue crabs.

b. Analyses of the trends in relative exploitation rates on blue crab, according to major gear types used in the commercial fishery.

c. Develop methods for estimation of Baywide commercial fishing effort and conduct a pilot study to test the methods.

d. Design and develop an integrated Baywide blue crab mark and recapture study that will provide information on growth, natural mortality, fishing mortality, size selectivity, catchability, reporting rates and the distribution of harvest among the fisheries. Results should be informative with respect to the reproductive frequency of female crabs, and longevity.

(4) Improvement or implementation of the collection of fishery-dependent data within Chesapeake Bay. Projects can involve either the commercial and/or recreational components of the fishery. Projects should focus on collecting biological data (size, sex, age, diet), and catch and effort data from Baywide harvests of significant finfish and shellfish fisheries to provide accurate, statistically representative information on the spatial and temporal characteristics of the harvest. Proposals may involve designs for port-sampling of landings, or on-board analysis of the catch, analysis of intercepts and telephone surveys. Proposals that document information on by-catch and discard mortality would be relevant and are encouraged.

The proposals should recognize current efforts to collect biological data from Bay fisheries and attempt to define the optimal, regional (Maryland, Potomac River Fisheries Commission, and Virginia jurisdictions) sampling program.

(5) Improvement and/or implementation of Chesapeake Bay fisheries database tools (including oracle database systems and web-based public access) for the various fishery-dependent and fishery-independent data currently and historically available in Chesapeake Bay. Proposals are encouraged to coordinate with the Atlantic Coastal Cooperative Statistics Program (ACCSP) and/or the Northeast Area Monitoring Assessment Program (NEAMAP) activities.

(B) *Multispecies Management and Research.* The Chesapeake Bay is a complex and dynamic ecosystem that supports many fisheries that are economically important both regionally and nationally. To date, these resources have been managed on a single species basis. While the single species approach has served us well, the existence of both biological and technical (by-catch) interactions in most Chesapeake Bay fisheries point to the need to move toward a wider, multispecies perspective. This viewpoint was wholeheartedly endorsed at a workshop of regional, national and international scientists held to address the potential utility of multispecies approaches to fisheries management in the Chesapeake Bay (STAC Publication 98-002, www.chesapeake.org). The ultimate objective of this research and monitoring is to lead to the development of an ecosystem plan for Chesapeake Bay fisheries, within which the rational exploitation of individual species can be determined.

Consideration for funding will be given to applications that address the following multispecies management and research priorities for the Chesapeake Bay. Priorities are not listed in any implied order:

(1) Fishery-independent Surveys. Plan, develop and conduct coordinated Baywide surveys to regularly estimate species abundances, trends and biological characteristics (e.g., age/size structure, recruitments, growth and mortality rates, food habitats) for

economically and ecologically important key species. Proposals within this task should:

a. Review and assess existing fishery independent sampling programs conducted by regional agencies to evaluate their potential applicability to the Chesapeake Bay. This may include evaluation of the use of fixed and random sampling protocols, with or without stratification, and the sampling characteristics of different gear types.

b. Develop and initiate a Baywide, coordinated, fishery-independent survey that may include multiple gear, such as benthic and midwater trawling, and hydroacoustics to characterize the status and trends in the abundance, distribution and characteristics of key Chesapeake Bay finfish and shellfish.

(2) Retrospective Analyzes. Document and quantify multispecies interactions among economically and ecologically important finfish and shellfish within the Chesapeake Bay. The proposed work should lead to the identification of the 'strong' interactions within the Chesapeake Bay fisheries system. Work may involve analysis of commercial and recreational catch and effort data, the analysis of the patterns of diets and energy flows within the fisheries system, or multivariate analyses of abundance relationships within the fisheries system and their relationship to environmental and habitat characteristics.

(3) Multispecies Assessment / Ecosystem Modeling. Apply and assess alternative multispecies fisheries models to the Chesapeake Bay fisheries systems. The submitted proposal should detail the development of a multispecies or ecosystem model focusing on core Chesapeake Bay species. Examples of possible approaches include, but are not limited to: multispecies biomass dynamic, multispecies yield per recruit, multispecies virtual population analysis, multispecies bioenergetics, spatial-physical predator-prey, trophic production and ecosystem simulation models. Model approaches should seek to predict constraints and patterns in the fisheries production of the Chesapeake Bay system.

(C) *Fisheries Ecosystem Plan (FEP) Research and Implementation.* The NOAA Chesapeake Bay Office has initiated development of an FEP for Chesapeake Bay. An FEP is an umbrella document containing information on the structure and function of the ecosystem in which fishing activities occur, so that managers can be aware of the effects their decisions have on the ecosystem, and the effects other components of the ecosystem may have on fisheries. Development of FEPs for each major ecosystem was recommended by the NMFS appointed Ecosystem Principles Advisory Panel which was formed under a mandate by the Sustainable Fisheries Act of 1996. (See the Panel's Report to Congress at: http://www.nmfs.noaa.gov/sfa/EPAPrpt.pdf.) The initial FEP will reflect the existing state of knowledge about the Chesapeake Bay ecosystem. Effective FEP implementation, however, and ultimate success of the Bay's FEP initiative, will require new research to characterize critical components of the ecosystem. The total value of the proposals selected for funding under this priority cannot exceed $100,000 of the base amount. Priorities are not listed in any particular order.

(1) Design and implementation of surveys to identify habitats, spawning areas, and feeding grounds for significant Chesapeake Bay species.

(2) Promote a higher level of understanding of the relationships between fisheries, the ecosystem, society and the environment. Proposals may include:

a. Improving the understanding of the 'multiple pathways' that can affect managed species and members of their significant food webs. Pathways might include (but are not limited to): the effects of habitat degradation and restoration, influences of the spatial arrangement of habitats, effects of environmental fluctuations or climate change, and the impact of changes in predator-prey relationships.

b. Characterizing uncertainty in key parameters used to support fisheries management decisions. This should include the ability to show the risks associated with the estimated uncertainty.

c. Describing the social and economic drivers of both commercial and recreational sectors of the Chesapeake Bay fishing industry.

d. Determining the relevance of existing, or proposed, indicators of ecosystem health (especially to meet the objective of linking fisheries and human health to the supporting Chesapeake Bay ecosystem).

III. How to Apply

A. *Eligible applicants.* Eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

The Department of Commerce National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

B. *Duration and terms of funding.* Under this solicitation, NMFS will fund Chesapeake Bay Fisheries Research Projects as 12 month cooperative agreements. The cooperative agreement has been determined to be the appropriate funding instrument because of the substantial involvement of NMFS in:

1. Developing program research priorities;

2. Evaluating the performance of the program for effectiveness in meeting regional goals for Chesapeake Bay stock assessments;

3. Monitoring the progress of each funded project;

4. Holding periodic workshops with investigators; and

5. Working with recipients to prepare annual reports summarizing current accomplishments of the Chesapeake Bay Stock Assessment Committee.

Project dates should be scheduled to begin no later than 1 October 2002. Cooperative agreements are approved on an annual basis but may be considered eligible for continuation beyond the first project and budget period subject to the approved scope of work, satisfactory progress, and availability of funds at the total discretion of NMFS. However, there are no assurances for such continuation. Publication of this document does not obligate NMFS to award any specific cooperative agreement or to obligate any part of the entire amount of funds available.

C. *Cost-sharing requirements.* Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required by the Chesapeake Bay Fisheries Research Program but is encouraged.

D. *Format.* 1. Applications for project funding must be complete and must

follow the format described in this document.

Applicants must identify the specific research priority or priorities to which they are responding. If the proposal addresses more than one priority, it should list first on the application the priority that most closely reflects the objective of the proposals. For applications containing more than one project, each project component must be identified individually using the format specified in this section. If an application is not in response to a priority, it should so state. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application.

Applications must not be bound and must be one-sided. All incomplete applications will be returned to the applicant. Applicants are required to submit 1 signed original and 2 copies of the proposal.

2. Applications must be submitted in the following format:

(a) *Cover sheet*: An applicant must use OMB Standard Form 424 (revised 7/97) as the cover sheet for each project. Applicants may obtain copies of these forms from the NOAA Grants Management Division, the NOAA Chesapeake Bay Office (see **ADDRESSES**) from the NOAA Grants website, http://www.rdc.noaa.gov/grants/.

(b) *Project summary*: It is recommended that each proposal contain a summary of not more than one page that provides the following:

(1) Project title.

(2) Project status (new vs. continuation).

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal Investigator(s) (PI).

(6) Project objectives.

(7) Summary of work to be performed.

(8) Total Federal funds requested.

(9) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.

(10) Total project cost.

(c) *Project description* (including results from prior support): Each project must be completely and accurately described. The main body of the proposal should be a clear statement of the work to be undertaken and should include: specific objectives and performance measures for the period of the proposed work and the expected significance; relation to longer-term goals of the PI's project; and relation to other work planned, anticipated, or underway under Federal Assistance. The project description must not exceed 15 pages in length. Visual materials, including charts, graphs, maps, photographs and other pictorial presentations are not included in the 15-page limitation. If an application is awarded, NMFS will make all portions of the project description available to the public for review; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

(1) Identification of problem(s): Describe the specific problem to be addressed (see section II above).

(2) Project objectives: The project description must identify the following three project objectives: (1) Identify the specific priority listed earlier in the solicitation to which the proposed projects respond, if any. (2) Identify the problem/opportunity you intend to address and describe its significance to the fishing community. (3) State what you expect the project to accomplish.

If you are applying to continue a project previously funded under the Chesapeake Bay Fisheries Research Program, describe in detail your progress to date and explain why you need additional funding.

Objectives should be:

(a) Simple and easily understandable.

(b) As specific and quantitative as possible.

(c) Clear with respect to the ''what and when '' and should avoid the ''how and why.''

(d) Attainable within the time, money, and human resources available.

(e) Use action verbs that are accomplishment oriented.

(f) Identify specific performance measures.

(3) Results from Prior Chesapeake Bay Fisheries Research Support: If any PI or co-PI identified on the project has received Chesapeake Bay Fisheries Research (CBSAC) support in the past 5 years, information on the prior award(s) is required. The following information must be provided:

(a) The NOAA award number, amount and period of support;

(b) The title of the project;

(c) Summary of the results of the completed work, including, for a research project, any contribution to the development of human resources in science/biology;

(d) Publications resulting from the award;

(e) Brief description of available data, samples, physical collections and other related research products not described elsewhere; and

(f) If the proposal is for renewed support, a description of the relation of the completed work to the proposed work.

(4) Need for Government financial assistance: Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(5) Benefits or results expected: Identify and document the results or benefits to be derived from the proposed activities.

(6) Project statement of work: The Statement of Work is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective(s).

Investigators submitting proposals in response to this announcement are strongly encouraged to develop inter-institutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. Such collaborative efforts will be factored into the final funding decision.

Each Statement of Work must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the Statement of Work.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. A detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures (from item III.D.2.c(5)(d)) that are to be attained in each project month covered by the Statement of Work. Table format should follow sequential month rather than calendar month (i.e. Project period Month 1, Month 2... versus October, November ...)

(7) Federal, state and local government activities: List any programs (Federal, state, or local government or activities, including Sea Grant, state Coastal Zone Management Programs, NOAA Oyster Disease Research

Program, the state/Federal Chesapeake Bay Program, etc.) this project would affect and describe the relationship between the project and those plans or activities.

(8) Project management: Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

(9) Monitoring of project performance: Identify who will participate in monitoring the project.

(10) Project impacts: Describe how these products or services will be made available to the fisheries and management communities.

(11) Evaluation of project: The applicant is required to provide an evaluation of project accomplishments and progress towards the project objectives and performance measures at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical feasibility, or to quantify the results of the project in promoting increased production, product quality and safety, management effectiveness, or other measurable factors.

(12) Total project costs: Total project costs is the amount of funds required to accomplish what is proposed in the Statement of Work, and includes contributions and donations. All costs must be shown in a detailed budget. A standard budget form (SF-424A) is available from the offices listed and on the internet (see **ADDRESSES**). NMFS will not consider fees or profits as allowable costs for grantees. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. The date, period covered, and findings for the most recent financial audit performed, as well as the name of the audit firm, the contact person, and phone number and address, must be also provided.

(d) Supporting documentation: Provide any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

IV. Review Process and Criteria

A. *Initial Evaluation of Applications.* Applications will be reviewed by NOAA to assure that they meet all requirements of this announcement, including eligibility and relevance to the Chesapeake Bay Fisheries Research Program. Proposals that do not support the technical and management priorities of the Chesapeake Bay, as defined in section II. above will not be considered for funding.

B. *Consultation with Experts in the Field of Stock Assessment and Fisheries Research.* For applications meeting the requirements of this solicitation, NMFS will conduct an individual technical evaluation (via mail/electronic mail) of each project. This review normally will involve experts from both NOAA and non-NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. Reviewers will be asked to score and comment based on the following four criteria (total of 50 possible points):

1. Problem description and conceptual approach for resolution, especially the applicant's comprehension of the problem(s), familiarity with related work that is completed or ongoing, and the overall concept proposed to resolve the problem(s) (15 points).

2. Soundness of project design/technical approach, especially whether the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and weaknesses of the technical design proposed for problem resolution (20 points).

3. Project management and experience and qualifications of personnel, including organization and management of the project, and the personnel experience and qualifications (5 points).

4. Justification and allocation of the budget in terms of the work to be performed (10 points).

C. *Review Panel.* NMFS will convene a review panel consisting of at least three regional experts (both NOAA and non-NOAA panelists) in the scientific and management aspects of fisheries research.

Each individual panel member will:

1. Provide independent review based on the same criteria and scoring as the technical review.

2. Provide a numerical ranking of all submitted proposals and suggestions for modifications (i.e., budget, personnel, technical approach, etc.).

The review panel will collectively:

1. Discuss all review comments as a panel incorporating the evaluation provided by the technical reviewers.

D. *Funding Decision.* After applications have been evaluated and ranked numerically by the review panel, the Director of the NOAA/NMFS Chesapeake Bay Office, in consultation with the Assistant Administrator (AA) for Fisheries, NOAA, will determine the projects to be recommended for funding based upon the technical evaluations and panel review comments, and determine the amount of funds available for the program. Numeric ranking will be the primary consideration for deciding which of the proposals will be selected for funding. In making the final selections, NOAA/NMFS may consider costs, geographical distribution, inter-jurisdictional and inter-institutional collaboration and duplication with other federally funded projects. Accordingly, numerical ranking is not the sole factor in deciding which proposals will be selected for funding. The Director of the NOAA/NMFS Chesapeake Bay Office will prepare a written justification for any recommendations for funding that fall outside the ranking order, or for any cost adjustments. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, the Grants Office, and the NOAA/NMFS Chesapeake Bay Office staff. Potential grantees should not initiate projects in expectation of Federal funding until an award document signed by an authorized NOAA official has been received.

E. Applications not selected for funding will be held in the Program Office for a period of at least 12 months.

V. Administrative Requirements

A. *Obligations of the applicant.* Periodic Workshops--Investigators will be expected to prepare for and attend one or two workshops with other Fisheries Research Program researchers to encourage interdisciplinary dialogue and collaboration.

B. *Other requirements.* 1. Indirect Cost Rates--The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Regardless of any approved indirect cost

rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs for this Program. Applicants with indirect costs above 25 percent may use the amount above the 25 percent level as cost sharing. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

2. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget, in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

3. Financial Management Certifications/preaward Accounting Survey--Successful applicants, at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable Office of Management and Budget (OMB) Circulars prior to execution of the award. Any first-time applicant for Federal grant funds may be subject to a preaward accounting survey by the DOC specified in the applicable OMB Circulars/Code of Federal Regulations prior to execution of the award.

Classification

This action has been determined to be ''not significant'' for purposes of Executive Order 12866.

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Pursuant to Section 553(a)(2) of the Administrative Procedure Act, prior notice and an opportunity for public comment are not required for this notification concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms (SF) 424 and 424A have been approved by OMB under their respective control numbers 0348-0043 and 0348-0044. Notwithstanding any other provision of 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 Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: March 26, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–8081 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032802C]

Individual Fishing Quota (IFQ) Stakeholders; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The H. John Heinz III Center for Science, Economics and the Environment, at NMFS' request, will host a meeting to discuss quota allocation programs as options for fishery management. This meeting is open to the public. The public may also attend as observers and submit written statements to the stakeholder meetings on May 7 and 8, 2002.

DATES: The open meeting will convene at 9 a.m. on Monday, May 6, 2002, recess at 5 p.m. Small working sessions to solicit views and debate issues among pre-determined participants will continue on May 7 and 8, 2002.

ADDRESSES: The meeting will be held at The Tremont House Hotel, 2300 Ship Mechanic Row, Galveston, TX 77550, 409–763–0300.

FOR FURTHER INFORMATION CONTACT: Mary Hope Katsouros or Laurie Allen at 202–737–6307.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the use of quota allocation strategies as a tool for fishery management. This will be done by reviewing current U.S. individual fishing and transferable quota programs, community development programs and other cases, the 1999 National Research Council's report, entitled ''Sharing the Fish'', related reports and literature, and input from stakeholders. This meeting presents an opportunity for stakeholders to provide their views on the pros and cons of this type of fishery management tool. A report will be produced by The Heinz Center that will provide a summary of public input and an analysis of policy options considered by stakeholders. If you are unable to attend, but do want to provide input, send your written statements no later than 5 p.m., April 20, 2002, to The Heinz Center, Attn: IFQ Project, 1101 Pennsylvania Avenue, N.W., Suite 735 South, Washington, DC. 20004.

Although other issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issue may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–326–6352 at least 5 days prior to the meeting date.

Dated: March 28, 2002.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–8084 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032602G]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Atlantic Mackerel, Squid and Butterfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Friday, April 19, 2002, from 10 a.m. until 4 p.m.

ADDRESSES: This meeting will be held at the Sheraton International Hotel, Baltimore Washington International Airport, 7032 Elm Road, Baltimore, MD; telephone: 410–859–3300.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to make quota recommendations for the 2003 fishing year for Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish and consider an in-season adjustment to the 2002 *Loligo* quota.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MAFMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the MAFMC Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 27, 2002.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–8083 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032602C]

Endangered Species; Permits

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

ACTION: NMFS has issued permit 1355.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has issued permit 1355 to Mr. Eugene Greer, of Columbia Environmental Research Center.

DATES: Permit 1355 was issued to Mr. Eugene Greer on March 21, 2002.

ADDRESSES: Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR1, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (phone:301–713–2319).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: *Lillian.Becker@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Species Covered in This Notice

The following species are covered in this notice:

Endangered Shortnose Sturgeon (*Acipenser brevirostrum*)

Permit 1355

Notice was published on January 3, 2002 that Mr. Eugene Greer, of Columbia Environmental Research Center applied for a scientific research permit (1355). The applicant proposes to test the effects of toxins found in the waters of North Carolina on the growth and survival of shortnose sturgeon fry. Up to 3,000 fry will be placed into water shipped in from the rivers of North Carolina and measured. Permit 1355 was issued on March 21, 2002, authorizing take of shortnose sturgeon. Permit 1355 expires June 1, 2004.

Dated: March 28, 2002.

Ann Terbush,

Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–8082 Filed 4–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 10, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before June 3, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically

mailed to the Internet address *KarenF.Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: March 29, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Small Business Innovation Research (SBIR) Program—Phase I—Grant Application Package.

Abstract: This application package invites small business concerns to submit a Phase I research application for the Small Business Innovation Research (SBIR) program. This is in response to Pub. L. 106–554, the ''Small Business Reauthorization Act of 2000, H.R. 5667'' (the ''Act'') enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education (ED), to establish a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or R&D through a uniform, highly competitive, three-phase process each fiscal year.

Additional Information: The Act further requires the Small Business Administration (SBA) to issue policy directives for the general conduct of the SBIR programs within the Federal Government. In order to avoid public harm and comply with the law and SBA Policy Directives, the Department is requesting an emergency clearance by April 10, 2002. This is the only way to assure that applicants have an adequate response time, that their applications receive an expert peer review, and that their awards are made before the end of the fiscal year.

Frequency: Annually.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 250.

Burden Hours: 10,000.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting ''Browse Pending Collections'' and clicking on link number. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO__RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–8052 Filed 4–2–02; 8:45 am]

BILLING CODE 4001–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7167–6]

EPA Science Advisory Board Metals Assessment Panel; Request for Nominations; EPA Science Advisory Board MARLAP Review Panel; Correction to Meeting Location; EPA Science Advisory Board Clean Air Scientific Advisory Committee; Advance Meeting Notification

1. Metals Assessment Panel; Request for Nominations

ACTION: Notice; request for nominations to serve on the Metals Assessment Panel of the U. S. Environmental Protection Agency's Science Advisory Board.

SUMMARY: The U.S. Environmental Protection Agency's (Agency, EPA) Science Advisory Board (SAB) is announcing the formation of a Metals Assessment Panel and is soliciting nominations of qualified individuals to serve on this Panel. The SAB was established to provide independent scientific and technical advice to the EPA Administrator on Agency positions; in this case advice on development of cross-Agency guidance for assessing certain hazards and risks for metals and metal compounds.

Any interested person or organization may nominate qualified individuals for membership on the Panel. Nominations (preferably in electronic format) should include the individual's name, occupation, position, qualifications to address the issue, and contact information (i.e., telephone number, fax number, mailing address, email, and/or Website). To be considered, all nominations must include a current resume (preferably electronic) providing information on the nominee's background, experience, and qualifications for this Panel.

Background

There has been considerable interest in the scientific assessments that the Agency conducts on metals and metal compounds. Discussions between the Agency and external stakeholders, as well as concerns expressed formally as part of the recent Toxics Release Inventory (TRI) lead rulemaking, have demonstrated the need for a more comprehensive, cross-Agency approach to metals assessments that can be applied to human health and ecological assessments. Therefore, the Agency is developing a Framework that will offer guidance for EPA programs to use when considering the various environmental properties of metals, such as

persistence, bioaccumulation and toxicity, in assessing the hazards and risks of metals and metal compounds. As a first step in accomplishing this goal, the Agency is developing an Action Plan that

(a) Identifies the primary elements to be addressed in the assessment Framework,

(b) Proposes a structure for the Framework, and

(c) Sets out a process that will culminate in the production of the Framework, per se.

The Agency has asked the SAB to form a Panel to provide advice (i.e., generate an SAB Advisory) on the Action Plan and subsequently to review (i.e., generate an SAB Review) the Framework that will be developed over the coming year.

The SAB is negotiating a specific Charge to guide the Metals Assessment Panel consideration of the Action Plan. The specific questions that constitute the Charge provide general guidance to the nominators about the technical qualifications of individuals who are being sought to carry out the work of the Panel. It is anticipated that the Panel will contain experts who have proven knowledge of the toxicology of metals in humans and the environment, the transport and fate of metals in the environment, computer modeling of the behavior of metals in the environment, risk assessment of metals, and the technical issues that arise in applying these principles in a decision-making context.

The current version of the Charge follows, although details of the Charge may change as a result of ongoing discussions between the Agency and the Panel. Updates will be posted on the SAB Website: *www.epa.gov/sab.*

Tentative Charge to the Metals Assessment Panel of the SAB

Please comment on the soundness of the Action Plan, specifically focus on the following:

1. Please comment on the soundness of the proposed organizing principles for the Framework.

2. EPA has attempted to capture the major, cross-cutting scientific issues that are specific to assessing the hazard and risk of metals and metal compounds. Please comment on the scientific issues presented in the Action Plan. In particular, does the SAB concur that these are the major, cross-cutting issues of concern with respect to assessing hazard and risks of metals and metal compounds? If not, which issues would you add or delete from this list and why?

3. Has EPA adequately characterized the issues and does the SAB concur with the steps proposed for addressing these issues? Why or why not?

4. Can the SAB suggest priorities within the list of issues based on the state-of-the-science and the feasibility of developing guidance in the near term. Which issues should be the focus of longer-term research efforts?

5. Are there specific recommendations (including methods and models) for addressing these issues that are not captured by EPA's Action Plan?

6. Please comment on the feasibility of the proposed process for drafting the Framework. Do you consider the time line to be realistic? Are the measures being taken to involve the public adequate?

7. Please comment on the structure for the Framework. Is it clear and all inclusive?

Any interested person or organization may nominate qualified individuals for membership on the Panel. Nominations should include the individual's name, occupation, position, qualifications to address the issue, and contact information (i.e., telephone number, fax number, mailing address, email address, and/or Website). To be considered, all nominations must include a current resume (preferably electronic), providing the nominee's background, experience, and qualifications.

Nominations should be submitted (preferably in electronic format) to Ms. Stephanie Sanzone, Designated Federal Officer, EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, telephone (202) 564–4561; FAX (202) 501–0323; e-mail at *sanzone.stephanie@epa.gov* no later than April 13, 2002. The Agency will not necessarily formally acknowledge or respond to nominations.

The nominations received through this solicitation will be combined with nominations obtained through other sources; e.g., the Agency, SAB members, and particular organizations. From this larger group of nominees (termed the ''WIDECAST''), a smaller subset of candidates (the ''Short List'') will be identified for more detailed consideration. The names of the Short List individuals, along with a short biosketch of each, will be posted on the SAB Website *(www.epa.gov/sab).* The public will have the opportunity to provide any information, analysis, and documentation—related to expertise, knowledge, scientific credibility, conflict-of-interest, possible lack of impartiality, experience, and skills working in committees and advisory panels—that they feel should be considered in the final Panel selection process. The public will also be asked to provide information, analysis, and documentation on their views of the Short List as it relates to questions of whether all necessary domains of knowledge are represented to conduct the review, whether all relevant scientific perspectives are included, and whether there is a sufficient range of experience to conduct a fully informed, credible technical review. Such data provided by the public will be considered, along with information collected by the SAB Staff (e.g., review of the candidates' resumes and confidential conflict of interest statements (OGE form 450) and conversation with the candidates), when the SAB Staff Director makes the final decisions on Panel membership from the Short List, in consultation with SAB leadership, as needed.

Panel members will be asked to attend at least one public meeting, possibly followed by a public teleconference meeting over the anticipated 3-month course of the activity. The Executive Committee (EC) of the SAB will critically review the Panel's report and reach a judgment about its transmittal to the Administrator.

2. MARLAP Review Panel; Correction to Meeting Location

The Multi-Agency Radiological Laboratory Analytical Protocols (MARLAP) Review Panel of the Radiation Advisory Committee (RAC) of the US EPA Science Advisory Board announced a meeting for April 23–25, 2002 (see 67 FR 11328–11330, March 13, 2002). The meeting location was given as EPA Hearing Room 1153 in the EPA East Headquarters Building, 1201 Pennsylvania Avenue, NW, Washington, DC 20004. The street address should read 1201 Constitution Avenue, NW, not 1201 Pennsylvania Avenue, NW. The other information given in the previous FR is correct.

3. Clean Air Scientific Advisory Committee; Advance Notification of Meetings

The Particulate Matter Review Panel of the Clean Air Scientific Advisory Committee (CASAC) will hold two meetings to review Agency draft documents concerned with the Particulate Matter National Ambient Air Quality Standards (NAAQS). The first meeting will be held on July 18–19, 2002 to review the draft Particulate Matter Criteria Document. The second meeting will be held on September 18–19, 2002 to review the Particulate Matter

Staff Paper. Both meetings will be held in Research Triangle Park, NC. Details about these meetings will appear in a FR Notice approximately one month prior to each meeting. Availability of review documents will be posted separately in the FR approximately two months prior to each meeting. These FR Notices will contain contact information and information concerning how to provide comments to either EPA or to CASAC. For further information concerning these two planned meetings, please contact Mr. Robert Flaak, CASAC Designated Federal Officer at (202) 564–4546, *flaak.robert@epa.gov* or at US EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

General Information

Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website *(http://www.epa.gov/sab)* and in the *Science Advisory Board FY2000 Annual Staff Report* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: March 26, 2002.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 02–8065 Filed 4–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0004; FRL–6831–7]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to review of the Cumulative and Aggregate Risk Evaluation System (CARES)™ Model used as a tool for dietary and residential pesticide exposure and risk assessments. The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Olga Odiott at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on April 30 – May 1, 2002 from 8:30 a.m. to approximately 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Hotel is (703) 486–1111. Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your request must identify docket control number OPP–2002–0004 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Designated Federal Official, Office of Science Coordination and Policy (7201M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: odiott.olga@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Food Quality Protection Act (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* A meeting agenda and copies of EPA primary background documents for the meeting will be available by the end of March. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA/SAP Internet Home Page at http://www.epa.gov./scipoly/sap/. To access this document, on the Home Page, select ''**Federal Register** Notice Announcing This Meeting.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedregstr/.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–2002–0004. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the review of key features of the CARES™ model, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0004 in the subject line on the first page of your request. Members of the public wishing to submit comments should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** to confirm that the meeting date and agenda have not been modified. Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advance written request to the persons listed under **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc.). There is no limit on the extent of written comments for consideration by the Panel, but oral statements before the panel are limited to approximately 5 minutes. The

Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral or written statements at the meeting should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies of their presentation and/or remarks to the Panel. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: ''opp–docket@epa.gov.'' Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–2002–0004. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

This 2–day meeting concerns scientific issues undergoing consideration within the EPA Office of Pesticide Programs (OPP). The Panel will review key features of the CARES™ Model to include the software code, data requirements, data inputs, and output reports. The presentation will focus on the operating system and will solicit panel comments and advice with respect to the transparency and operation of the model. CARES™ is a model for assessing aggregate and cumulative exposure and risk to pesticides. To assist the Panel in their evaluation of CARES™ each Panel member will be provided a copy of the CARES™ software and supporting documentation. The Panel will also be provided with hypothetical, yet representative, residue and toxicological data sets for assessing aggregate and cumulative exposure and risk via the dietary, residential and drinking water pathways. Interested public parties can obtain a copy of the CARES™ software by contacting Angelina Duggan at Aduggan@croplifeamerica.org. This program is copyrighted and there will be a charge for a copy of the program.

B. Panel Report

Copies of the Panel's report of their recommendations will be available within 60–working days after the meeting, and will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information Records Integrity Branch (PIRIB) at the address and telephone listed below under Unit I.

List of Subjects

Environmental protection.

Dated: March 25, 2002.

Vanessa T. Vu,

Director, Office of Science Coordination and Policy.

[FR Doc. 02–7947 Filed 4–2–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7167–7]

EPA Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Engineering Committee (EEC, Committee) of the US EPA Science Advisory Board (SAB) will meet via public teleconference on the date and time noted below. All times noted are Eastern Time. This meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office (if any) is included below. Subsequent teleconference meetings of the EEC are planned for July 3, 2002, September 4, 2002 and November 6, 2002. Information concerning these meetings will appear in future **Federal Register** notices.

1. Environmental Engineering Committee (EEC)—May 1, 2002

The Environmental Engineering Committee (EEC, Committee) of the US EPA Science Advisory Board (SAB), will conduct a public teleconference meeting on May 1, 2002 hosted from Room 6528, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting will begin at 12:00 pm and adjourn no later than 2:00 pm. The public is encouraged to attend the meeting in the conference room noted above, however, the public may also attend through a telephonic link if lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Mary Winston (see contact information below)

Purpose of the Meeting—The primary purpose of this meeting will be to review for approval a commentary prepared by the EEC's Risk Reduction Options Selection Subcommittee. The Committee reviewed the December 20, 1001 draft report of the Subcommittee at its January 30, 2002 conference call and agreed that the report would be revised to address the comments received. Those revisions are in progress and the Committee expects to have the commentary available for consideration at the May 1, 2002 conference call.

The Committee will also use the meeting to discuss the future of the EEC. To prepare for this, several members are preparing a paper on the future of the EEC to stimulate discussion at the May 1 conference call. This discussion will also address the Committee's FY2003 plans.

The Committee may also be briefed on issues of technical interest. For example, if schedules permit, there may be a briefing on nanotechnology addressing both the state of the Agency and the state of the science.

Availability of Review Materials: The draft commentary will be available at the SAB's website (www.epa.gov/sab) before April 24, 2002.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this teleconference meeting or who wishes to submit brief oral comments (3 minutes or less) must contact Ms. Kathleen White, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; fax (202) 501–0582; or via e-mail at *white.kathleen@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. White no later than

noon Eastern Time April 24, 2002. An agenda or information on participation in the above teleconference meeting may be obtained from Ms. Mary Winston, Management Assistant, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: (202) 564–4538, FAX (202) 501–0582; or via e-mail at *winston.mary@epa.gov.*

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. White at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 26, 2002.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 02–8064 Filed 4–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00764; FRL–6830–3]

The Association of American Pesticide Control Officials/State FIFRA Issues Research and Evaluation Group Working Committee on Water Quality and Pesticide Disposal; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality and Pesticide Disposal will hold a 2-day meeting, beginning on April 29, 2002, and ending April 30, 2002. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. The purpose of this meeting is to provide an opportunity for States to discuss with EPA matters related to pesticide regulatory policies that affect water quality and pesticide disposal.

DATES: The meeting will be held on Monday, April 29, 2002, from 8:30 a.m. to 5 p.m. and Tuesday, April 30, 2002, from 8:30 a.m. to noon.

ADDRESSES: This meeting will be held at the Days Inn Crystal City, 2000 Jefferson Davis Hwy., Arlington, VA.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00764 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: aapco@plainfield.bypass.com or Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: Mcduffie.Georgia @epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all parties interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decisionmaking process are invited and encouraged to attend the meetings and participate as appropriate. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00764. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any

information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00764 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00764. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Tentative Agenda

Committee Operations & Orientation
Water Quality Registration Review Issue Team Report
Association of States & Interstate Water Pollution Control Administration (ASIWPCA) Introduction and Presentation
Review of Label Statements for Disposal
Environmental Fate & Effects Division Presentation on OP Cumulative Risk Assessment
Discussion of Pesticide Regulatory Education Program (PREP) Water Quality Recommendations
Schedule Setting
Committee Member Up-date
Office of Pesticide Program Up-date
Office Enforcement and Compliance Assurance Up-date
EPA Report—Office of Water, Office of Pesticide, & Office of Enforcement and Compliance Assurance
New Issue Team Discussion

List of Subjects

Environmental protection, Hazardous waste disposal, Pesticides and pests, Water pollution.

Dated: March 19, 2002.

Jay S. Ellenberger,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 02–7945 Filed 4–2–02; 8:45 am]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Elementary-Secondary Staff Information Report

AGENCY: Equal Employment Opportunity Commission (EEO).

ACTION: Notice of information collection under review; Elementary-Secondary Staff Information Report EEO–5.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a one-year extension of the existing collection as listed below.

DATES: Written comments on this notice must be submitted on or before June 3, 2002.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittal will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801

L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street NW. Room 9222, Washington, DC 20507, (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: The Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, 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

Collection Title: Elementary-Secondary Staff Information Report EEO–5.

OMB Number 0346–0003.

Frequency of Report: Biennial.

Type of Respondent: Public elementary and secondary school districts with 100 or more employees.

Description of Affected Public: State and Local Government.

Number of Responses: 5,000.

Reporting Hours: 12,000.

Federal Cost: $80,000.

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 and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirement for various kinds of employers. Elementary and secondary public school systems and districts have been required to submit EEO–5 reports EEOC since 1974 (biennially in even-numbered years since 1982). Since 1996 each 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, greatly reducing the respondent burden and cost.

EEO–5 data are used by the EEOC to investigate charges of employment discrimination against elementary and secondary public school districts. The data are used to support EEOC decisions and conciliations, and 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 are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs).

Burden Statement: the estimated number of respondents included in the annual EEO–5 survey is 5000 public elementary and secondary school districts. The number of responses per respondent is one report. The annual number of responses is approximately 5,000 and the total hours per response ranges from one (1) to five (5) hours. The estimated total number of response hours is 12,000 each time the survey is conducted (i.e., biennially.) Respondents are encouraged to report data on electronic media such as magnetic tapes and diskettes.

Dated: March 27, 2002.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 02–7988 Filed 4–2–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011695–004.

Title: CMA CGM/Norasia Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: Norasia Container Lines Limited, CMA CGM, S.A.

Synopsis: The proposed amendment would permit CMA CGM to swap slots from its allocation on China Shipping Container Lines Company's vessels under the CMA CGM/CSG Slot Exchange, Sailing and Cooperative Working Agreement, FMC Agreement No. 011712, with Norasia in exchange for slots from Norasia's allocation under the subject agreement.

Agreement No.: 011796.

Title: CMA CGM/Lloyd Triestino Slot Exchange, Sailing and Cooperative Working Agreement.

Parties: CMA CGM, S.A., Lloyd Triestino Di Navigazione S.p.A.

Synopsis: Under the proposed agreement, the parties may consult on sailing schedules, ports served, service frequency, and the exchange of slots or space on their respective vessels in the trades between U.S. West Coast ports and ports in Asia. The parties request expedited review.

Agreement No.: 11797.

Title: New Caribbean Service Consortium Agreement.

Parties: CMA CGM, S.A., Hapag-Lloyd Container Linie GmbH, P&O Nedlloyd Limited/P&O Nedlloyd B.V., Hamburg-Süd KG, Compania Sud Americana de Vapores, S.A.

Synopsis: The proposed agreement would permit the parties to share their vessels in the trade between ports in Puerto Rico and the U.S. Virgin Islands, on the one hand, and ports in North Europe, the Caribbean, and Central America, on the other hand.

Dated: March 25, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–8046 Filed 4–2–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information

The Commission gives notice that it has requested that the parties to the below listed agreement provide additional information pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. 1705(d). The Commission has determined that further information is necessary to evaluate the impact of the proposed agreement on transportation costs and services. This action prevents the agreement from becoming effective as originally scheduled.

Agreement No.: 201128.

Title: Florida Ports Conference II.

Parties: Canaveral Port Authority; Broward County, Port Everglades

Department; Jacksonville Port Authority; Port of Key West, City of Key West Transportation Department; Manatee County Port Authority; Miami-Dade County, Port of Miami; Ocean Highway and Port Authority, Nassau County, Port of Fernandina; Port of Palm Beach District; Panama City Port Authority; City of Pensacola, Port of Pensacola; and Tampa Port Authority.

Dated: March 29, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–8048 Filed 4–2–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
4088F	Able Freight Services, Inc. 5340 W. 104th Street Los Angeles, CA 90045.	February 10, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–8047 Filed 4–2–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 4456NF.
Name: Arrisco International, Inc.
Address: 1808 G Associates Lane, Charlotte, NC 28217.
Date Revoked: March 14 2002.
Reason: Failed to maintain valid bonds.

License Number: 2944F.
Name: Astral International Shipping Services, Inc.
Address: 2414 World Trade Center, New Orleans, LA 70130.
Date Revoked: March 3, 2002.
Reason: Failed to maintain valid bond.

License Number: 4455NF.
Name: Cargo Transport, Inc.
Address: 6700 Marginal Way, SW, Seattle, WA 98106.
Date Revoked: February 22, 2002.
Reason: Surrendered license voluntarily.

License Number: 12237N.
Name: Costa Rica Carriers, Inc.
Address: 8620 NW 70th Street, Miami, FL 33166.
Date Revoked: March 18, 2002.
Reason: Failed to maintain a valid bond.

License Number: 2467F.
Name: L. C. Forwarding International Company.
Address: 150 Marine Street, Lake Charles, LA 70601.
Date Revoked: March 31, 2002.
Reason: Surrendered license voluntarily.

License Number: 2689F.
Name : Raul Nunez dba Nunez Forwarding Company.
Address: 14655 Northwest Freeway, Suite 119, Houston, TX 77040.
Date Revoked: March 14, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4257F.
Name: Road Runner International, Inc. dba International Delivery Systems.
Address: 1021 Stuyvesant Avenue, Union, NJ 07083.
Date Revoked: March 2, 2002.
Reason: Failed to maintain a valid bond.

License Number: 12426N.
Name: Windward Container Lines, Inc.
Address: 2630 NW 75th Avenue, Miami, FL 33122–1432.
Date Revoked: February 14, 2002.
Reason: Surrendered license voluntarily.

License Number: 17228N.
Name: YTN Corp.
Address: 122 N. Commonwealth Avenue, #311, Los Angeles, CA 90004.
Date Revoked: March 1, 2002.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–8045 Filed 4–2–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Int'l Cargo, LLC, 98 Craig Road, Manalapan, NJ 07726. Officer: Katherine Buonomo, President (Qualifying Individual).

Delcon Line (USA), Inc., 18726 Western Avenue, Gardena, CA 90248. Officers: Sunee Noh, Managing Director (Qualifying Individual) Doo Hee Lee, CEO.

All Transport LLC, 2824 May Avenue, Redondo Beach, CA 90278. Officer: Andres J. Villablanca, CEO Qualifying Individual.

Top Line Logistics Inc., 147–40 184th Street, Jamaica, NY 11413. Officers: Almon S.C. Lee, President (Qualifying Individual) Violet Horng, Vice President.

Remnant Shipping, Inc., 14928 S. Figueroa Street, Gardena, CA 90248. Officer: Soonyoung Chung, CEO (Qualifying Individual).

Fashion Container Line LLC dba FMI Inc. dba, FMI Trucking dba FMI International, 800 Federal Blvd., Carteret, NJ 07008. Officers: Geoff Tice, Vice President (Qualifying Individual) Ernie DeSaye, President.

Navivan Corp., 200 Crofton Road, Suite 2, Bldg. 10–B, Kenner, LA 70062. Officers: Ivan Lopez, Director (Qualifying Individual) Eric Lopez, Director.

Global Freight Transport Inc., 17 Jessica Lane, North Brunswick, NJ 08902. Officer: William Roach, President (Qualifying Individual).

Diaz & Flores, Inc., RR 3, Box 4550, San Juan, PR 00928. Officers: Rosa Marina Flores, President (Qualifying Individual) Paulette Diaz Barbosa, Vice President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Caribbean Int'l Cargo Transport, Inc. dba, Caribbean Int'l Forwarders and Consolidators, Inc., 2759 NW 82 Avenue, Miami, FL 33122. Officers: Soraya Quintana, Export Agent (Qualifying Individual) Joaquin Hernandez, Director.

Sun Island Freight L.C., 17401 NW 8th Street, Pembroke Pines, FL 33029. Officers: Jerome Anthony Lafond, Treasurer/Secretary (Qualifying Individual) Maurice Holder, President.

1st Class International, Inc., 8242 A Sandy Court, Jessup, MD 20794. Officer: Raef Boussi, President (Qualifying Individual).

Embassy Cargo NJ Inc., 45 Tamarack Circle, Skillman, NJ 08558. Officers: Silvio Travia, President (Qualifying Individual) Fabrizio Travia, Vice President.

Momentum Logistics Corp., 16311 Stone Grove Lane, Cerritos, CA 90703. Officer: Ralph Koo, Director/President.

Swiftpak, Inc., 17352 SW 35th Street, Miramar, FL 33029. Officers: Jacquelin Carter, President (Qualifying Individual) Howard Carter, CEO.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

AJB International Transport, Inc., 5013 North Hale Avenue, Tampa, FL 33614. Officer: Alejandro Barbosa, President (Qualifying Individual).

Worchel Transport Inc. dba Prime Transport, 150–4 183rd Street, Springfield Gardens, NY 11413. Officers: Sam Fischel, President (Qualifying Individual) David Wortman, Vice President.

Sun Continental Logistics, Inc., 10834 S. La Cienega Blvd., Inglewood, CA 90304. Officers: Jack Y. M. Kao, President (Qualifying Individual) Yoke Liu, Vice President.

Dated: March 29, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–8044 Filed 4–2–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 17, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309–4470:

1. Noel Mitchell Dowling, Jr., Dothan, Alabama; to acquire additional voting shares of BancSouth Corporation, Dothan, Alabama, and thereby indirectly acquire additional voting shares of BankSouth, Dothan, Alabama.

2. Johnny Fred Coleman, Livingston, Tennessee; to acquire additional voting shares of American Bancshares Corporation, Dothan, Alabama, and thereby indirectly acquire additional voting shares of American Bank & Trust of the Cumberlands, Livingston, Tennessee.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Don H. Carlton and Brenda C. Bruton, both of Tulsa, Oklahoma; to acquire voting shares of ASB Corporation, Tulsa, Oklahoma, and thereby indirectly acquire voting shares of American State Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, March 28, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–8013 Filed 4–2–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 April 26, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Nicolet Bankshares, Inc., Green Bay, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Nicolet National Bank, Green Bay, Wisconsin.

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Peoples State Bancorp, Inc., Munising, Michigan; to become a bank

holding company by acquiring 100 percent of the voting shares of Peoples State Bank of Munising, Munising, Michigan.

2. State Bancshares of Ulen, Inc., Dilworth, Minnesota; to acquire 100 percent of the voting shares of K Roberts, Inc., Hendrum, Minnesota, and thereby indirectly acquire voting shares of Viking Bank, Hendrum, Minnesota.

C. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lauritzen Corporation, Omaha, Nebraska; to acquire up to 0.9 percent of the voting shares of First National of Nebraska, Inc., Omaha, Nebraska, and thereby indirectly acquire voting shares of First National Bank of Omaha, Omaha, Nebraska; First National Bank, North Platte, Nebraska; Platte Valley State Bank & Trust Co., Kearney, Nebraska; Fremont National Bank & Trust Co., Fremont, Nebraska; First National Bank & Trust Company, Columbus, Nebraska, First National Bank, Overland Park, Kansas; First National Bank South Dakota, Yankton, South Dakota; First National of Colorado, Inc., Fort Collins, Colorado; and thereby indirectly acquire voting shares of First National Bank, Fort Collins, Colorado; Union Colony Bank, Greeley, Colorado; First National Bank of Colorado, Boulder, Colorado; First National of Illinois, Inc., Omaha, Nebraska; and thereby indirectly acquire voting shares of Castle Bank, N.A., DeKalb, Illinois.

Board of Governors of the Federal Reserve System, March 28, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–8012 Filed 4–2–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transaction Granted Early Termination, 03/05/2002			
20020467	Express Scripts, Inc	Richard O. Ullman	Airport Properties, LLC (''APLLC'') CFI of New Jersey, Inc. (''CFINJ'') CFI, Inc. (''CFI'') National Prescription Administrators, Inc. (''NPA'') NPA of New York, IPA, Inc. (''IPA'') The Ullman Family Partnership, LP (''LP'')
20020476	Givaudan, S.A	Nestle S.A	FIS–North America, Inc
20020477	Royal Dutch Petroleum Company	Siemens und Shell Solar GmbH	Siemens und Shell Solar GmbH
20020484	Telephone and Data Systems, Inc. Voting Trust.	MCT Inc	MCT, Inc
20020485	Lee Enterprises Incorporated	Robert S. Howard and Lillian I. Howard.	Howard Publications, Inc
20020487	Community Newspaper Holdings, Inc.	Dow Jones & Company, Inc	The Ashland Daily Independent, Inc The Joplin Globe, Inc The Mankato Free Press, Inc The Sharon Herald
20020488	ALLTEL Corporation	Verizon Communications Inc	Verizon South Inc
200020489	Welsh, Carson, Anderson 7 Stowe VIII, L.P.	SAVVIS Communications Corporation.	SAVVIS Communications Corporation
Transaction Granted Early Termination, 03/08/2002			
20020441	The Titan Corporation	Jaycor, Inc. Employee Stock Ownership Plan.	Jaycor, Inc
20020462	Stonebridge Partners Equity Fund III, L.P.	General Electric Company	Hunter Fan Company
20020471	Ripplewood Partners, L.P	Proxim, Inc	Proxim, Inc
20020482	BJ Services Company	Great Lakes Chemical Corporation	OSCA, Inc
20020502	The Shaw Group Inc	The IT Group, Inc., Debtor in Possession.	The IT Group, Inc., Debtor in Possession
20020503	Societe des Participations du Commissariat.	Duke Energy Corporation	Duke Engineering & Services, Inc
20020504	Vector Group Ltd	Gary L. Hall	The Medallion Company, Inc
20020506	Mr. Paris Mouratoglou	Innogy Holdings plc	Delaware Mountain Wind Farm L.P. NWP Indian Mesa Wind Farm L.P Pennsylvania Windfarms Inc
20020511	Province Healthcare Company	Memorial Health Systems, Inc	Henry County, Inc
20020513	Sun Capital Partners II, L.P	Questron Technology, Inc	Questron Technology, Inc

Trans No.	Acquiring	Acquired	Entities
200020517	Centrica plc	NewPower Holdings, Inc	NewPower Holdings, Inc
Transaction Granted Early Termination, 03/11/2002			
20020475	Maverick Tube Corporation	Precision Tube Holding Corporation	Precision Tube Holding Corporation
20020486	aaiPharma Inc	Eli Lilly and Company	Eli Lilly and Company
20020494	Pharmacia Corporation	Nastech Pharmaceutical Company Inc.	Nastech Pharmaceutical Company Inc
20020512	PeopleSoft, Inc	Peoplesoft, Inc	Momentum Business Applications, Inc
Transaction Granted Early Termination, 03/12/2002			
20020483	Level 3 Communications, Inc	Rebar, LLC	CorpSoft, Inc
20020497	Moody's Corporation	KMV Corporation	KMV Corporation
20020498	MidAmerican Energy Holdings Company.	The Williams Companies, Inc	Kern River Gas Transmission Company
20020505	U.S. Bancorp	First Defiance Financial Corp	The Leader Mortgage Company, LLC
Transaction Granted Early Termination, 03/15/2002			
20020524	WLR Recovery Fund, L.P.	The LTV Corporation	EGL–LTV Holding Com. LTV Steel Company, Inc.
20020530	Code, Hennessy & Simmons, IV, L.P.	Furnishings International Inc.	Berkline Corporation Blue Mountain Trucking Corporation Universal Furniture Limited
20020533	Forstmann Little & Co. Equity Partnership V, L.P.	MCLeodUSA Incorporated	MCLeodUSA Incorporated
20020534	Forstmann Little & Co. Subordinated Debt & Equit Mgmt. VI.	MCLeodUSA Incorporated	MCLeodUSA Incorporated
20020535	Forstmann Little & Co. Equity Partnership—VII, L.P.	MCLeodUSA Incorporated	MCLeodUSA Incorporated
20020536	Forstmann Little & Co. Sub. Debt & Equity Mgmt. Buyout VII.	MCLeodUSA Incorporated	MCLeodUSA Incorporated
20020537	Forstmann Little & Co. Subordinated Debt & Equity Mgmt. VIII.	MCLeodUSA Incorporated	MCLeodUSA Incorporated
20020544	AT&T Wireless Services, Inc	AT&T Wireless Services, Inc	AT&T Wireless PCS of Philadelphia, LLC

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay; or, Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580. (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–8017 Filed 4–2–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: ''Enrollee Survey of Relationship Between Out-of-Pocket Costs and Use of Prescribed Medications''. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by June 3, 2002.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 2101 East Jefferson Street, Suite 500, Rockville, MD 20852–4908.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Enrollee Survey of Relationship Between Out-of-Pocket Costs and Use of Prescribed Medications''

The project is being conducted in response to an AHRQ task order entitled ''Patient Safety and the Quality of Care: An Examination of Economic and Structural Characteristics, Working Conditions, and Technological Advances'' (*issued under Contract 290–00–0012:* Accelerating the Cycle of Research through a Network of Integrated Delivery Systems with the Center for Health Care Policy and Evaluation, UnitedHealth Group, Minnetonka, MN).

Past research suggests that increases in out-of-pocket costs are associated with decreased medication use in the elderly who have a drug benefit. Furthermore, reductions in medication use have been associated with increases in visits to physicians' offices and emergency departments and admissions to hospitals and long-term care facilities.

When Medicare beneficiaries alter their use of prescription medications in

response to their out-of-pocket costs, patient safety and quality of care may be compromised.

As suggested by OMB, we have been in communication with the Center for Medicare & Medicaid Services (CMS) (*contact:* Frank Eppic, Deputy Director, Information and Methods Group, ORDI, tel: 410–786–7950 or *FEppic@hcfa.org*) regarding the availability of data on this topic, particularly CMS's Medicare Current Beneficiary Survey (MCBS). Examination of raw response frequencies on the 1999 MCBS survey indicate that fewer than 2% (319/16670 total respondents) cite costs or lack of coverage as primary reasons for not getting a prescription filled. This small percentage seems to be inconsistent with other reports on the inadequacy of drug benefits for the elderly. However, the MCBS does not inquire whether Medicare beneficiaries get prescriptions filled, but take less medication than prescribed because of out-of-pocket costs or caps on drug benefits. In addition, the amount of drug coverage is not ascertained. Since data to determine the prevalence of cost-related reductions in medication use under different drug benefits and subsequent worsening health or increased use of health care services are sparse, additional research on this important issue is warranted.

The proposed study will utilize the Center for Health Care Policy and Evaluation's administrative database that includes several Medicare+Choice health plans that have provided a limited drug benefit in 2002. Data collected by survey will determine how often out-of-pocket costs or caps incurred under the available drug benefit caused Medicare beneficiaries to alter their use of prescription medicines including not getting a prescription filled or refilled or taking reduced doses. These are the dependent variables for the study.

Survey data will be used to identify medications that have not been taken or reduced and alternatives that have been used to make judgments about the potential clinical consequences of any changes in medication-taking behavior. In addition, respondents' perceptions of the effects of any changes in medication use on their health status and utilization of other services (physician visits, emergency department visits and hospital admissions) will be ascertained. Several potential correlates will be assessed as well, most of which are based on previous studies of medication use in the elderly population. Other key variables will be extracted from administrative (enrollment and claims) data including age, gender, identity of the health plan, duration of enrollment, number of prescription claims, types of medications, prescription copayments, number of physician visits and hospital admissions during the period prior to the survey.

Data Confidentiality Provisions

Assurances of confidentiality will be given to participants within the informed consent form that each person will sign prior to participation (*See* Appendix 1). These assurances explain the applicability of AHRQ's confidentiality statute, 42 U.S.C. 299c–3(c). (*See* Appendix 2). The consent form will be reviewed, modified if requested and approved by an Institutional Review Board and sent to survey recipients along with the survey (*see* Appendix 3). the Center for Health Care Policy and Evaluation has an extensive security program in place to safeguard the privacy and confidentiality of data. This multi-tiered program, comprised of both policies and specific procedures, promotes compliance with all legal and regulatory requirements for privacy protection of individually identifiable health information. Building and office access cards and computer identification codes and passwords are in operation.

Encryption and authentication are utilized where control over sensitive information is required including file transfers (*e.g.,* (FTP) and data processing applications. Automated monitoring (network and platform intrusion detection) and system firewalls are established for all major network interface points.

Additional confidentiality procedures include: (1) Written agreements with a subcontractor hired to administer the questionnaire; (2) use of key-code processes and encryption to protect individual identity of data records in the Center for Health Care Policy and Evaluation's administrative database; (3) use of study-specific keys for data transmission and linkage of sample information and survey data; (4 efforts to ensure that the least sensitive level of data possible is used or transmitted in the conduct of research; (5) destruction of data files after completion of the research project, approximately one year after the final report is filed under the task order or one year after the final report is filed under the tasks order or one year after a journal article is published based upon the final report, whichever is later (to allow access to assist other scientists seeking to validate or replicate results); and (6) written policies and procedures and training of employees in regards to protection of human subjects and data confidentiality.

Data Products

Data will be produced in the following forms:

1. A file will be developed comprising the sample from the Center for Health Care Policy and Evaluation's database of enrollment and claims to be used to collect the survey data. The sample file will contain an investigator-assigned, study specific case identity code that will allow the survey results file to be linked back to the administrative data.

2. A second file will include information on the final disposition of all cases and survey responses along with variables derived from administrative data. This file will be analyzed to generate research reports. The proportion (probability) that an individual in the study population altered his/her prescription mediation-taking behavior because of out-of-pocket costs or limits on drug benefits will be estimated with 95% confidence intervals. The probabilities of altered medication use secondary to out-of-pocket costs or caps on drug benefits will be analyzed separately. Since the sampling design provides equal probabilities of selection without cluster techniques, design effects do not need to be taken into consideration during estimation of the probabilities and confidence intervals (variance). The finite population correction factor should also be negligible. Missing data on partially completed surveys will be imputed. Estimates and tests of potential explanatory variables will be generated by two-step regression models in an effort to control non-response bias.

The data are intended to be used for purposes such as:

1. Providing information about the extent and correlates of reduced prescription drug use to help define the circumstances when out-of-pocket costs might become a quality/safety issue.

2. Helping to inform policymakers about how current drug benefits being provided by Medicare+Choice plans affect patients' quality of care.

3. Informing the design of drug benefits for Medicare beneficiaries that foster quality care by considering financial barriers to effective use of pharmaceuticals.

Method of Collection

The population to be studied consists of individuals enrolled in the Center for Health Care Policy and Evaluation's UnitedHealthcare Medicare+Choice health plans that provide a drug benefit in 2002, from which a sample will be drawn and surveyed. The Center for

Health Care Policy & Evaluation maintains a database comprised of enrollment and claims data generated by these health plans. Actual 2002 enrollment will be used for sampling. None of drug benefits being studied require a deductible and all will use the same formulary or preferred drug list.

Investigators will use the enrollment and claims database to define the sampling frame for the study. Pharmacy claims will not be used for sample selection because they would be missing if enrollees do not get prescriptions filled, and selecting people because they had a pharmacy claim could bias estimates of cost-altered medication use. Since medication use and out-of-pocket prescription costs are related to the presence of chronic conditions, selection of enrollees will be based on diagnoses listed in the administrative data. The focus will be on medical conditions that are common in the elderly population for which medications are often prescribed including hypertension, hyperlipidemia (high cholesterol), coronary artery disease, congestive heart failure, diabetes, arthritis, glaucoma and gastrointestinal ulcers. The presence of one or more of these diagnoses on claims from physician visits or hospital admissions that occur in the first quarter of 2002 will be used to create a sampling frame. This will help assure that sampled enrollees have recently seen a physician who has acknowledged the presence of the condition and a high likelihood of having been prescribed medication.

Eligible health plan members must also be enrolled during the entire first quarter of 2002 to facilitate collection of administrative variables for the analysis.

The sample of eligible enrollees will be stratified by health plan and a simple random sample will be selected from each health plan using a proportionate (uniform) sampling fraction. Missing sampling frame elements are not expected to be a problem, and anyone excluded from the sampling frame because of missing diagnoses due to claims lags will be considered missing at random because physician and hospital claim lags should be totally independent of cost-related changes in medication-taking behavior.

The sample file will contain an investigator-assigned, study specific case identity code that will allow the survey results file to be linked back to the administrative data. Checks for changes in address will be made and survey packets prepared. A cover letter from the investigators will invite Medicare beneficiaries enrolled in UnitedHealthcare Medicare+Choice health plans to participate in the study, and a written consent form approved by a duly constituted Institutional Review Board will be sent along with the survey questionnaire. Two mailings with a postcare reminder sent in the interim period and follow-up calls to non-responders after the second survey mailing are planned to obtain a response rate similar to the Medicare Consumers Assessment of Health Plans Survey response rate of 75% to 82%. Respondents will not receive any gifts or payments as incentives to respond.

Estimated Annual Respondent Burden

This is a one-time survey with 24 multiple choice questions, plus one question that asks respondents to name any medication(s) they did not use as prescribed because of cost, plus one question that asks respondents to name the medication(s), if any, that they used as alternative(s) to the medication(s) that cost too much. The survey will be conducted in 2002.

Survey year	Number of respondents	Estimated time per respondent in hours	Estimated total burden hours	Estimated cost to the government
2002	1,125	.25	281	$35,000

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 26, 2002.

Carolyn M. Clancy,

Acting Director.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03001]

Grants for Education Programs in Occupational Safety and Health; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for institutional training grants in occupational safety and health. This program addresses the ''Healthy People 2010'' focus area of Occupational Safety and Health.

The National Institute for Occupational Safety and Health (NIOSH) is mandated to provide an adequate supply of qualified personnel to carry out the purposes of the Occupational Safety and Health Act. The specific purpose of this program is to provide financial assistance to eligible applicants to assist in providing an adequate supply of qualified professional occupational safety and health personnel. Projects are funded to support Occupational Safety and Health Education and Research Center Training Grants (ERCs) and Long-Term Training Project Grants (TPGs).

ERCs are academic institutions that provide interdisciplinary graduate training and continuing education in the industrial hygiene, occupational health nursing, occupational medicine, occupational safety, and closely related occupational safety and health fields. The ERCs also serve as regional resource centers for industry, labor, government, and the public. TPGs are academic institutions that primarily provide single-discipline graduate training in the industrial hygiene, occupational health nursing, occupational medicine, occupational safety, and closely related occupational safety and health fields.

B. Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and any other U.S. Territory or Trust Territory not named herein are eligible to apply for an institutional training grant.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds and Types of Training Awards

Approximately $4,000,000 is available for competing continuation or new awards in FY 2003 to fund ERC and TPG programs. Funding estimates may change.

1. Funding for ERCs

Approximately $2,880,000 of the total funds available will be utilized as follows:

a. Approximately $2,400,000 is available to award four competing continuation or new ERC grants. This includes a total of $160,000 to augment the support of occupational medicine program residents. Awards will range from $400,000 to $800,000 with the average award being $600,000.

b. Approximately $300,000 is available to award five competing continuation or new training grants; two of the awards are planned for $120,000 for Hazardous Substance Academic Training (HSAT) Programs and three of the awards are planned for $180,000 for Hazardous Substance Training (HST) Programs.

The awards are to support the development and presentation of continuing education and short courses (HST Programs), and academic curricula (HSAT Programs) for trainees and professionals engaged in the management of hazardous substances. Program support is available for faculty and staff salaries, trainee costs, and other costs to provide training and education for occupational safety and health and other professional personnel engaged in the evaluation, management, and handling of hazardous substances.

c. Approximately $120,000 is available to award two competing continuation or new training grants. These awards will support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety.

d. Approximately $60,000 is available to award one competing continuation or new grant to support the enhancement of the ERC research training mission through the support of pilot project research training programs.

2. Funding for TPGs

Approximately $580,000 is available to fund nine competing continuation or new TPG grants. Awards will range from $20,000 to $100,000, with the average award being $65,000. This includes a total of $40,000 to augment the support of occupational medicine program residents. These awards will support academic programs in the core disciplines (*i.e.,* industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety and ergonomics) and relevant components (*e.g.,* occupational injury prevention, industrial toxicology, ergonomics).

These awards are intended to augment the scope, enrollment, and quality of training programs rather than to replace funds already available for current operations.

3. Funding for ERCs and TPGs

Approximately $540,000 is available to fund four competing continuation or new grants for occupational injury prevention research training. Awards will range from $75,000 to $150,000, with the average award being $135,000. This program is intended to encourage new occupational injury prevention research training programs and will only support doctoral-level training and trainees. In institutions with existing NIOSH-funded occupational safety/ergonomics and/or injury epidemiology programs, funding will be considered for the addition of a doctoral-level program only if it is not part of the existing NIOSH-funded program. For the purpose of this announcement, only doctoral-level programs with a specific concentration in occupational injury prevention will be considered. The proposed program must be described in detail, with objectives, competencies and how achieved in specified courses, curricula, recruitment, faculty and other program features. Institutions submitting proposed programs under this announcement which also have existing NIOSH-funded programs in safety/ergonomics and/or injury epidemiology must describe in detail how the proposed program differs from the existing program. In some instances, it may be necessary to replace the existing program funding with funding available under this announcement.

4. It is expected that awards will begin on or about July 1, 2003, and will be made for a 12-month budget period within a project period of up to five years. ERC individual program awards will be made for a 12-month budget period within a project period not to exceed that of the main ERC training grant.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

The following are applicant requirements that define the ERC and TPG programs to be conducted:

1. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various objectives of the grant. Measures must be objective/quantitative and must measure the intended outcomes. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

2. An ERC shall be an identifiable organizational unit within the sponsoring organization. Applicants must meet the following characteristics in order to be considered for an award. If the characteristics are not met, the application will be considered non-responsive and will be returned to the applicant without a review.

a. Cooperative arrangements with a medical school or teaching hospital (with an established program in preventive or occupational medicine), a school of nursing or its equivalent, a school of public health or its equivalent, or a school of engineering or its equivalent. It is expected that other schools or departments with relevant disciplines and resources shall be represented and shall contribute as appropriate to the conduct of the total program, e.g., epidemiology, toxicology, biostatistics, environmental health, law, business administration, and education. Specific mechanisms to implement the cooperative arrangements between departments, schools/colleges, universities, etc., shall be demonstrated in order to assure that the intended interdisciplinary training and education will be engendered.

b. An ERC Director who possesses a demonstrated capacity for sustained productivity and leadership in occupational health and safety education and training. The Director

shall oversee the general operation of the ERC Program and shall, to the extent possible, directly participate in training activities. A Deputy Director shall be responsible for managing the daily administrative duties of the ERC and to increase the ERC Director's availability to ERC staff and to the public.

c. Program Directors who are full-time faculty and professional staff representing various disciplines and qualifications relevant to occupational safety and health who are capable of planning, establishing, and carrying out or administering training projects undertaken by the ERC. Each academic program, as well as the continuing education and outreach program, shall have a Program Director.

d. Faculty and staff with demonstrated training and research expertise, appropriate facilities and ongoing training and research activities in occupational safety and health areas.

e. A program for conducting education and training for four core disciplines: Occupational physicians, occupational health nurses, industrial hygienists, and occupational safety personnel. ERC core academic programs are intended to provide multi-level practitioner and research training. Core academic programs should offer masters degrees and, in research institutions, doctoral degrees. There shall be a minimum of five full-time students or full-time equivalent students in each of the core programs, with a goal of a minimum of 30 full-time students (total in all of core and component programs together). ERCs are encouraged to recruit and train minority students to help address the under-representation of minorities among the occupational safety and health professional workforce. Although it is desirable for an ERC to have the full range of core programs, an ERC with a minimum of three academic programs of which two are in the core disciplines is eligible for support providing it is demonstrated that students will be exposed to the principles and issues of all four core disciplines. In order to maximize the unique strengths and capabilities of institutions, consideration will be given to the development of: New and innovative academic programs that are relevant to the occupational safety and health field, *e.g.,* ergonomics, industrial toxicology, occupational injury prevention, and occupational epidemiology; and to innovative technological approaches to training and education. ERCs must also document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. Each core program curriculum shall include courses from non-core categories as well as appropriate clinical rotations and field experiences with public health and safety agencies and with labor-management health and safety groups. Where possible, field experience shall involve students representing other disciplines in a manner similar to that used in team surveys and other team approaches. ERCs should address the importance of providing training and education content related to special populations at risk, including minority workers and other sub-populations specified in the National Occupational Research Agenda (NORA) special populations at risk category.

f. A specific plan describing how trainees in core and component academic programs will be exposed to the principles of all other occupational safety and health core and allied disciplines. ERCs that apply as a consortium (contracting with other institutional partners) generally have geographic, policy and other barriers to achieving this ERC characteristic and, therefore, must give special, innovative, attention to thoroughly describing the approach for fulfilling interdisciplinary interaction between students.

g. Demonstrated impact of the ERC on the curriculum taught by relevant medical specialties, including family practice, internal medicine, dermatology, orthopedics, pathology, radiology, neurology, perinatal medicine, psychiatry, etc., and on the curriculum of undergraduate, graduate and continuing education of primary core disciplines as well as relevant medical specialities and the curriculum of other schools such as engineering, business, and law.

h. An outreach program to interact with and help other institutions or agencies located within the region. Programs shall be designed to address regional needs and implement innovative strategies for meeting those needs. Partnerships and collaborative relationships shall be encouraged between ERCs and TPGs. Programs to address the under-representation of minorities among occupational safety and health professionals shall be encouraged. Specific efforts should be made to conduct outreach activities to develop collaborative training programs with academic institutions serving minority and other special populations, such as Tribal Colleges and Universities, Historically Black Colleges and Universities, and Hispanic-Serving Institutions. Examples of outreach activities might include: Interaction with other colleges and schools within the ERC and with other universities or institutions in the region to integrate occupational safety and health principles and concepts within existing curricula (*e.g.,* Colleges of Business Administration, Engineering, Architecture, Law, and Arts and Sciences); exchange of occupational safety and health faculty among regional educational institutions; providing curriculum materials and consultation for curriculum/course development in other institutions; use of a visiting faculty program to involve labor and management leaders; cooperative and collaborative arrangements with professional societies, scientific associations, and boards of accreditation, certification, or licensure; and presentation of awareness seminars to undergraduate and secondary educational institutions (*e.g.,* high school science fairs and career days) as well as to labor, management and community associations.

i. A specific plan for preparing, distributing and conducting courses, seminars and workshops to provide short-term and continuing education training courses for physicians, nurses, industrial hygienists, safety engineers and other occupational safety and health professionals, paraprofessionals and technicians, including personnel from labor-management health and safety committees, in the geographical region in which the ERC is located. The goal shall be that the training be made available to a minimum of 400 trainees per year representing all of the above categories of personnel, on an approximate proportional basis with emphasis given to providing occupational safety and health training to physicians in family practice, as well as industrial practice, industrial nurses, and safety engineers. Priority shall be given to establishing new and innovative training technologies, including distance learning programs and to short-term programs designed to prepare a cadre of practitioners in occupational safety and health. Where appropriate, it shall be professionally acceptable that Continuing Education Units (as approved by appropriate professional associations) may be awarded. These courses should be structured so that higher educational institutions, public health and safety agencies, professional societies or other appropriate agencies can utilize them to provide training at the local level to occupational health and safety personnel working in the workplace. Further, the ERC shall conduct periodic training needs assessments, shall develop a specific plan to meet these needs, and shall have demonstrated

capability for implementing such training directly and through other institutions or agencies in the region. The ERC should establish and maintain cooperative efforts with labor unions, government agencies, and industry trade associations, where appropriate, thus serving as a regional resource for addressing the problems of occupational safety and health that are faced by State and local governments, labor and management.

j. A Board of Advisors or Consultants representing the user and affected population, including representatives of labor, industry, government agencies, academic institutions and professional associations, shall be established by the ERC. The Board should meet at least annually to advise an ERC Executive Committee and to provide periodic evaluation of ERC activities. The Executive Committee shall be composed of the ERC Director and Deputy Director, academic Program Directors, the Director for Continuing Education and Outreach and others whom the ERC Director may appoint to assist in governing the internal affairs of the ERC.

k. A plan to incorporate research training into all aspects of training and, in research institutions, as documented by on-going funded research and faculty publications, a defined research training plan for training doctoral-level researchers in the occupational safety and health field. The plan will include how the ERC intends to strengthen existing research training efforts, how it will integrate research training activities into the curriculum, field and clinical experiences, how it will expand these research activities to have an impact on other primarily clinically-oriented disciplines, such as nursing and medicine, and how it will build on and utilize existing research opportunities in the institution. Each ERC is required to identify or develop a minimum of one, preferably more, areas of research focus related to work environment problems. Consideration should be given to the CDC/NIOSH priority research areas identified in the National Occupational Health Research Agenda (NORA). Further information regarding NORA may be found at the CDC/NIOSH Internet address: *http://www.cdc.gov/niosh/norhmpg.html.* The research training plan will address how students will be instructed and instilled with critical research perspectives and skills. This training will emphasize the importance of developing and working on interdisciplinary teams appropriate for addressing a research issue. It should also prepare students with the skill necessary for developing research protocols, pilot studies, outreach efforts to transfer research findings into practice, and successful research proposals. Such components of research training will require the ERCs to strive toward developing the faculty composition and administrative infrastructure essential to being Centers of Excellence in Occupational Safety and Health Research Training that are required to train research leaders of the future. The plan should address the incremental growth of such elements and evaluation of the plan commensurate with funds available. In addition to the research training components, the plan will also include such items as specific strategies for obtaining student and faculty funding, plans for acquiring equipment, if appropriate, and a plan for developing research-oriented faculty.

l. Evidence in obtaining support from other sources, including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

3. TPG applicants must document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. There shall be a minimum of three full-time students or full-time equivalent students in each academic program. Applicants should address the importance of providing training and education content related to special populations at risk, including minority and disadvantaged workers. The types of training currently eligible for support are:

a. Graduate training for practice, teaching, and research careers in occupational safety and health. Priority will be given to programs producing graduates in areas of greatest occupational safety and health need. Strong consideration will be given to the establishment of innovative training technologies including distance learning programs.

b. Undergraduate and other pre-baccalaureate training providing trainees with capabilities for positions in occupational safety and health professions.

c. Special technical or other programs for long-term training of occupational safety and health technicians or specialists.

E. Application Content

The information in the Program Requirements, Other Requirements, and Evaluation Criteria sections should be used to develop the application content. Applications will be evaluated on the basis of the evaluation criteria, so it is important to fully consider them in laying out the program plan. The narrative should be no more than 15 pages per program, printed on one side, single-spaced, with one inch margins and unreduced font. The print must be clear and legible. Use standard size, black letters that can be clearly copied. Do not use photo reduction. Prepare all graphs, diagrams, tables, and charts in black ink. The application must contain only material that can be photocopied. Do not include course catalogue and course brochures. When additional space is needed to complete any of the items, use plain white paper (8 ½ × 11 inches), leave one inch margins on each side, identify each item by its title, and type the name of the program director and the grant number (if the application is a competitive renewal) in the upper right corner of each page. All pages, including Appendices should be numbered consecutively at least one-half inch from the bottom edge.

Note: Please consult the detailed Recommended Outline for Preparation of Competing New/Renewal Training Grant Applications (CDC 2.145 A) available at the internet address listed in section F.

F. Submission and Deadline

Applications should be clearly identified as an application for an ERC Training Grant or TPG Training Grant.

Application

Submit the original and two copies of CDC 2.145 A–ERC or TPG (OMB Number 0920–0261). Forms and instructions are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.html.*

On or before July 1, 2002, submit the application to the Grants Management Specialist identified in Section J of this announcement, ''Where to Obtain Additional Information''.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above will be returned to the applicant.

G. Evaluation Criteria

Upon receipt, applications will be reviewed for completeness and responsiveness to Program Requirements (*see* Section D). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Those applications judged to be competitive will be further evaluated individually against the following criteria and the extent to which they have been met. The initial peer review will be conducted by means of a panel meeting or site visit. The purpose of the initial review is to obtain basic information regarding elements of the proposed training grant program and to provide a technical report as input to the Special Emphasis Panel. The final official peer review will be conducted by a Special Emphasis Panel appointed by CDC.

1. All ERC and TPG applications will be evaluated to determine the extent to which the proposed Measures of Effectiveness will demonstrate the accomplishment of program objectives.

2. ERC evaluation criteria are as follows:

a. Plans to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. Special consideration should be given to the development of programs addressing the under-representation of minorities among occupational safety and health professionals. Indicators of regional need should include measures utilized by the ERC such as previous record of training and placement of graduates. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

b. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the ''Characteristics of an Education and Research Center'' (*see* D.1).

c. The establishment of new and innovative programs and approaches to training and education relevant to the occupational safety and health field and based on documentation that the program meets specific regional workforce needs. In reviewing such proposed programs, consideration should be given to the developing nature of the program and its capability to produce graduates who will meet such workforce needs.

d. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

e. Academic training including the number of full-time and part-time students and graduates for each core and component program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, *etc.*). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

f. Methods in use or proposed methods for evaluating the effectiveness of training and outreach including the use of placement services and feedback mechanisms from graduates as well as employers, innovative strategies for meeting regional needs, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

g. Competence, experience and training of the ERC Director, the Deputy ERC Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

h. Institutional commitment to ERC goals. An example of institutional commitment to the long-term stability of ERC programs is the commitment of tenured or tenure-track faculty positions to each participating academic program.

i. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

j. Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds. This includes a separate budget for the academic staff's time and effort in continuing education and outreach.

k. Evidence of the integration of research experience into the curriculum, and field and clinical experiences. In institutions seeking funds for doctoral and post-doctoral (physician training) level research training, evidence of a plan describing the research and research training the ERC proposes. This should include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

l. Evidence of success in attaining outside support to supplement the ERC grant funds including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

m. Evidence of a strategy to evaluate the impact that the ERC and its programs have had on the region served by the Center. Examples could include a continuing education needs assessment and action plan, a workforce needs survey and action plan, consultation and research programs provided to address regional occupational safety and health problems, the impact on primary care practice and training, a program graduate data base to track the employment history and contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

n. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

3. ERC individual program evaluation criteria are as follows:

a. Hazardous Substance Training Program in Education and Research Centers:

(1) Relevance of the proposed project to each element of the characteristics of a hazardous substance training program.

(2) Comprehensiveness and soundness of the training plan developed to carry out the proposed activities. This is based on a documented need for the training and evidence to support the approach used to provide the required training. It includes descriptions of the scope and magnitude of the hazardous substance problem in the region served by the ERC and current activities and training efforts.

(3) Education and experience of the Project Director, faculty, and staff assigned to this project with respect to handling, managing or evaluating hazardous substance sites and to the training of professionals in this field.

(4) Creativity and innovation of the project leadership with respect to marketing the courses, structure in attracting trainees and/or providing incentives for training.

(5) Extent to which the applicant considered the work of relevant agencies involved in hazardous substance activities, including EPA, and cooperated with these agencies in developing and implementing this training program.

(6) Suitability of facilities and equipment available for this project.

(7) Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds.

b. Agricultural Safety and Health Education Programs in Education and Research Centers:

(1) Evidence of a needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination and special industrial or community training needs that may be peculiar to the region.

(2) Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

(3) The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve characteristics of an ERC.

(4) The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

(5) Previous record of academic training in agricultural safety and health including the number of full-time and part-time students and graduates, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous record of continuing education training in agricultural safety and health and record of outreach activity and assistance to agricultural groups within the ERC region.

(6) Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

(7) The competence, experience and training of the Program Director and other professional staff in relation to the type and scope of training and education involved.

(8) Institutional commitment to Center goals.

(9) Academic and physical environment in which the training will be conducted, including access to appropriate occupational agricultural settings.

(10) Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds. This includes the budget for the academic program and the continuing education and outreach program.

(11) Evidence of a plan describing the agricultural safety and health training the Center proposes. This should include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

(12) Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

c. Hazardous Substance Academic Training Program in Education and Research Centers:

(1) Evidence of a needs assessment directed to the overall contribution of the proposed training program toward meeting the needs of the job market, especially within the applicant's region. The needs assessment should consider the regional requirements for hazardous substance training, information dissemination and special industrial, labor or community training needs that may be peculiar to the region.

(2) Evidence of a plan to satisfy regional needs for training in the areas outlined by the application, including Program projected enrollment and recruitment and current workforce populations.

(3) The extent to which the HSAT curriculum content and design includes: Formalized training objectives; minimal course content to achieve a degree or successful completion of the specialty area requirements; course descriptions; course sequence; additional related courses open to occupational safety and health students; time devoted to lecture, laboratory, and field experience; and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

(4) Previous record of academic and/or short course training delivered in the hazardous substances field, including the number and type of students trained. Previous record of hazardous substances outreach activity and assistance to hazardous substance groups within the ERC's region.

(5) Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, student evaluations from academic and continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

(6) The competence, experience and training of the Program Director and other professional staff in relation to the type and scope of training and education involved.

(7) Institutional commitment to HSAT Program goals.

(8) Academic and physical environment in which the training will be conducted.

(9) Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds. This includes the budget required to support the training courses developed, as well as accounting for the academic staff's time.

(10) Evidence of a plan describing the hazardous substances academic training the Center proposes. This should include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

(11) Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

(12) Extent to which the applicant has collaborated with state and federal agencies having hazardous substance management functions, including the U.S. Environmental Protection Agency, and has cooperated with the agencies in developing and implementing this program.

d. ERC Pilot Project Research Training Programs:

(1) Relevance of the proposed program, including objectives that are specific and consistent.

(2) Adequacy of the plan proposed to conduct the pilot projects program, including procedures for reviewing and funding projects, the scientific review mechanism, program quality assurance.

(3) *Human Subjects*—Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (*See* Attachment 1 in the application kit, AR–1, Human Subject Requirements.)

(4) Extent to which the applicant demonstrates collaboration with other research training institutions in the region, including NIOSH Training Project Grantees.

(5) Education and experience of the proposed Research Training Program Director and faculty in the occupational safety and health field, including the utilization of pilot projects as a research training mechanism.

(6) Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds.

(7) Adequacy of the plan to evaluate the effectiveness of the proposed pilot projects program.

(8) *Gender and minority issues*—Are plans to include women, ethnic, and racial groups adequately developed (as appropriate for the scientific goals of the pilot projects)? (*See* Attachment 1 in the application kit, AR–2, Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.)

4. TPG evaluation criteria are as follows:

a. Need for training in the program area outlined by the application. This should include documentation of a plan for student recruitment, projected enrollment, job opportunities, regional need both in quality and quantity, and for programs addressing the under-representation of minorities in the profession of occupational safety and health.

b. Potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

c. The establishment of new and innovative programs and approaches to training and education relevant to the occupational safety and health field and based on documentation that the program meets specific regional workforce needs. In reviewing such proposed programs, consideration should be given to the developing nature of the program and its capability to produce graduates who will meet such workforce needs.

d. Curriculum content and design which should include formalized program objectives, minimal course content to achieve degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches. There should also be evidence of integration of research experience into the curriculum, and field and clinical experiences.

e. Previous records of training in this or related areas, including placement of graduates.

f. Methods proposed to evaluate effectiveness of the training.

g. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant? An example of institutional commitment to the long-term stability of TPG programs is the commitment of tenured or tenure-track faculty positions to each academic program.

h. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

i. Competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved. The program director must be a full-time faculty member.

j. *Admission Requirements:* Student selection standards and procedures, student performance standards and student counseling services.

k. *Advisory Committee:* Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need. The Committee should meet at least annually to provide advice and periodic evaluation of TPG activities.

l. Evidence of a strategy to evaluate the impact that the program has had on the region. Examples could include a workforce needs survey and action plan, consultation and research programs provided to address regional occupational safety and health problems, a program graduate data base to track the employment history and contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

m. Past performance based on evaluation of the most recent CDC/NIOSH Objective Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

n. Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds.

5. ERC and TPG applications for Occupational Injury Prevention Research Training Programs evaluation criteria are as follows:

a. Evidence of a plan to satisfy the need for training in the area outlined by the application, including projected enrollment, recruitment and job opportunities. Indicators of need may include measures utilized by the Program such as previous record of training and placement of graduates. Indicate the potential contribution of the project toward meeting the need for this specialized training.

b. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the program requirements.

c. Evidence of a plan describing in detail the research training the program proposes. This should include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

d. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to students, time devoted to lecture, and clinical and research experience addressing the relationship with didactic programs in the educational process.

e. The extent to which the program effort is capable of supporting the number and type of students proposed.

f. Extent to which the program has initiated collaborative relationships with external agencies and institutions to expand and strengthen its research capabilities by providing student and faculty research opportunities.

g. Evidence of previous record of training in occupational injury prevention, including placement of graduates and employment history.

h. The extent to which the applicant documents methods in use or proposed methods for evaluating the effectiveness of the training, including the use of feedback mechanisms from graduates and employers, placement of graduates in research positions, research accomplishments of graduates and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

i. Competence, experience and training of the Program Director, faculty

and advisors in relation to the type and scope of research training involved.

j. Degree of institutional commitment to Program goals. An example of institutional commitment to the long-term stability of academic programs is the commitment of tenured or tenure-track faculty positions to each participating academic program.

k. Adequacy of the academic and physical environment in which the training will be conducted, including access to appropriate occupational injury prevention research resources.

l. The extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds.

m. Evidence of a plan for establishment of an Advisory Committee, including meeting times, roles and responsibilities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports (may be incorporated as component of non-competing continuation applications);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and progress reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in Section J, ''Where to Obtain Additional Information''.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1*	Human Subjects Requirements.
AR–2*	Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
AR–3*	Animal Subjects Requirements.
AR–10	Smoke-Free Workplace Requirements.
AR–11	Healthy People 2010.
AR–12	Lobbying Restrictions.

*Applies to ERC Pilot Project Research Training Program applications only.

Data collection initiated under this training grant program has been approved by the Office of Management and Budget under Number 0920–0261. ''NIOSH Training Grants, 42 CFR part 86, Application and Regulations,'' Expiration Date January 31, 2004.

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 670(a) of the Occupational Safety and Health Act [29 U.S.C. 670 (a)]. The Catalog of Federal Domestic Assistance number is 93.263.

J. Where to Obtain Additional Information

This and other CDC announcements are available through the CDC homepage at the following Internet address: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.*

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest. Please refer to Program Announcement 03001 and specify ERC or TPG when you request information.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Joseph A. Gilchrist, Procurement and Grants Office, Program Announcement 03001, Centers for Disease Control and Prevention (CDC), 626 Cochrans Mill Rd., Mailstop P05, Pittsburgh, PA 15236. Telephone: (412) 386–6428. E-mail address: *jpgo@cdc.gov.*

For program technical assistance, contact:

John T. Talty, Principal Engineer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop C–7, Cincinnati, OH 45226–1998. Telephone (513) 533–8241. E-mail address: *jtt2@cdc.gov.*

Kathleen M. Rest,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–7991 Filed 4–2–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02041]

Traumatic Injury Biomechanics Research; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds to fund grants for Injury Prevention and Control Research in the priority areas of Injury and Violence Prevention which was published in the **Federal Register** on February 28, 2002, (Volume 67, No. 40, pages 9289–9292). The notice is amended as follows:

On page 9289, second column, under Section A. Purpose, first paragraph (number 1.), line 4 should be changed from ''* * *Programmatic Interests.'' to ''* * *Program Requirements.''

On page 9289, second column, under Section B. Eligible Applicants, first paragraph, line 3, insert after ''organizations'' '', including public and nonprofit faith-based organizations,* * *''

On page 9289, third column, under Section B. Eligible Applicants, third paragraph (number 5.), line 5, should be changed from ''* * * Programmatic Interests.'' to ''* * * Program Requirements.''

On page 9289, third column, under Section C. Availability of Funds, first paragraph, line 7 should be changed from ''* * * Programmatic Interests.'' to ''* * * Program Requirements.''

On page 9290, third column, under Section F. Submission and Deadline, third paragraph, line 1, should be changed to read ''On or before May 6, 2002 * * *''

Dated: March 29, 2002.

Michael J. Detmer,

Branch Chief, Acquisition and Assistance Branch A, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–8020 Filed 4–2–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02040]

Violence-Related Injury Prevention Research; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds to fund grants for Injury Prevention and Control Research in the priority areas of Violence and Abuse Prevention which was published in the **Federal Register** on February 28, 2002, (Volume 67, No. 40, pages 9292–9296). The notice is amended as follows:

On page 9293, first column, under Section B. Eligible Applicants, first paragraph, line 3, insert the following after ''organizations'' '', including public and nonprofit faith-based organizations, * * *''

On page 9293, third column, under Section C. Availability of Funds, the sub-heading, ''Funding Preferences'', line 1 and following paragraph, line 2 through line 14 that reads ''Priority will be given * * * violence in these groups.'' should be deleted.

On page 9294, second column, under Section F. Submission and Deadline, third paragraph, line 1 should be changed to read ''On or before May 6, 2002 * * *''

On page 9296, second column, under section J. Where to Obtain Additional Information, first paragraph, lines 12 and 13 should be changed to read ''Internet address *vbk5@cdc.gov.''*

Dated: March 28, 2002.

Michael J. Detmer,

Branch Chief, Acquisition and Assistance Branch A, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–8019 Filed 4–2–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–43]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; Title of Information Collection: Conditions of Participation for Portable X-ray suppliers and Supporting Regulations in 42 CFR Sections 486.104, 486.106, and 406.110; *Form No.:* CMS–R–43 (OMB# 0938–0338); *Use:* This information is needed to determine if portable X-ray; *Frequency:* Recordkeeping (Disclosure); *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 645; *Total Annual Responses:* 645; *Total Annual Hours:* 1,612.5.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 21, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–7985 Filed 4–2–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Docket Identifier: CMS–10001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Service.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: HIPAA Nondiscrimination Provisions;

Form No.; CMS–10001 (OMB# 0938–0827);

Use: Self-funded nongovernmental plans are required to give individuals who were previously discriminated against an opportunity to enroll, including notice of an opportunity to enroll;

Frequency: Once;

Affected Public: Business or other for-profit, not-for-profit institutions, Individuals or households, State, local, or tribal government; *Number of Respondents:* 18;

Total Annual Responses: 18;

Total Annual Hours: 194.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Julie Brown, CMS–10001 Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 14, 2002.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–7986 Filed 4–2–02; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Medicare and Medicaid Services

[Document Identifier: CMS–R–296]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of currently approved collection;

Title of Information Collection: Home Health Advance Beneficiary Notice of Liability and Supporting Regulations in 42 CFR 484.10(a);

Form No.: HCFA–R–296 (OMB# 0938–0781);

Use: Home health agencies must provide proper written notice to Medicare beneficiaries in advance of furnishing home health care that they believe that Medicare will not pay for before reducing, terminating, or denying services to a Medicare beneficiary;

Frequency: On occasion;

Affected Public: Not-for-profit institutions, business or other for-profit;

Number of Respondents: Federal Register 7,857;

Total Annual Responses: 145,966;

Total Annual Hours: 14,597.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 21, 2002.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–7984 Filed 4–2–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–P–0015SPA]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. Due to the events of September 11, 2001, the timing of this proposed information collection has been negatively affected. We are requesting Emergency OMB review for this supplement since this is a beneficial survey and it can do no harm if OMB acted upon this sooner than the normal timeframe. The 60-day **Federal Register** notice was published on January 8, 2002, for which we solicited public comment. CMS is requesting OMB review and approval of this collection by April 25, 2002, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by April 22, 2002.

Type of Information Collection Request: New collection; *Title of Information Collection:* Medicare Current Beneficiary Survey—Supplement on Patient Activation;

Form No.: CMS–P–0015SPA (OMB# 0938–NEW); *Use:* A primary theme of the NMEP education efforts has been to help Medicare beneficiaries make choices. Simply providing uniform information to an undifferentiated audience is not sufficient. CMS needs to know whether beneficiaries have the communication skills, motivation and basic knowledge of their own health status to be partners in their own health care. The purpose of this survey supplement is to assess the degree to which Medicare beneficiaries participate actively in their own health care decisions.; *Frequency:* One-time; *Affected Public:* Individuals or Households; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 2,666.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be

mailed and/or faxed to the designees referenced below, by April 22, 2002:

Centers for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–0262, Attn: Dawn Willinghan, CMS–P–0015SPA.

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Eydt, CMS Desk Officer.

Dated: March 12, 2002.

John P. Burke III,

CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–7987 Filed 4–2–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Web-based Semi Annual Report (SAR): NEW

The Health Resources and Services Administration (HRSA), Bureau of Primary Health Care (BPHC) plans to collect the annual reporting requirements for the primary care grantees funded by BPHC using a web-based Semi Annual Report (SAR). The SAR includes reporting requirements for grantees of the following primary care programs: State Primary Care Associations and State Primary Care Offices. Authorizing legislation is found in Public Law 104–299, Health Center Consolidation Act of 1996, enacting Section 330 of the Public Health Service Act.

BPHC collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policymakers on program accomplishments. To meet these objectives, BPHC requires a core set of information collected semi-annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The SAR, completed by all grantees, provides data on services, characteristics of populations, leveraged funds, and services that fall within the scope of the grant.

The estimated burden is a follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
SAR	106	2	18	3816

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 28, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–8085 Filed 4–2–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 3, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

Applicant: David Eugene Arledge, Dallas, TX, PRT–053861

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Robert E. Miller, Baltimore, MD, PRT–053942

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Thomas E. Murphy, MD, Wilmette, IL, PRT–053978

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa,

for the purpose of enhancement of the survival of the species.

Applicant: Field Museum of Natural History, Chicago, IL, PRT–053039

The applicant requests a permit to import ninety-five specimens of mouse lemurs (*Microcebus spp.*) and fifty-seven fat-tailed lemurs (*Cheirogaleus spp.*) removed from wild populations in Madagascar for scientific research.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 8, 2002.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–7989 Filed 4–2–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Emergency Exemption Issuance of Endangered Species Recovery Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of emergency exemption issuance.

SUMMARY: The following applicant has been issued a scientific research permit to conduct certain activities with an endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Permits Biologist at 503–231–2063.

SUPPLEMENTARY INFORMATION: The Washington Department of Fish and Wildlife (WDFW) has been authorized via permit number TE–050644, by the U.S. Fish and Wildlife Service's Pacific Region, to increase, the area in which it surveys, captures, and handles individuals from the Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*; pygmy rabbit), and to maintain firebreaks located in their habitat in conjunction with research, a captive propagation program, and to reduce the likelihood of catastrophic fire throughout the species range. We issued this permit for the purpose of enhancing the propagation and survival of the pygmy rabbit. The 30-day public comment period required by the Endangered Species Act (Act) was waived in accordance with section 10(c) of the Act upon a determination that an emergency affecting the health and life of specimens of pygmy rabbit exists, and that no reasonable alternative is available to the applicant.

The pygmy rabbit has undergone dramatic annual declines since 1998, and the entire wild portion of this population now consists of fewer than 50 individuals from just 1 known colony on State land in Douglas County, Washington. As part of a captive breeding program, initiated by the WDFW during the spring of 2001, an additional 14 individuals from this population are being held in captivity, including 5 offspring born at the holding facility. The capture of additional animals from the wild, throughout the species range, will help to ensure genetic diversity of the species by complementing the genetic profiles and potential breeding scenarios of those already in captivity. Any pygmy rabbits that are not considered essential to the captive breeding program will be left in the wild, and ongoing management to protect this portion of the population will continue.

Pygmy rabbits may experience significant mortality due to increased susceptibility to wild fires if fire breaks located within their habitat are not properly maintained. These firebreaks need to be maintained before reproductive behavior is exhibited and especially prior to young of the year being born as early as mid-April.

Delay in the WDFW's planned activities due to the 30-day public comment period could jeopardize the success of the captive breeding program and, ultimately, the long-term security of the pygmy rabbit.

Dated: March 20, 2002.

Rowan W. Gould,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–8021 Filed 4–2–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No.

Aquatic Nuisance Species Task Force Northeast Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces meeting of the Aquatic Nuisance Species (ANS) Task Force Northeast Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Northeastern Regional Panel will meet from 1:00 p.m. to 5:00 p.m. on Tuesday, May 7, 2002, and 8:30 a.m. to 5:00 p.m., Wednesday, May 8, 2002.

ADDRESSES: The Northeast Regional Panel meeting will be held at the Quality Inn and Suites, 1380 Putney Road, Brattleboro, Vermont 05301. Phone 802–254–8701.

FOR FURTHER INFORMATION CONTACT: Susan Snow-Cotter, 617–626–1202 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Northeast Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Northeast Regional Panel was established on July 25, 2001 to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Northeast region of the United States. Geographically, the Northeast region is defined to include the jurisdictions of the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York. The Northeast Regional Panel will discuss several topics at this meeting including: membership of the Panel, updates from the Coastal and Inland subcommittees, updates from the Aquatic Nuisance Species Task Force and Invasive Species Council on national issues, reauthorization of the National Invasive Species Act, updates on the development of State ANS Plans, findings and management recommendations from the ANS Vector Study, and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: March 27, 2002.

Cathleen I. Short,

Co-chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 02–8068 Filed 4–2–02; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–009]

Sunshine Act Meeting; Emergency Postponement of Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

Place: Room 101, 500 E Street SW, Washington, DC 20436. Telephone: (202) 205–2000.

ACTION: Postponement of meeting.

Original Date/Time: April 1, 2002 at 2:00 p.m.

New Date/Time: April 2, 2002 at 9:30 a.m.

Status: Open to the public.

The Commission has determined to postpone the meeting in Inv. No. 731–TA–925 (Final) (Greenhouse Tomatoes from Canada) from April 1, 2002 at 2:00 p.m. to April 2, 2002 at 9:30 a.m.

Earlier announcement of this notice was not possible.

By order of the Commission.

Issued: March 29, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–8135 Filed 4–1–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1400]

Proposed Program Plan for the Missing and Exploited Children's Program for Fiscal Year 2002

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of proposed program plan for Missing and Exploited Children's Program for fiscal year 2002.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this notice of its Proposed Program Plan for the Missing and Exploited Children's Program for fiscal year (FY) 2002, and soliciting public comments on the overall plan and priorities. After analyzing the public comments, OJJDP will issue the Final Program Plan for the FY 2002 Missing and Exploited Children's Program.

DATES: Comments must be received on or before June 3, 2002.

ADDRESSES: Comments should be mailed to Terrence S. Donahue, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531. In the lower left hand corner of the envelope clearly write, ''Proposed Program Plan for the Missing and Exploited Children's Program Comments.''

FOR FURTHER INFORMATION CONTACT: Ronald C. Laney, Director, Child Protection Division, 202–616–3637. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Missing and Exploited Children's Program is administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of Section 406(a)(2) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, 42 U.S.C. 5776, the Acting Administrator of OJJDP is publishing for public comment a Proposed Program Plan for activities authorized by Title IV of the JJDP Act, the Missing Children's Assistance Act, 42 U.S.C. 5771 *et seq.*, that OJJDP proposes to initiate or continue in FY 2002. Taking into consideration comments received on this Proposed Program Plan, the Acting Administrator will develop and publish a Final Program Plan describing the program activities OJJDP intends to fund during FY 2002 using Title IV funds.

Except for programs earmarked by Congress, notices of solicitations for competitive grant applications described in the Final Program Plan will be published in the **Federal Register** at a later date. No proposals, concept papers, or other types of applications should be submitted in response to this proposed plan.

Background

For the purposes of Title IV, the term ''missing children'' refers to children who have been abducted by either a family or nonfamily member, and includes both children who have been abducted within the United States and those who have been abducted from the United States and taken to or illegally retained in a foreign country. The term ''child exploitation'' refers to any criminal activity that focuses on children as sexual objects and includes sexual abuse, child pornography, and prostitution.

Introduction to the Fiscal Year 2002 Proposed Program Plan

In 1984, Congress enacted the Missing Children's Assistance Act, which established the Missing and Exploited Children's Program (MECP) within OJJDP. Under the Act, MECP is responsible for (1) coordinating Federal activities designed to help missing and exploited children; (2) providing a national resource center and clearinghouse; and (3) supporting research, training, technical assistance, and demonstration programs that enhance the Nation's overall response to missing children and their families.

In FY 2001, MECP made significant advances in the course of meeting its responsibilities to provide services to children, parents, educators, prosecutors, law enforcement, and other professionals and persons working on child safety issues. Some of MECP's notable accomplishments are summarized below.

- MECP chairs the Federal Agency Task Force on Missing and Exploited Children as part of its coordination responsibilities. In FY 2001, the task force continued to focus on enhancing and coordinating the U.S. response to international child abduction. The task force developed a parent-to-parent guide that provides important information to families seeking the return of children abducted to or illegally retained in foreign countries, and a publication designed to assist law enforcement officers who investigate international parental abductions. Both publications are expected to be available in the spring of 2002.
- In FY 2001, OJJDP's Internet Crimes Against Children (ICAC) Task Force added 41 new ICAC Investigative Satellites to the 30 regional task forces, and it now provides forensic, investigative, and prevention services in 35 States. Through the ICAC program, more than 140 State and local law enforcement agencies have developed multijurisdictional and multiagency responses to the online victimization of children. Since the program was developed in 1998, task force agencies have issued more than 1,021 search warrants and 1,080 subpoenas, seized more than 900 computers, provided training to prosecutors and law enforcement officers, and reached thousands of children, parents, and educators with information about safe online practices for children and teenagers.
- In FY 2001, the National Center for Missing and Exploited Children's (NCMEC's) CyberTipline reached the 23,000-report mark and played an increasingly important role in ensuring that reports of suspicious online activity made by children, parents, and private citizens were received by the appropriate law enforcement agencies. NCMEC expanded its Protecting Children Online training program by adding a course tailored to the specific

needs of State and local prosecutors, and it provided this training to more than 1,421 law enforcement unit commanders and prosecutors.

• In FY 2001, through a cooperative agreement with Fox Valley Technical College (FVTC), OJJDP provided training and technical assistance to more than 11,725 prosecutors and professionals in law enforcement and social, health, and family services. FVTC integrates current research, state-of-the-art practice and knowledge, and new technologies into courses designed to increase skills and abilities, enhance service coordination and delivery, and improve the investigation and handling of cases involving missing and exploited children. In FY 2001, FVTC also provided specialized technical assistance to State and local practitioners and juvenile justice agencies. This technical assistance addressed Internet crimes against children, information sharing, response planning, child protection legislation, and development of multidisciplinary teams. In FY 2000, FVTC completed the development of a new child fatality investigative course that improves the way child deaths are investigated.

• Finally, John Ashcroft, Attorney General, participated in the annual Missing Children's Day Ceremony to commemorate America's missing children and to recognize the extraordinary efforts made by law enforcement officers who work to reunite children with their families. The Attorney General presented the NCMEC Law Enforcement Officer of the Year Award to Postal Inspector David Dermeyer of the U.S. Postal Inspection Service in Memphis, TN; Postal Inspector Rey Santiago of the U.S. Postal Inspection Service in Tulsa, OK; and Detective Liz Eagan of the Tulsa, OK, Police Department.

Fiscal Year 2002 Programs

In FY 2002, OJJDP proposes to continue its concentration on national programs that promote awareness of and enhance the Nation's response to missing and exploited children and their families. Although no funds are available for new programs in FY 2002, OJJDP is interested in obtaining input from the field on program and service needs to help plan programming for both FY 2002 and the future.

Fiscal Year 2002 Program Listing

National Resource Center and Clearinghouse
Internet Crimes Against Children Regional Task Force Program
Missing and Exploited Children's Training and Technical Assistance Program
National Crime Information Center NISMART 2
Jimmy Ryce Law Enforcement Training Center Program
Missing and Exploited Children Non-Profit Organizations and Family Support Program
National Center on Child Fatality Review
National Child Victimization Conference Support

Continuation Programs

The FY 2002 Title IV continuation programs are summarized below. Available funds, implementation sites, and other descriptive information are subject to change based on the plan review process, grantee performance, application quality, fund availability, and other factors.

National Resource Center and Clearinghouse

In FY 2001, Congress provided funding to continue and expand the programs, services, and activities of NCMEC, a national resource center and clearinghouse dedicated to missing and exploited children and their families. As provided in Title IV, the functions of the Center include, but are not limited to, the following:

• Providing a toll-free hotline (800–843–5678) that citizens can use to report investigative leads and that parents and other interested individuals can use to receive information about missing children.

• Providing technical assistance to parents, law enforcement agencies, and other agencies working on issues involving missing and exploited children.

• Promoting information sharing and providing technical assistance by networking with regional nonprofit organizations, State missing children clearinghouses, and law enforcement agencies.

• Developing publications that contain practical, timely information.

• Providing information regarding programs that offer free or low-cost transportation services to help reunite children with their families.

In FY 2001, NCMEC's toll-free hotline received more than 155,000 calls, ranging from citizens reporting information about missing children to parents and law enforcement officers requesting information and publications. NCMEC also assisted in the recovery of hundreds of children, disseminated millions of photographs of missing children, and sponsored a national training workshop for State missing children clearinghouses and relevant nonprofit organizations. NCMEC also assisted the U.S. Department of State in carrying out its Hague Convention responsibilities by processing incoming applications for children abducted to the United States, and by broadening its efforts to recover American children abducted to foreign countries.

In FY 2001, NCMEC continued to perform functions associated with the national resource center and clearinghouse, and it broadened the Protecting Children Online training program with additional courses for prosecutors. In cooperation with the Federal Bureau of Investigation (FBI), NCMEC released *Child Molesters: A Behavioral Analysis,* a publication designed to help law enforcement officers investigate the sexual exploitation of children by acquaintance molesters.

A 1-year cooperative agreement will be awarded to NCMEC in FY 2002. The award will enable NCMEC to continue the functions of the national resource center and clearinghouse and the operation of the Jimmy Ryce Law Enforcement Training Center, which provides training to improve investigative responses to cases involving missing children. No additional applications will be solicited in FY 2002.

Internet Crimes Against Children Regional Task Force Program

In FY 2001, 41 new awards were given to jurisdictions interested in participating in the ICAC Task Force Program Investigative Satellite Initiative (ISI), which broadens the impact of the ICAC Task Force Program by augmenting the forensic and investigative capacities of smaller State and local law enforcement agencies. Under ISI, agencies lacking the resources to establish full-time regional task forces may still acquire OJJDP funds to train and equip local officers to respond to child pornography and cyber-enticement cases.

Other FY 2001 ICAC Task Force Program activities included partnering with SEARCH Group, Inc., of Sacramento, CA, to deliver a hands-on investigative course and a national 3-day training workshop that focused on emerging technology and its relevance to criminal activities and ICAC investigative efforts.

In FY 2002, OJJDP will continue to fund the 30 regional ICAC Task Forces and will solicit applications for new regional sites in FY 2002.

Missing and Exploited Children's Training and Technical Assistance Program

In FY 1998, FVTC was awarded a cooperative agreement to provide training and technical assistance to law enforcement officers, prosecutors, and health and family services professionals. The Missing and Exploited Children's Training and Technical Assistance Program is designed to ensure that professionals working on issues involving missing and exploited children receive up-to-date, practical training and technical assistance. Training focuses on investigative techniques, interview strategies, comprehensive response planning, media relations, lead and case management, and other topics related to missing and exploited children cases.

The Missing and Exploited Children's Training and Technical Assistance Program offers five courses: Responding to Missing and Abducted Children, Child Sexual Exploitation Investigations, Child Abuse and Exploitation Investigative Techniques, Child Fatality Investigations, and Child Abuse and Exploitation Team Investigation Process. In addition to offering these courses, FVTC provides technical assistance and support to the Federal Agency Task Force on Missing and Exploited Children and its related subcommittees; develops documents and publications related to missing and exploited children; convenes special focus groups or meetings to facilitate communication and problem solving among youth service workers and professionals at the Federal, State, and local levels; and performs special projects, as directed by OJJDP. These special projects include designing protocols for handling and responding to cases involving missing and exploited children, establishing a response planning system, and conducting a case review of child protection legislation. No additional applications will be solicited in FY 2002.

National Crime Information Center

The ability to verify National Crime Information Center (NCIC) entries, communicate with law enforcement through the Interstate Law Enforcement Telecommunication System, and be notified of life-threatening cases through the NCIC flagging system, is crucial to NCMEC's mission. OJJDP proposes to continue to transfer funds to the Department of Justice's Justice Management Division through a reimbursable agreement to continue NCMEC's online access to the FBI's Wanted and Missing Persons files through NCIC. No additional applications will be solicited in FY 2002.

NISMART 2

Under the Missing Children's Assistance Act, Title IV, OJJDP is required to conduct periodic studies to assess the scope of the missing children problem in the United States. The original National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMART 1) was conducted in 1988, with results published in 1990. In FY 1995, OJJDP funded NISMART 2, the second national study to measure the incidence of each category of missing children. Temple University received funding in FY 1995 to conduct the study, which builds on the strengths and addresses some of the weaknesses of NISMART 1. Temple University has contracted with the University of New Hampshire Survey Research Laboratory and Westat, Inc., to implement specific components of the study and provide extensive background knowledge about the particulars of NISMART 1. Specifically, NISMART 2 will do the following:

- Revise and enhance NISMART 1 definitions.
- Survey approximately 23,000 households by telephone to determine how many children are missing on an annual basis.
- Survey law enforcement agencies to determine the annual frequency of child abductions.
- Survey approximately 10,000 youth by telephone to understand what happens during missing children episodes.
- Interview directors of residential facilities and institutions to determine how many residents run away.
- Analyze data on thrownaway children from a related survey of community professionals.

The findings from these surveys will provide updated annual estimates on the number of missing children in the United States. Preliminary findings will be available in the summer of 2002, and a final report will be completed by the end of FY 2002. An OJJDP Bulletin that documents the scope of the research, definition revisions, and methodology changes was published in FY 2000.

OJJDP support for NISMART 2 will continue in FY 2002. No additional applications will be solicited in FY 2002.

Jimmy Ryce Law Enforcement Training Center Program

In FY 1997, OJJDP, in partnership with NCMEC, the FBI, and FVTC, developed and implemented the Jimmy Ryce Law Enforcement Training Center (JRLETC) program. JRLETC offers two law enforcement training tracks designed to improve the national investigative response to cases involving missing children.

JRLETC's Chief Executive Officer (CEO) seminars examine cases involving missing children from a management perspective and offer information about coordination and communication issues, resource assessment, legal concerns, and policy development for police chiefs and sheriffs. The Responding to Missing and Abducted Children (REMAC) course offers modules that focus on comprehensive investigative techniques for cases involving missing children. In FY 2001, 1,864 police chiefs and sheriffs participated in the CEO training and 319 law enforcement officers participated in REMAC.

Congress appropriated $2.3 million in FY 2001 to continue the operation of JRLETC. To respond to the numerous requests for additional assistance from JRLETC graduates, OJJDP, NCMEC, the FBI, and FVTC will continue to provide training and technical assistance through both JRLETC and the onsite technical assistance program.

Under the JRLETC appropriation, OJJDP awarded $300,000 to FVTC to support regional REMAC courses; the remaining $2 million supported NCMEC's CEO seminars and onsite technical assistance program. No additional applications will be solicited in FY 2002.

Missing and Exploited Children Non-Profit Organizations and Family Support Program

The goal of the Missing and Exploited Children Non-Profit Organizations (NPOs) and Family Support Program is to establish a national nonprofit association to (1) provide oversight to a minimum of 25 missing and exploited children NPOs, and (2) develop a mentoring program that provides one-on-one support to parents of missing children. In FY 2001, MECP solicited applications through a competitive process, four applications were received, and the Association of Missing and Exploited Children's Organizations (AMECO) was selected to receive the award. AMECO will provide ongoing oversight, support, and assistance to missing and exploited children NPOs to improve the quality of services for missing and exploited children and their families and to provide ongoing support and parent-to-parent/one-on-one assistance to families of children who have been exploited, abducted, or who are otherwise missing. No

additional applications will be solicited in FY 2002.

National Center on Child Fatality Review

In FY 1997, OJJDP awarded a noncompetitive award to the National Center on Child Fatality Review (NCCFR) in Los Angeles, CA. NCCFR received the award to develop State and local uniform reporting definitions and generic protocols for child fatality review teams that could be considered by communities working to enhance their investigations of child deaths.

NCCFR developed a model for integrating data among the Criminal Justice, Vital Statistics, and Social Services Child Abuse Indices. NCCFR also selected a National Advisory Board composed of representatives from across the country and from relevant disciplines.

In FY 2002, OJJDP will continue to support NCCFR if funds are available. No additional applications will be solicited in FY 2002.

National Child Victimization Conference Support

If funds are available, OJJDP proposes to provide funding in FY 2002 for national conferences that focus on child abduction, exploitation, and victimization issues. This funding support would include conferences sponsored by the National Children's Advocacy Center, the Dallas Police Department and Children's Advocacy Center, the American Professional Society on the Abuse of Children, the Center for Child Protection, and the San Diego Conference on Responding to Child Maltreatment. No additional applications will be solicited in FY 2002.

Dated: March 29, 2002.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–8054 Filed 4–2–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

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 Employment and Training Administration is soliciting comments concerning the proposed extension of approval of Form ETA 581, Contribution Operations. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments be submitted to the office listed in the addressee section below on or before June 3, 2002.

ADDRESSES: Constance I. Peterkin, Room S–4522, 200 Constitution Avenue, NW., Washington, DC 20210; telephone number: 202–693–3221 (this is not a toll-free number); Internet address: *cpeterkin@doleta.gov;* facsimile number: 202–693–3229.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workforce Security (OWS) of the Employment and Training Administration (ETA) has three programs which evaluate the separate functions within the Unemployment Insurance (UI) program. The Benefit Accuracy Measurement (BAM) program assesses the accuracy of paying UI benefits. The Benefit Timeliness and Quality (BTQ) program assesses the quality and timeliness of UI benefit functions; while the Tax Performance System (TPS) evaluates the employer-related or tax functions of the UI program. The Contribution Operations report (Form ETA 581) is a comprehensive report of each State's UI tax operations and is essential in providing quarterly tax performance data to DOL/ETA/OWS, the source of grants funding authority. ETA 581 data are the basis for determining the adequacy of funding of States' UI tax operations and measuring the effectiveness of such operations. These are required Federal functions under the Federal-State UI program.

Using ETA 581 data, the TPS program measures performance, accuracy, and promptness in employer registration (status determination, report delinquency, collections (accounts receivable), and the audit function.

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

It is important that approval of the ETA 581 report be extended because this report is the only vehicle for collection of information required under the TPS program. If ETA 581 data were not collected, there would be no basis for determining the adequacy of funding for States' UI tax operations, making projections and forecasts in the budgetary process, nor measuring program performance and effectiveness. The ETA 581 accounts receivable data are necessary in the preparation of complete and accurate financial statements for the Unemployment Trust Fund (UTF) and the maintenance of a modified accrual system for UTF accounting.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Contribution Operations.

OMB Number: 1205–0178.

Agency Number: ETA 581.

Affected Public: State Government.

Cite/Reference/Form/etc: ETA 581.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 8.5 hours.

Estimated Total Burden Hours: 1,802.

Total Burden Cost (operating/maintaining): $–0–.

Comments submitted in response to this comment request 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: March 27, 2002.

Grace A. Kilbane,

Director, Office of Workforce Security.

[FR Doc. 02–8061 Filed 4–2–02; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COUNCIL ON DISABILITY

Reauthorization of the Individuals With Disabilities Education Act

AGENCY: National Council on Disability.

ACTION: Request for written comments.

SUMMARY: The Individuals with Disabilities Education Act (IDEA) is scheduled to be reauthorized by Congress in 2002. The IDEA statute is made up of four parts, including the Part A General Provisions section, the Part B Grants to States Program (including preschool grants), the Part C Infants and Toddlers program, and the Part D Support Programs. Part B is permanently authorized. Congress must periodically review and reauthorize Parts C and D of IDEA (usually every 5 years) in order to ensure continuation of the activities included under these parts.

The National Council on Disability (NCD) is seeking input from IDEA stakeholders on the reauthorization IDEA by responding to questions in NCD's new working paper on IDEA reauthorization *(http://www.ncd.gov/newsroom/reauthorizations/idea/idea.html).* Specifically, NCD wants feedback on questions related to monitoring and enforcement, full funding, discipline, and, eligibility and over-representation of students from culturally diverse backgrounds.

DATES: NCD would like to receive your written comments on IDEA reauthorization by June 1, 2002.

ADDRESSES: Please send your responses to Martin Gould, Senior Research Specialist, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004, or 202–272–2022 (fax), or *mgould@ncd.gov* (e-mail).

People with disabilities may obtain a copy of this notice in an alternative format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed in the previous paragraph.

FOR FURTHER INFORMATION CONTACT: Martin Gould, Senior Research Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax) *mgould@ncd.gov* (E-mail).

Agency Mission: NCD is an independent Federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

SUPPLEMENTARY INFORMATION:

IDEA Reauthorization—An NCD Working Paper

Background

The National Council on Disability (NCD) is an independent Federal agency making recommendations to the President and Congress on issues affecting 54 million Americans with disabilities. NCD is composed of 15 members appointed by the President and confirmed by the U.S. Senate. NCD's overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society. NCD makes recommendations to the President, Congress and Federal agency officials concerning ways to better promote equal opportunity for all individuals with disabilities. In addition to our statutory mandates, NCD's mission is to provide a voice in the Federal government and to Congress for all people with disabilities in the development of policies and delivery of programs that affect their lives. This was the direction that we received from over 300 disability advocates that convened in Texas in 1996 for a disability policy summit; NCD was charged by these people to investigate their concern regarding the shortcomings in the Federal enforcement of disability civil rights laws. One of those civil rights laws involves public special education.

In 1975, when Congress enacted the Education for All Handicapped Children Act, P.L. 94–142—now known as the Individuals with Disabilities Education Act IDEA—it found that the special education needs of more than eight million students with disabilities were not being met. Some students were entirely excluded from school; others were not receiving an appropriate education; still others had unidentified disabilities or were misclassified. Of those who did receive educational services, many were educated far away from their local schools (20 U.S.C. Sec. 1400(b)(1)–(6)). Still, Congress recognized that educators had the ability to instruct these students (20 U.S.C. Sec. 1400(b)(7)).

In that vein, Congress crafted a statute in 1975 that, if faithfully implemented, is designed to consistently produce quality outcomes for students with disabilities. The United States Code defines special education as ''specially designed instruction'' to meet the ''unique needs'' of these students; each student's individualized education program (IEP) is to set forth his or her unique needs and individually designed instruction; and, each student's placement is to be based on the IEP and no more restrictive than necessary (20 U.S.C. 1402(25); 34 CFR 3000.552(a)(2)(b)). If IEPs are based on the unique needs of students, if instruction is individually designed, if IEPs are faithfully implemented, and if the LRE requirements are followed, students will achieve quality outcomes while enjoying maximum interactions with their nondisabled peers. Compliance with, and enforcement of, these IDEA requirements is a sufficient condition for quality outcomes.

In fact, in the more than two decades since its enactment, IDEA implementation has produced important improvements in the quality and effectiveness of the public education received by millions of American children with disabilities. Today almost 6 million children and young people with disabilities ages 3 through 21 qualify for educational interventions under Part B of IDEA. Some of these students with disabilities are being educated in their neighborhood schools in regular classrooms. These children have a right to have support services and devices such as assistive listening systems, braille text books, paraprofessional supports, curricular modifications, talking computers, and speech synthesizers made available to them as needed to facilitate their learning side-by-side with their nondisabled peers. Post-secondary and employment opportunities are opening up for increasing numbers of young adults with disabilities as they leave high school. Post-school employment rates for youth served under Part B are twice that of older adults with disabilities who did not benefit from

IDEA in school, and self-reports indicate that the percentage of college freshmen with a disability has almost tripled since 1978.

During the course of five studies on the IDEA, from 1989 to 2000, NCD consistently learned that parents of children with disabilities are enthusiastic supporters of the law. They think it's a good law.

As part of its advisory work during the 2002 calendar year, NCD is interested in securing input from people in preparation for the reauthorization of the Individuals with Disabilities Education Act. NCD is using a variety of mechanisms to secure this input: (a) through testimony at quarterly Board meetings; (b) via the Internet and NCD's Web site (*http://www.ncd.gov*); and (c) as a result of teleconferences, to name just a few ways.

This working paper is designed to frame some of the major policy issues that are likely to be addressed during IDEA Reauthorization activities this year. It is intended to be used to outline these issues, and provide a set of questions which NCD is most interested in receiving responses to at this point in time.

Introduction

IDEA is the most far-reaching aspect of the Federal involvement in public education. Rich or poor, urban, suburban, or rural, all schools and districts are affected by special education. IDEA is scheduled to be reauthorized by the US Congress in 2002. The IDEA statute is made up of four parts, including the Part A General Provisions section, the Part B Grants to States Program (including preschool grants), the Part C Infants and Toddlers program, and the Part D Support Programs. Part B is permanently authorized. Congress must periodically review and reauthorize Parts C and D of IDEA (usually every 5 years) in order to ensure continuation of the activities included under these parts.

Nevertheless, judging from the level and intensity of IDEA-related activity in the 107th Congress during the debates on H.R. 1, the No Child Left Behind Act (reauthorization of the Elementary and Secondary Education Act), it is clear that two IDEA amendments (i.e., full funding and discipline of students with disabilities) which occupied a great deal of attention during ESEA debates, but ultimately failed to make it out of a Congressional joint conference, will make their way into the 2002 IDEA reauthorization schedule.

Some of the key policy issues and provisions of the law that are likely to be taken up during IDEA reauthorization during 2002 include: monitoring and enforcement; full funding; discipline; and, eligibility and over-representation of students from culturally diverse backgrounds. The following pages provide an outline to the selected issues.

Monitoring and Enforcement

In January 2000, NCD released its evaluation of nearly two and a half decades of Federal enforcement of IDEA. Entitled Back to School on Civil Rights this report analyzed the data contained in the Department of Education's state monitoring reports from 1975 to 1998 to determine what has been happening over time. The study measured adherence to, or compliance with, IDEA requirements in the areas of free appropriate public education (FAPE), least restrictive environment (LRE), individualized education plans (IEP), transition services, general supervision, procedural safeguards and protection in evaluation of students with disabilities. The findings of that study indicate that every state and the District of Columbia were found to be out of compliance with IDEA requirements to some degree. This study confirmed what children with disabilities have repeatedly told NCD, namely, that too many students: did not receive FAPE, were not educated in the LRE, had not been able to access critical transition services, did not receive the benefits of procedural safeguards and protections in evaluation in some states over many years, placing enormous burdens on children and families.

NCD's findings of 25 years worth of chronic noncompliance translate into real and significant problems for eligible children and their families, including: lack of IEPs for students; non-provision of critical services and supports, such as psychological counseling for students with mental health needs; an absence of procedural safeguards for parents; a lack of any transition planning for students aging out of special education services systems; and, a lack of general supervision by SEAs of LEAs. These types of compliance problems cut to the core of what a special education entitlement is supposed to mean.

For example, students with disabilities must be provided with related services such as occupational therapy, speech therapy, physical therapy, and psychological counseling based on their individual needs as reflected in their IEPs. This requirement recognizes that without these related services, some students with disabilities cannot adequately access and learn their curricular materials.

On pages 93 to 94 of Back to School on Civil Rights NCD's January, 2000 education report, data indicates that:

''* * * OSEP found that 34 states (68%) had failed to ensure compliance with the related services requirements, as shown in the following examples:

In Florida,* * * OSEP was informed in interviews with district and building-based administrators, teachers, and related services personnel in Agencies F, G, and H that psychological counseling, as a related service, is not available to students with disabilities, regardless of need. A building-based administrator in Agency E indicated that many students need psychological counseling but it is not available as a related service.* * * OSEP was informed by two related service providers in Agency G that they were instructed not to list individual therapy on their caseload(s). They stated that they will provide the service informally, but it is not reflected on the student's IEP (there are no goals and objectives) * * * A special education teacher in Agency H told OSEP that students may have to go to a center-based or day program if they need more intense counseling services.

In one agency in Minnesota, OSEP found that psychological counseling was not considered for inclusion in any student's IEP.

An administrator from an agency in Arizona confirmed ''that related services (speech therapy, occupational therapy, and physical therapy) are not based on the individual student's needs but are based upon the availability of the service provider.

Administrators and teachers from two agencies in Oklahoma stated that psychological counseling services are not provided based on an IEP, even if a child needs such services to benefit from special education.

In one district in California, an administrator told OSEP that there were 42 students whose IEPs called for speech services, but who were not receiving the services; in another district, an administrator reported that students whose IEP teams believed they needed mental health services to benefit from special education were referred to outside agencies for the services, rather than receiving the services free of charge through their IEPs.''

These are only very recent examples of what has been a long-standing problem (i.e., the lack or absence of provision of related services and supports) in the successful implementation of IDEA for some of the nation's most vulnerable students with disabilities. When a student does not have an IEP or receive the support

services he or she is deemed eligible for, he or she cannot achieve educational outcomes Those children are destined to be left behind.

NCD needs to hear from stakeholders in response to the following questions:

1. To what extent do existing Federal monitoring and enforcement activities support efforts to provide effective special education and related services to improve results for children and youth with disabilities?

2. To what extent do existing Federal monitoring and enforcement activities inhibit efforts to provide effective special education and related services to improve results for children and youth with disabilities?

3. What, if anything, should be changed to improve Federal IDEA monitoring and enforcement of SEAs and LEAs? What would that/those changes look like?

4. To what extent does local capacity building need to occur for effective monitoring and enforcement of IDEA to be assured? How is local capacity building designed, implemented, and achieved?

Funding

In 1975, when Congress originally enacted the Federal special education law, it authorized the Federal government to pay 40 percent of each state's ''excess cost'' of educating children with disabilities. That amount—often called ''IDEA full funding''—is computed by taking 40 percent of the national average per pupil expenditure (APPE) multiplied by the number of children with disabilities served under IDEA in each state. Federal funding for Part B has significantly increased over the last several years. Initially, the Federal share was about 7 percent; the Federal share is currently at 15 percent, which is the highest Federal contribution to date.

IDEA authorizes a Part B grants-to-states program (accounting for most IDEA funding), state preschool grants, and state grants for infants and families together with various national programs (*e.g.,* funds for research and improvement). Total funding in FY2001 ($7.4 billion) increased by 40 percent over FY1999 and by nearly 25 percent over FY2000. Virtually all of these increases went for grants to states under Part B of IDEA. An ongoing controversy surrounding IDEA funding concerns whether the Federal government is living up to its ''promise to fully fund'' IDEA.

The Part C Infants and Toddlers Program and the Preschool Program under IDEA are critical components of state's efforts to assist young children with special needs in developing to their potential. The importance of the early years in ensuring that children succeed later in school and life has achieved bipartisan recognition in the U.S. Congress and the Administration (See, for example, Congressional Record on No Child Left Behind Act).

Appropriations for the Part B Preschool Grants (for children with disabilities ages 3 through 5, inclusive) and the Part C Infants and Toddlers Program (ages birth through 2 years of age, inclusive) have received virtually no increase over the past several years and have not kept pace with inflation.

The IDEA Part D Support Programs provide the critical infrastructure necessary to drive improvements in all aspects of special education practice. The support programs provide critical funds for professional development, technical assistance, and dissemination of knowledge about promising practices, to improve results for children with disabilities. Funds for these vital programs have remained stagnant for a number of years.

An estimated $16.9 billion would be required to provide states the maximum allotment allowed per student served, about 2.7 times more than the appropriation of $6.3 billion for FY2001. Others argue that the 40 percent figure is an upward limit of funding and as such is a target or goal for Federal funding meant to assist states and local school districts to meet their obligation to serve students with disabilities, not an obligation or an unfulfilled promise.

NCD needs to learn from the community:

1. What, if any, changes should be considered in Federal special education funding formulas?

2. Is the current distribution of the total Part D appropriation appropriate?

3. Should any new Federal funding be linked to particular student outcomes? If so, what should those outcomes be and how would this work?

4. Should any new funding be linked to state/local school districts' compliance with, and enforcement of, IDEA statutory requirements? If so, how would this work?

5. Should funds be used for prevention strategies to reduce the number of referrals to special education? If so, how might this work?

Eligibility and Over-Representation of Students From Linguistically and Culturally Diverse Backgrounds

In its 1993 report entitled Educating Students with Disabilities: Progress and Prospects NCD addressed the issue of over-representation of students from diverse backgrounds. At that time, NCD noted that some school districts had difficulty delivering appropriate services to their increasingly diverse student populations.

''School enrollment trends suggest that some school districts are having difficulty delivering appropriate services to their increasingly diverse student populations. In some states, the percentage of students enrolled in special education has increased while the general school population has declined. For instance, a 1991 report issued by the Massachusetts Department of Education, A Review of the Eligibility Criteria for Children with Special Needs, noted that 17 percent of students ages 3 to 21 were taught in special education classes during the 1990–1991 school year. The report acknowledged that ''over referrals'' to special education are a direct result of imprecise eligibility definitions, nonexistent or ineffective prereferral processes, and untrained or undertrained school personnel.''

In addition, NCD noted that:

''Disproportionate overrepresentation and underrepresentation of culturally and racially diverse student groups in special education programs may be caused by inaccurate perceptions of students' competencies and behaviors. The results of such a set of circumstances could be devastating to those children and youth who are inappropriately placed. * * * a survey of 51 urban school districts in 25 states reported percentage enrollment patterns for students in the special and general education populations (National School Board Association, 1990) * * * disproportionate special education enrollment patterns exist for certain racial groups. These kinds of enrollment, ability-grouping, and/or academic tracking patterns, and the apparent lack of Americans. Once again, it seems that there may be a relationship between school systems' implementation of least restrictive environment mandates—reflected in Table 3—and the disproportionate placement patterns represented in Figures 6A, 6B, and 7. Such a relationship is also suggested by findings from other Federal education research studies. For example, a 1987 study of high school juniors reported that among special education students 66 percent were Caucasian, 25 percent were African American, and 8 percent were Hispanic American, while comparable figures among non-special education students were 72 percent Caucasian, 15 percent African American, and 8.5 percent Hispanic American.''

In the most recent IDEA reauthorization in 1997, the U.S. Congress called for greater efforts to ensure that children from culturally and linguistically diverse backgrounds are classified accurately and appropriately placed.

Based on its own research for Back to School on Civil Rights (2000), the National Council on Disability reported that:

''In addition to the testimony of parents, special education advocates attest that inappropriate placement in separate settings and a lack of services for children with disabilities served in regular classrooms persist in many areas. Testimony of parents at public hearings, consultation with special education advocates serving rural, Native American, and other minority communities around the country, as well as studies by various government and advocacy organizations indicate that minority students are disproportionately represented in separate educational settings.[fn. 82]

''* * * there is a very big need on our reservation to have monitoring of our school districts. We've made it very clear to them that we have a need, that there are problems in our education system, and our children are not getting IDEA implemented there. And we're told by our district people that 'yes, we agree there is a problem.' Well, where do we go after we get the acknowledgment and there's nothing done about it?''—a Native American parent from Montana[fn 83]

Other studies find that minority children are over-represented in institutions such as detention and correctional facilities where access to appropriate educational services is inadequate to nonexistent. That is especially problematic considering that 40 percent of youth held in detention are estimated to have some form of learning disability.[fn 84]''

In October 2001, the House Committee on Education and the Workforce conducted a hearing on Over identification Issues Within the Individuals with Disabilities Education Act and the Need for Reform. According to the Chair of that Committee ''It has become increasingly evident that the IDEA system allows far too many students to be wrongly or mistakenly classified as in need of special education services. As we will learn shortly, this problem strikes particularly hard at minority students. The issue of over identification has prompted great concern in Congress. It is the issue that led our colleague * * * to request this hearing last spring. Whether the subject is the Elementary and Secondary Education Act or IDEA, improving our nation's education system starts with believing that every single American child can learn. To presume that any student is incapable of achieving academic success simply on the basis of race, ethnicity, or special needs is inconsistent with the principles upon which our nation is built.''

According to U.S. Department of Education Secretary Paige who testified during this October 2001 hearing, ''Our third concern is that when you look at State data, you find that the proportion of minority students identified in some disability categories is dramatically greater than their share of the overall population. More specifically, African-American students are labeled as mentally retarded and emotionally disturbed far out of proportion to their share of the student population. Department of Education national data show that 2.2 percent of all black students, but only 0.8 percent of all white students, are identified as mentally retarded. Similarly, 1.3 percent of all black students, and only 0.7 percent of all whites are identified as emotionally disturbed * * * This problem of disproportional identification of some minority groups in some categories of special education occurs in many other States. For minority students, misclassification or inappropriate placement in special education programs can have significant adverse consequences, particularly when these students are being removed from regular education settings and denied access to the core curriculum. Of particular concern is that, often, the more separate a program is from the general education setting, the more limited the curriculum and the greater the consequences to the student, particularly in terms of access to postsecondary education and employment opportunities. The stigma of being misclassified as mentally retarded or seriously emotionally disturbed, or as having a behavioral disorder, may also have serious consequences in terms of the student's self-perception and the perception of others, including family, peers, teachers, and future employers.'' It is useful to note that the most recent 2001 report of the National Academy of Sciences (NAS) entitled, Minority Students in Special and Gifted Education, echoes these themes and findings.

NCD needs input from the community in response to the following questions:

1. What policies, procedures, and/or practices can be established related to prevention or early intervention that can contribute to the elimination of the problem of over-representation?

2. What strategies and/or policies should school districts create or adopt related to culturally and linguistically sensitive and appropriate family centered services?

3. What strategies and/or policies should state systems of higher education implement to prepare, recruit, and retain qualified professionals from culturally and linguistically diverse groups?

4. What strategies and/or policies should state and local school districts adhere to to ensure that students with disabilities from diverse backgrounds are included and accommodated in new statewide and district-wide assessments of student performance?

5. How can we preserve the protections afforded students and parents under Federal and state special education regulations and correct the problems of unnecessary over-referral of students from diverse cultural and linguistic backgrounds for special education?

6. Are there additional policy or implementation barriers that should be considered in order to eliminate problems related to over-representation?

Discipline

In 1997, Congress made significant changes to IDEA and attempted to strike ''a careful balance between the LEA's [local educational agency] duty to ensure that school environments are safe and conducive to learning for all children, including students with disabilities, and the LEA's continuing obligation to ensure that children with disabilities receive a free appropriate public education.'' This current law does not immunize a student with a disability from disciplinary procedures but these procedures may not be identical to those for children without disabilities.

In brief, if a student with a disability commits an action that would be subject to discipline, school personnel have the following options: (a) Suspending the student for up to 10 days with no educational services provided; (b) conducting a manifestation determination review to determine whether there is a link between the student's disability and the misbehavior. If the student's behavior is not a manifestation of a disability, long term disciplinary action such as expulsion may occur, except that educational services may not cease. If the student's behavior is a manifestation of the student's disability, the school may review the student's placement and, if appropriate, initiate a change in placement; placing the student in an interim alternative education setting for

up to 45 days (which can be renewed) for situations involving weapons or drugs; and (c) asking a hearing officer to order a student be placed in an interim alternative educational setting for up to 45 days (which can be renewed) if it is demonstrated that the student is substantially likely to injure himself or others in his current placement. School officials may also seek a Honig injunction as discussed previously if they are unable to reach agreement with a student's parents and they feel that the new statutory provisions are not sufficient.

On January 25, 2001 the General Accounting Office (GAO) submitted a report entitled Student Discipline: Individuals with Disabilities Education Act to the House and Senate Committees on Appropriations. Following the 1997 Amendments to the Individuals with Disabilities Education Act (IDEA), there was a perception of a double standard for student discipline for students with disabilities. As a result, Congress directed the GAO to conduct a study to determine how the IDEA Amendments of 1997 affect the ability of schools to maintain a safe environment conducive to learning. Some of the results of the GAO study, which primarily involved a survey of principals of 272 middle and high schools from around the country, indicate, for example, that (a) students with disabilities are receiving the same punishments as their general education peers for violent acts they commit in school, contrary to what some lawmakers stated in legislation last year; (b) the same proportion of each group of students who commit violence, about one in six, is expelled from school or placed in an alternative educational setting as a consequence of their actions; (c) 74 percent of responding principals generally regarded their overall special education discipline policy, which is essentially a combination of IDEA and local policies, as having a positive or neutral effect on their schools' levels of safety and orderliness; and (d) the remaining 26 percent of responding principals rated the policies as having a negative effect.

During the 2001 calendar year, two ''discipline'' amendments relating to children with disabilities were offered and accepted during Congressional debates on H.R.1 (107th Congress), the No Child Left Behind Act. Both amendments would have altered the scope of protection and procedural safeguards for certain IDEA eligible students. These two amendments did not survive the joint House-Senate Conference on H.R.1 but are sure to make their way into IDEA Reauthorization debates.

NCD needs to hear from the community:

1. Are the discipline procedures under IDEA clear and understandable?
2. To what extent is the current IDEA discipline policy properly implemented?
3. What are challenges and obstacles to implementing the IDEA discipline policy?
4. To what extent are resources available to school districts, educational personnel, and parents to ensure implementation of the IDEA discipline policy?
5. Should changes be considered to the current IDEA discipline policy?
6. To what extent are state and local school districts not complying with the current IDEA discipline policy? How can this policy be enforced?

Conclusions

One of the nation's best tools in promoting education equity and excellence is a public education system that is focused directly on accountability, achievement, and enforcement. To deal with the existing realities when it comes to Federal education policymaking, during IDEA reauthorization, NCD will use a variety of forums and mechanisms to solicit stakeholders' input to advise the Administration and Congress regarding a range of critical policy issues. These policy issues and suggested policy options for reauthorization go to the heart of education reform for over 6 million students with disabilities and involve: (a) Accountability in Federal education spending, (b) achievement and progress in the K–12 arena, and (c) fidelity of implementation in all aspects of the IDEA entitlement program.

Signed in Washington, DC, on March 28, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–8005 Filed 4–2–02; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure (#10719).

Date/Time: Friday, April 19, 2002, 1:00 p.m. to 4:00 p.m. EST.

Place: Room 555 Stafford II, National Science Foundation, 4121 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open Meeting. Persons wishing to attend the meeting at NSF should contact Richard Hilderbrandt to arrange for a visitor's pass.

Contact Persons: Dr. Richard Hilderbrandt, Program Director, Division of Advanced Computational Infrastructure and Research, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel: (703) 292–7093, e-mail: *rhilderb@nsf.gov.*

Purpose of Meeting: To present a first draft of the committee report.

Agenda

(Meeting will begin promptly at 1:00 PM EST)

1. Review of status of the panel's activities and goals for this meeting.
2. Reports from the authoring sub-committees.
3. Review and discussion of the working draft of the report.
4. Discussion of primary recommendations.
5. Stewardship and additional use of the material gathered by the Panel.
6. Summary of additional activities to create final version of report.
7. Matters arising.

Dated: March 28, 2002.

Karen J. York,

Committee Management Officer.

[FR Doc. 02–8006 Filed 4–2–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 33—Specific Domestic Licenses of Broad Scope for Byproduct Material.

2. *Current OMB approval number:* 3150–0015.

3. *How often the collection is required:* There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the information for renewal of the license.

4. *Who is required or asked to report:* All applicants requesting a license of broad scope for byproduct material and all current licensees requesting renewal of a broad scope license.

5. *The number of annual respondents:* 1.

6. *The number of hours needed annually to complete the requirement or request:* 1.

7. *Abstract:* 10 CFR part 33 contains mandatory requirements for the issuance of a broad scope license authorizing the use of byproduct material. The subparts cover specific requirements for obtaining a license of broad scope. These requirements include equipment, facilities, personnel, and procedures adequate to protect health and minimize danger to life or property.

Submit, by June 3, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC World Wide Web site (*http://www.nrc.gov/public-involve/doc-comment/omb/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 28th day of March 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8040 Filed 4–2–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants''.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* One-time submission with application for renewal of an operating license for a nuclear power plant and occasional collections for holders of renewed licenses.

5. *Who will be required or asked to report:* Commercial nuclear power plant licensees who wish to renew their operating licenses.

6. *An estimate of the number of responses:* 20 (an average of 6 responses annually + 14 recordkeepers).

7. *The estimated number of annual respondents:* 14 (6 respondents annually based on an estimate of the receipt of 19 new renewal applications over three years + 8 current recordkeepers).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* Approximately 432,333 hours (405,333 hours one-time reporting burden and 27,000 hours recordkeeping burden).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* 10 CFR part 54 of the NRC regulations, ''Requirements for Renewal of Operating Licensees for Nuclear Power Plants,'' specifies the procedures, criteria, and standards governing nuclear power plant license renewal, including information submittal and recordkeeping requirements, so that the NRC may make determinations that the operation of civilian nuclear power reactors during the extended term of the license will adequately protect the health and safety of the public and the environment.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 3, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0155), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 28th day of March 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8037 Filed 4–2–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation, Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–86, issued to North Atlantic Energy Service Corporation (the licensee), for operation of the Seabrook Station, Unit No. 1, located in Rockingham County, New Hampshire. Therefore, as required by 10

CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would make administrative changes to Technical Specification Sections 1.9, Core Alteration; 1.14, Engineered Safety Features Response Time; and 1.29, Reactor Trip Response Time.

The proposed action is in accordance with the licensee's application dated August 6, 2001, as supplemented by letters dated November 2, 2001, and February 1, 2002.

The Need for the Proposed Action

The proposed action will allow the licensee to implement Technical Specification changes to support refueling outage 08, currently scheduled for spring 2002.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that it has no environmental impact.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Seabrook Station, Unit No. 1, dated December 1982.

Agencies and Persons Consulted

On February 13, 2001, the staff consulted with the New Hampshire State official, Mike Nawoj, of the New Hampshire Office of Emergency Management, and on February 19, 2002, the staff consulted with the Massachusetts State official, James Muckerheid, of the Massachusetts Emergency Management Agency, regarding the environmental impact of the proposed action. The State officials had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 6, 2001, as supplemented by letters dated November 2, 2001, and February 1, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of March 2002.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Section 2 Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–8038 Filed 4–2–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

International Conference on Wire System Aging

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The International Conference on Wire System Aging (ICWSA) will be held April 23–25, 2002, from 8:30 a.m. to 5 p.m. at the DoubleTree Hotel at 1750 Rockville Pike, Rockville, Maryland, USA.

The conference has a three-fold purpose: (1) To review current practices and programs for understanding and managing wire system aging, (2) to exchange information on the current status of research related to the issue, and (3) to identify technical issues and programs of interest for collaborative research. The conference will focus on four specific topics as they relate to wire system aging:

- Reliability Physics Modeling of Wire System Aging;
- Fire Risk Assessment of Wire System Aging;
- Risk Significance of Wire System Aging; and
- Prognostics and Diagnostics for Installed Wire Systems.

Michael Mayfield, Director of the Division of Engineering Technology of the NRC Office of Nuclear Regulatory Research, will open the conference on Tuesday, April 23, and Ashok C. Thadani, Director of the NRC Office of Nuclear Regulatory Research, will be the keynote speaker.

Technical sessions on each of the four topics will be held Tuesday and Wednesday. Each session will include technical papers, followed by question and answer periods. On Thursday morning a general session on initiatives and insights on Wire System Aging will be held. This session will contain presentations by international wire system experts regarding initiatives in their countries to address wire system aging, along with presentations on initiatives in the USA.

On Thursday afternoon, April 25, an expert panel will discuss issues related to wire system aging, along with the future direction of collaborative research to address these issues. Panel members will include Dr. Nilesh Chokshi, NRC Office of Nuclear Regulatory Research; Dr. Elliot Cramer, NASA-Langley; and Dr. John Brewer, Department of Transportation.

Technical exhibits will be on display all three days of the conference. These exhibits will demonstrate state-of-the-art

cable monitoring techniques, as well as new advances in cable construction.

The conference is open to the public and there is no registration fee. However, attendance will be limited to 200 people, and advance registration for the conference is strongly recommended. Those who wish to attend are encouraged to register in advance on the ICWSA Web site (*www.bnl.gov/ICWSA*) or by contacting Susan Monteleone, Brookhaven National Laboratory, Building 130, Upton, NY 11973–5000, telephone (631) 344–7235; or Jit Vora (301) 415–5833, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 27th day of March 2002.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 02–8039 Filed 4–2–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: Yucca Mountain Repository

May 7–8, 2002—Washington, DC: The Nuclear Waste Technical Review Board will hold a meeting to discuss efforts by the Department of Energy (DOE) related to developing a safety case for a potential Yucca Mountain repository. Other topics that will be discussed include staged repository concepts, repository design concepts, issues related to corrosion of waste package materials, and the DOE's plans for continuing technical and scientific investigations if the Yucca Mountain site recommendation is approved.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Tuesday, May 7, and Wednesday, May 8, 2002, the U.S. Nuclear Waste Technical Review Board (Board) will hold a meeting in Washington, D.C., to discuss efforts by the U.S. Department of Energy (DOE) to develop a safety case for a potential repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nevada. Also discussed will be ''staged'' concepts for the development of such a repository, the design of a potential repository, and issues related to corrosion of the materials that would be used for the waste packages at a potential repository. The meeting is open to the public, and opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of DOE activities related to managing spent nuclear fuel and high-level radioactive waste.

The Board meeting will be held at the Washington Marriott Hotel; 1221 22nd Street, NW; Washington, D.C. 20037. The telephone number is 202–872–1500; the fax number is 202–872–9899. The meeting sessions will begin at 8 a.m. on both days.

The morning session on Tuesday will begin with comments by a representative of the State of Nevada, followed by a series of presentations by the DOE on the DOE's technical and scientific program, including scheduling and strategic planning. After lunch, the results of the DOE's Waste Package Materials Performance Peer Review will be presented, followed by an update on the State of Nevada's corrosion studies. The balance of the afternoon will be devoted to a discussion of the DOE's safety case for a potential Yucca Mountain repository, which will include the perspectives of the international community, the Nuclear Regulatory Commission, the DOE, and the State of Nevada.

On Wednesday morning, representatives of the international community, the DOE, and the State of Nevada will present their views on staged repository concepts. These presentations will be followed by a discussion of technical issues related to repository design concepts, including presentations on a flexible design concept and on a ventilation design concept. The afternoon session will begin with a discussion of the DOE's performance-confirmation and test and evaluation planning and activities, including a presentations on performance confirmation by the Electric Power Research Institute. An update on the DOE's performance assessment and design priorities will complete the afternoon agenda.

Opportunities for public comment will be provided before lunch and bore adjournment on both days. Those wanting to speak during the public comment periods are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. As time permits, the questions will be answered during the meeting.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Beginning on June 10, 2002, transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff.

A block of rooms has been reserved at the Washington Marriott Hotel. A meeting rate will be available for reservations made by April 19, 2002. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. For more information, contact the NWTRB; Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201—3367; (tel) 703–235–4473; (fax) 703–235–4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

Dated: March 29, 2002.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 02–8086 Filed 4–2–02; 8:45 am]

BILLING CODE 6820–AM–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Financial Disclosure Statement.

(2) *Forms(s) submitted:* G–423.

(3) *OMB Number:* 3220–0127.

(4) *Expiration date of current OMB clearance:* 6/30/2002.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,200.

(8) *Total annual responses:* 1,200.

(9) *Total annual reporting hours:* 1,700.

(10) *Collection description:* Under the Railroad Retirement and Railroad Unemployment Insurance Acts, the Railroad Retirement Board has authority to secure from an overpaid beneficiary a statement of the individual's assets and liabilities if waiver of the overpayment is requested.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–8022 Filed 4–2–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for a review and approval.

Summary of Proposal(s):

(1) *Collection title:* Statement Regarding Contributions and Support of Children.

(2) *Form(s) submitted:* G–139.

(3) *OMB Number:* 3220–0195.

(4) *Expiration date of current OMB clearance:* 5/31/2002.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 500.

(8) *Total annual responses:* 500.

(9) *Total annual reporting hours:* 125.

(10) *Collection description:* Dependency on the employee for at least one-half support is a condition affecting eligibility for increasing an employee or spouse annuity under the social security minimum overall provisions on the basis of the presence of a dependent child, the employee's natural child in limited situations, adopted children, stepchildren, grandchildren, and step-grandchildren. The information collected solicits financial information needed to determine entitlement to a child's annuity based on actual dependency.

Additional Information or Comments Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–8023 Filed 4–2–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Notification of Meeting

The railroad Retirement Board hereby gives notice that the Board will meet at 10:00 a.m., April 3, 2002, in the Board Room on the 8th floor of the agency's headquarters building located at 844 N. Rush Street, Chicago, Illinois. The subject to be addressed at this meeting is the Selection to Fill Vacancy in the Philadelphia District Office.

The entire meeting will be closed to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: March 29, 2002.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–8123 Filed 4–1–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27512]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 28, 2002.

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 19, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 19, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Conectiv, et al. (70–9095)

Conectiv, a registered holding company, Conectiv's public-utility subsidiaries: Atlantic City Electric Company (''ACE''); Delmarva Power & Light Company (''Delmarva''); Conectiv Atlantic Generation, L.L.C. (''CAG''); Conectiv Delmarva Generation, L.L.C. (''CDG''), and Conectiv Pennsylvania Generation, Inc. (''CPGI'') (collectively, ''Utility Subsidiaries''); and Conectiv's nonutility subsidiaries (''Nonutility Subsidiaries'' and with Utility Subsidiaries, ''Subsidiaries''): ACE REIT, Inc. (''ACE REIT''); ATE Investment, Inc.; ATS Operating Services, Inc.; Atlantic Generation, Inc.; Atlantic Jersey Thermal Systems, Inc.; Atlantic Southern Properties, Inc.; Binghamton General, Inc., Binghamton Limited, Inc.; Conectiv Bethlehem, Inc.; Conectiv Communications, Inc.; Conectiv Energy Holding Company (''CEH''); [1] Conectiv Energy Supply, Inc.; Conectiv Mid-Merit, Inc.; Conectiv Operating Services Company; Conectiv Properties and Investments, Inc.; Conectiv Resource Partners, Inc.; Conectiv Services, Inc.; Conectiv Solutions, LLC; Conectiv Thermal Systems, Inc.; DCI I, Inc.; DCI II, Inc.; DCTC-Burney, Inc.; King Street Assurance, Ltd.; Pedrick Gen., Inc.; Vineland Limited, Inc.; and Vineland General, Inc., all located at 800 King Street, Wilmington, Delaware 19899; and Conectiv Plumbing, L.L.C., located at 621 Chapel Avenue, Cherry Hill, New

[1] ACE REIT and CEH are registered holding companies under the Act.

Jersey 08034 (collectively, ''Applicants''), have filed a post-effective amendment (''Post-Effective Amendment'') under sections 6(a), 7, and 12(b) of the Act and rules 45, 53 and 54 under the Act, to its application-declaration previously filed under the Act.

I. Background

By order dated February 26, 1998 (HCAR No. 26833), and by various supplemental orders [2] (collectively, ''Financing Orders''), the Commission authorized Conectiv and its subsidiaries to effect certain financing transactions through September 30, 2003 (''Authorization Period''). These included: (1) The issuance by Conectiv of short-term debt in an aggregate amount not to exceed $2 billion, less any amount of short-term debt issued by Delmarva under its authorization to issue up to $275 million of short-term debt; (2) the issuance by Conectiv of up to $250 million of long-term debt with the reservation of jurisdiction over an additional $750 million of long-term debt; [3] (3) the reservation of jurisdiction over the issuance by Conectiv of common stock which, when combined with any long-term debt issued, does not exceed $500 million in the aggregate; [4] and (4) the issuance by Conectiv of guaranties, letters of credit, expense agreements or other forms of credit support for the obligations of Subsidiaries in an aggregate amount not to exceed $1.5 billion. Conectiv proposes that the financing parameters approved in the Financing Orders, except the proposal to modify the terms for the allowable cost of funds, discussed below, also apply to all the transactions proposed by this Post-Effective Amendment.

II. Description of Proposed Transactions

A. Summary of Requests

In [5] addition to the existing financing authority granted in the Financing Orders, Applicants request the following in this Post-Effective Amendment: (1) Authorization for Conectiv, CEH, any subsidiary of CEH or a financing entity established by CEH (including any entity established to construct and finance generation assets) [6] (collectively, CEH, any subsidiary of CEH and any financing entity established by CEH are referred to as the ''Genco Financing Entities'') to issue external long-term and short-term debt for the purpose of financing existing and prospective generation assets (collectively, ''Genco Financing''), in an amount not to exceed $1.5 billion outstanding at any one time (the ''Genco Financing Limit'') during the Authorization Period; [7] (2) authorization for CEH to guarantee the obligations of its direct and indirect subsidiaries to third parties and for the Genco Financing Entities to issue guaranties to external lenders in support of their financing activities in an aggregate amount not to exceed $1.0 billion (''CEH Guarantee Limit'') during the Authorization Period; (3) authorization for the Genco Financing Entities to enter into financial risk management arrangements (''Hedging Transactions'') during the Authorization Period; (4) modification of the allowable effective cost of money to 500 basis points above comparable term U.S. Treasury securities in the case of long-term debt securities, and to 500 basis points above comparable term London Interbank Offered Rate (''LIBOR'') in the case of short-term debt securities, from the 300 basis points above either U.S. Treasury securities or LIBOR, as approved in the Financing Orders; and (5) authorization for Conectiv to refund up to $150 million of long-term debt scheduled to mature during the Authorization Period.

B. Proposed Increases in Short-Term and Long-Term-Debt Authority

Applicants request authorization to issue external long-term and short-term debt which, when combined with outstanding short-term debt securities issued, will not exceed $1.5 billion during the Authorization Period. Applicants intend that short-term debt will be issued during the construction of mid-merit generation plants [8] and will be replaced by permanent long-term financing at a later date. Types of short-term debt securities may include, but not be limited to, borrowings under one or more revolving credit facilities or bank loans, commercial paper, short-term notes and bid notes. Applicants state that the specific terms of any short-term borrowings will be determined by the Genco Financing Entities at the time of issuance and will comply in all regards with the financing parameters (as adjusted in any order issued in this filing) authorized in the Financing Orders. The maturity of any short-term debt issued will not exceed 364 days or, if the notional maturity is greater than 364 days, the debt security will include put options at appropriate points in time to cause the security to be accounted for as a current liability under United States generally accepted accounting principles.

Applicants state that the types of long-term debt securities issued by the Genco Financing Entities may include, but not be limited to, notes, medium-term notes or debentures under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders. Applicants further state that the Genco Financing Entities may also enter into project finance arrangements which will be secured by property of CEH or a subsidiary of CEH, and would be non-recourse to Conectiv. Any long-term debt security would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking-fund terms and other terms and conditions as the Genco Financing Entities may determine at the time of issuance. Any long-term debt: (1) May be convertible into any other securities; (2) will have maturities ranging from one to 50 years; (3) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof; (4) may be entitled to mandatory or optional sinking-fund provisions; (5) may provide for reset of the coupon pursuant to a remarketing

[2] These orders were issued on August 21, 1998 (HCAR No. 26907); September 28, 1998 (HCAR No. 26921); October 21, 1998 (HCAR No. 26930); November 13, 1998 (HCAR No. 26941); December 14, 1999 (HCAR No. 27111); August 17, 2000 (HCAR No. 27213); June 7, 2001 (HCAR No. 27415) and March 22, 2002 (HCAR No. 27507).

[3] The Commission released this reservation of jurisdiction on March 22, 2002. (HCAR No. 27507).

[4] *Id.*

[5] The Commission has pending before it an application-declaration proposing a merger between Pepco Holdings, Inc. (''Pepco Holding'') and Conectiv. (HCAR No. 27511) (March 26, 2002). Also pending before the Commission is a financing U–1 filed by Pepco Holdings and Conectiv (''Financing U–1'') requesting, among other things, post-merger financing transactions. All authorizations sought in this Post-Effective Amendment will count against any limits aproved by the Commission in the Financing U–1. Conective states that it is requesting the authorizations in this Posr-Effective Amendment in the even that financing or investment opportunities arise prior to the Commission approving the proposed merger.

[6] The Commission previously authorized the Subsidiaries to organize new comporations, partnerships or other entities for the purpose of facilitating financings. Any such entities established for purposes of facilitating Genco Financing willl be wholly owned direct subsidiaries of CEH. (HCAR No. 26833) (February 26, 1998).

[7] Applicants request that the Commission reserve jurisdiction over the issuance of up of $700 million of Genco Financing pending completion of the record.

[8] Conectiv states that, due to certain state restructuring requirements, it intends to retain and develop additional flexible, low-cost mid-merit generation to address competitive opportunities in the Mid-Atlantic region. The mid-merit market consists of electric generating plants that are fuel-flexible, with the ability to start up and shut down quickly based on customer demand, weather conditions and price fluctuations.

arrangement; (6) may be subject to tender to the issuer for repurchase or be subject to the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event; and (7) may be called from existing investors by a third party.

C. Proposed Increase in Conectiv Guaranties

In addition to the guaranty authority granted in the Financing Orders, Conectiv requests authorization to enter into guaranties, obtain letters of credit, enter into support or expense agreements or otherwise provide credit support with respect to the obligations of CEH's direct and indirect subsidiaries and for Genco Financing Entities to issue guaranties to external lenders in support of their financing activities (''CEH Guarantees'') during the Authorization Period in an aggregate amount up to $1.0 billion. The CEH Guarantees will not exceed the CEH Guarantee Limit at any time during the Authorization Period.

D. Proposed Hedging Transactions

Applicants request authorization for the Genco Financing Entities to enter into, perform, purchase and sell financial instruments intended to reduce or manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements. Hedges may also include the issuance of structured notes (*i.e.,* a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or Agency obligations or LIBOR based swap instruments (collectively referred to as ''Hedge Instruments''). Applicants state that the transactions would be for fixed periods and stated notional amounts. Applicants further state that CEH would employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued pursuant to this authorization or an applicable exemption by, in effect, synthetically: (1) Converting variable-rate debt to fixed-rate debt; (2) converting fixed-rate debt to variable-rate debt; and (3) limiting the impact of changes in interest rates resulting from variable-rate debt. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. Transactions will be entered into for a fixed or determinable period. Applicants further state that the Genco Financing Entities will not engage in speculative transactions. The Genco Financing Entities will only enter into agreements with counterparties whose senior debt ratings, as published by a nationally recognized rating agency, are greater than or equal to ''BBB,'' or an equivalent rating (''Approved Counterparties'').

In addition, the Genco Financing Entities request authorization to enter into interest rate Hedging Transactions with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Such Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through: (1) A forward sale of exchange-traded Hedge Instruments (a ''Forward Sale''); (2) the purchase of put options on Hedge Instruments (a ''Put Options Purchase''); (3) a Put Options Purchase in combination with the sale of call options Hedge Instruments (a ''Zero Cost Collar''); (4) transactions involving the purchase or sale, including short sales, of Hedge Instruments; or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. CEH or its subsidiaries will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. Each of the Genco Financing Entities may decide to lock in interest rates and/or limit their exposure to interest rate increases.

E. Modification of Terms for Allowable Cost of Money

Conectiv states that in order to provide flexibility in times of high interest rate volatility, it requests that the financing parameters authorized in the Financing Orders be modified, from the 300 basis points above either U.S. Treasury securities or LIBOR, to state that the effective cost of money on long-term debt borrowings occurring pursuant to the authorizations granted under this Post-Effective Amendment will not exceed the greater of (1) 500 basis points over the comparable-term U.S. Treasury securities or (2) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The effective cost of money on short-term debt borrowings issued under authorizations granted in this Post-Effective Amendment will not exceed the greater of (1) 500 basis points over the comparable-term LIBOR or (2) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

F. Refunding of Existing Long-Term Debt

In addition, pursuant to the Financing Orders, Conectiv issued $250 million of long-term debt securities. Prior to the expiration of the Authorization Period, $150 million of these long-term debt securities are scheduled to mature by their terms. Conectiv requests authorization to issue up to $150 million of long-term debt securities for the purpose of refunding maturing long-term debt. Applicants state that specific terms of any issuances, such as maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the long-term securities of a particular series, will be determined by Conectiv at the time of issuance and will comply in all regards with the financing parameters authorized in the Financing Orders (as adjusted in any order issued in this filing).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8007 Filed 4–2–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934, Release No. 45668; File No. S7–06–02]

Notice of Intent to Prepare Environmental Assessment

March 28, 2002.

The U.S. Securities and Exchange Commission (Commission) intends to prepare an environmental assessment of its planned lease of approximately 650,000 square feet of office space at the Station Place facility at 100 F Street, NE., Washington, DC, currently being developed by Louis Dreyfus Properties, LLC. This space will consolidate and

replace the Commission's current office space located in its existing headquarters building at 450 5th Street, NW., and in an overflow facility at 901 E Street, NW., in Washington, DC. The Commission plans to lease this replacement space in Station Place because its lease is expiring at its current headquarters at 450 5th Street, and because its space requirements exceed its current capacity at both 450 5th Street and 901 E Street. The environmental assessment will be prepared in accordance with Section 102(2) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Council on Environmental Quality implementing regulations (40 CFR parts 1500–1508), and Section 106 of the National Historic Preservation Act of 1966, as amended. The environmental assessment shall also determine whether the Commission's decision to lease office space in Station Place will significantly affect the quality of the human environment, and hence require an environmental impact statement (EIS), or a finding of no significant impact (FONSI) under NEPA.

Interested individuals and groups and other members of the public are invited to identify environmental concerns that should be addressed during preparation of the environmental assessment. Interested Federal, regional and local agencies have also been solicited for comment. Public comments received on the potential impacts of the proposed action will be considered for the environmental assessment. To be most helpful, comments would clearly describe specific issues or topics that the community believes the environmental assessment should address. All written comments regarding the proposed project must be postmarked no later than April 17, 2002 and should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All comment letters should refer to File Number S7–06–02. Comment letters will be available for inspection and copying in the Public Reference Room at 450 Fifth Street, NW., Washington, DC.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8043 Filed 4–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 15258, March 29, 2002].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, April 2, 2002 at 10:00 a.m.

CHANGE IN THE MEETING: Additional Item.

The following item has been added to the closed meeting scheduled for Tuesday, April 2, 2002: consideration of amicus participation.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: March 29, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8113 Filed 3–29–02; 4:07 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45660; File No. SR–Amex–2002–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Make Permanent a Pilot Program Under Amex Rule 126(g), Commentary .01 Relating to Size Precedence

March 27, 2002.

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 22, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent the existing pilot program under Amex Rule 126(g), Commentary .01 regarding a 5,000 share minimum block cross size to establish size precedence. The text of the proposed rule change is below. There are no changes proposed to the existing rule, other than to make permanent the pilot program.

Rule 126 Precedence of Bids and Offers

* * *

(g) No change.

Commentary .01

Orders to cross 5,000, shares or more, where one or both sides of such cross is for the account of a member or member organization, will be permitted to establish precedence based on size so long as the orders are represented at the post when a sale removing all bids and offers from the Floor takes place. Once the precedence of such orders of 5,000 shares or more has been established, the broker handling the cross must then bid and offer the security in accordance with Rule 152.

* * * * *

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 Exchange 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 Exchange 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

On March 28, 2001, the Commission approved on a one-year pilot basis the Exchange's proposal to reduce from 25,000 to 5,000 shares the minimum size block cross that will be permitted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

to establish size precedence.[3] In SR–Amex–2002–22, the Exchange proposes to extend the pilot program for an additional six months, through September 27, 2002.

In the instant filing, the Amex proposes that the pilot program be approved on a permanent basis. The block cross procedures under Amex Rule 126(g) have facilitated executions of large size orders on the Amex as one transaction at a single price, without such orders losing shares to other orders in the trading crowd or on the specialist's book due to Exchange parity rules. In addition, by facilitating the execution of large blocks on the Amex, the rule reduces the incentive of member firms to route such orders to regional exchanges or the third market in order to avoid losing an excessive number of shares to other orders under existing Amex parity rules. With start-up of decimal quoting in equities, with a minimum price variation of one cent, it has become less expensive for members to break up proposed block crosses on the Amex Floor, which may result in such crosses being routed to markets in which size precedence is not taken into account in the manner required by Amex rules.

The Exchange believes the reduction in size parameters continues to have the potential to enhance primary market liquidity and that permanent approval of Amex Rule 126(g) Commentary .01 is appropriate. The Exchange believes that the size reduction to 5,000 shares from 25,000 shares in establishing precedence has the potential to alleviate some of the competitive burden associated with current Exchange priority and precedence rules that are stricter than those applied in other markets with respect to crosses in block size. Under the previous 25,000 share size parameter, such crosses would have been more difficult to effect without being broken up, particularly in view of the start of decimal pricing. The revised size parameter may facilitate greater liquidity in the primary market by reducing routing of block cross transactions to other markets. The Exchange believes this fosters improved price discovery and execution of investor orders at more favorable prices. The Exchange notes that the broker handling the cross is required to bid and offer the security in accordance with Amex Rule 152, and, therefore, that it is still possible for all or a portion of at least one side of a proposed block cross to be effected at a price better than the proposed cross price. In addition, confining the Exchange's size precedence threshold to 5,000 shares will continue to limit the effects of the rule primarily to active, liquid issues.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–23 and should be submitted April 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8009 Filed 4–2–02; 8:45 am]

BILLING CODE 8010–01–P

[3] Securities Exchange Act Release No. 44122 (March 28, 2001), 66 FR 18125 (April 5, 2001)(SR–Amex–2001–01).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] CFR 200.30–(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45658; File No. SR–Amex–2002–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend a Pilot Program Relating to Amex Rule 126 (Size Precedence)

March 27, 2002.

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 22, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

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 Amex proposes a six-month extension of the existing pilot program under Amex Rule 126(g), Commentary .01 regarding a 5,000 share minimum block cross size to establish size precedence. The current pilot is scheduled to expire on March 28, 2002. The proposed rule change would extend the pilot through September 27, 2002. No other changes to the pilot are proposed at this time. The text of the proposed rule change is available at the Amex and at the Commission.

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 Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 28, 2001, the Commission approved on a one-year pilot basis the Exchange proposal to reduce from 25,000 to 5,000 shares the minimum size block cross that will be permitted to establish size precedence.[6] The block cross procedures under Amex Rule 126(g) have facilitated executions of large size orders on the Amex as one transaction at a single price, without such orders losing shares to other orders in the trading crowd or on the specialist's book due to Exchange parity rules. In addition, by facilitating the execution of large blocks on the Amex, the pilot reduces the incentive of member firms to route such orders to regional exchanges or the third market in order to avoid losing an excessive number of shares to other orders under existing Amex parity rules. With start-up of decimal quoting in equities, with a minimum price variation of one cent, it has become less expensive for members to break up proposed block crosses on the Amex Floor, which may result in such crosses being routed to markets in which size precedence is not taken into account in the manner required by Amex rules.

The Exchange believes the reduction in size parameters continues to have the potential to enhance primary market liquidity and that it is appropriate to extend the pilot for an additional six months to permit the Commission to consider the Exchange's separate filing under Rule 19b–4 requesting permanent approval of Amex Rule 126(g), Commentary .01 (SR–Amex–2001–23). The Exchange believes that the size reduction to 5,000 shares from 25,000 shares in establishing precedence has the potential to alleviate some of the competitive burden associated with current Exchange priority and precedence rules that are stricter than those applied in other markets with respect to crosses in block size. Under the previous 25,000 share size parameter, such crosses would have been more difficult to effect without being broken up, particularly in view of the start of decimal pricing. The revised size parameter may facilitate greater liquidity in the primary market by reducing routing of block cross transactions to other markets. The Exchange believes this fosters improved price discovery and execution of investor orders at more favorable prices. The Exchange notes that the broker handling the cross is required to bid and offer the security in accordance with Rule 152, and, therefore, that it is still possible for all or a portion of at least one side of a proposed block cross to be effected at a price better than the proposed cross price. In addition, confining the Exchange's size precedence threshold to 5,000 shares will continue to limit the effects of the rule primarily to active, liquid issues.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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.

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] 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.

The Amex has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission finds good cause to waive the 5-day pre-filing notice requirement and the 30-day operative delay, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted for an additional six months, while the Amex seeks comment on a separate proposal to make permanent the pilot program. For these reasons, the Commission finds good cause to waive both the 5-day pre-filing requirement and the 30-day operative waiting period.[11]

[6] Securities Exchange Act Release No. 44122 (March 28, 2001), 66 FR 18125 (April 5, 2001)(SR–Amex–2001–01).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–22 and should be submitted by April 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8010 Filed 4–2–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45652; File No. SR–MSRB–2002–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Professional Qualifications of Municipal Fund Securities Limited Principals

March 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') and Rule 19b–4 thereunder,[1] notice is hereby given that on March 21, 2002, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MSRB–2002–03) (''proposed rule change'') described in Items, I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB has filed with the Commission a proposed rule change consisting of an amendment to Rule G–3, on professional qualifications. Additions are italicized; deletions are bracketed. The proposed rule change is as follows:

Rule G–3—Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements

(a) No change.

(b) Municipal Securities Principal*; Municipal Fund Securities Limited Principal.*

(i) No change.

(ii) Qualification Requirements.

(A) No change.

(B) Any person seeking to become qualified as a municipal securities principal in accordance with subparagraph (b)(ii)(A) of this rule[,] must, prior to being qualified as a municipal securities principal:

(1) Have been duly qualified as either a municipal securities representative or a general securities representative; *provided, however, that any person who qualifies as a municipal securities representative solely by reason of subparagraph (a)(ii)(C) shall not be qualified to take the Municipal Securities Principal Qualification Examination on or after October 1, 2002;* or

(2) No change.

(C)–(D) No change.

(iii) No change.

(iv) Municipal Fund Securities Limited Principal.

(A) Definition. The term ''municipal fund securities limited principal'' means a natural person (other than a municipal securities principal or municipal securities sales principal), associated with a broker, dealer or municipal securities dealer that has filed with the Board in compliance with rule A–12, who is directly engaged in the functions of a municipal securities principal as set forth in paragraph (b)(i), but solely as such activities relate to transactions in municipal fund securities.

(B) Qualification Requirements.

(1) Every municipal fund securities limited principal shall take and pass the Municipal Fund Securities Limited Principal Qualification Examination prior to being qualified as a municipal fund securities limited principal. The passing grade shall be determined by the Board.

(2) Any person seeking to become qualified as a municipal fund securities limited principal in accordance with clause (b)(iv)(B)(1) of this rule must, as a condition to being qualified as a municipal fund securities limited principal:

(a) have been duly qualified as either a general securities principal or an investment company/variable contracts limited principal; or

(b) have taken and passed either the General Securities Principal Qualification Examination or the Investment Company and Annuity Principal Qualification Examination.

(3) Any person who ceases to act as a municipal fund securities limited principal for two or more years at any time after having qualified as such shall meet the requirements of clauses (b)(iv)(B)(1) and (2) prior to being qualified as a municipal fund securities limited principal.

(4) For the first 90 days after becoming a municipal fund securities limited principal, the requirements of clauses (b)(iv)(B)(1) and (2) shall not apply to any person who is qualified as a general securities representative, investment company/variable contracts limited representative, general securities principal or investment company/variable contracts limited principal, provided, however, that such person shall meet the requirements of clauses (b)(iv)(B)(1) and (2) within that period.

(C) Actions as Municipal Securities Principal. Any municipal fund securities limited principal may undertake all actions required or permitted under any Board rule to be taken by a municipal securities principal, but solely with respect to activities related to municipal fund securities.

(D) Numerical Requirements. Any broker, dealer or municipal securities dealer whose municipal securities activities are limited exclusively to municipal fund securities may count any municipal fund securities limited principal toward the numerical requirement for municipal securities principal set forth in paragraph (b)(iii).

(E) [(iv)] Temporary Provisions for Municipal Fund Securities Limited Principal. *Notwithstanding any other provision of this rule, until December 31, 2002,* [Until July 31, 2002,] the following provisions shall apply to any broker, dealer or municipal securities dealer whose municipal securities activities are limited exclusively to municipal fund securities:

[(A)] *(1)* [notwithstanding the provisions of paragraph (b)(ii),] the broker, dealer or municipal securities dealer may designate any person who

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[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

has taken and passed the General Securities Principal Qualification Examination or Investment Company and Annuity Principal Qualification Examination as a municipal fund securities limited principal.

[(B)] *(2)* any municipal fund securities limited principal designated as provided in *clause* [subparagraph] (b)(iv)[(A)] *(E)(1)* may undertake all actions required or permitted under any Board rule to be taken by a municipal securities principal *to the same extent as set forth in subparagraph (b)(iv)(C).*

[(C)] *(3)* the broker, dealer or municipal securities dealer may count [one] any municipal fund securities limited principal *designated as provided in clause (b)(iv)(E)(1)* toward the numerical requirement for municipal securities principal *to the same extent as set forth in subparagraph (b)(iv)(D).* [set forth in paragraph (b)(iii); provided that, if such broker, dealer or municipal securities dealer is only required to have one municipal securities principal, such broker, dealer, or municipal securities dealer may count one municipal fund securities limited principal toward the numerical requirement only if the broker, dealer or municipal securities dealer is described in subparagraph (b)(iii)(B).]

(4) On and after January 1, 2003, all municipal fund securities limited principals (including any municipal fund securities limited principals designated as provided in clause (b)(iv)(E)(1)) must be qualified as provided in subparagraph (b)(iv)(B).

(c)–(f) No change.

(g) Waiver of Qualification Requirements.

(i) The requirements of paragraphs (a)(ii), (a)(iii), (b)(ii), *(b)(iv)(B)* and (c)(ii) may be waived in extraordinary cases for any associated person of a broker, dealer or municipal securities dealer who demonstrates extensive experience in a field closely related to the municipal securities activities of such broker, dealer or municipal securities dealer. Such waiver may be granted by

(A)–(B) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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

(a) Rule G–3, on professional qualifications, requires that a broker, dealer or municipal securities dealer (''dealer'') have at least one municipal securities principal (and in some cases two municipal securities principals), even if the dealer's only municipal securities transactions are sales of municipal fund securities. [2] In order to provide small dealers seeking to enter the market for municipal fund securities relief from the requirement to immediately obtain a municipal securities principal, the MSRB amended Rule G–3 in July 2001 to provide a temporary alternative method for qualification of principals in connection with municipal fund securities.[3] Under this temporary provision, until July 31, 2002, if a dealer's municipal securities activities are limited exclusively to municipal fund securities and the dealer has fewer than 11 associated persons engaged in such activities, it may fulfill its obligation to have a municipal securities principal by designating a general securities or investment company/variable contracts limited principal to act as a limited principal.[4] During this period, any designated limited principal has all of the powers and responsibilities of a municipal securities principal under MSRB rules with respect to transactions in municipal fund securities. Under the current transition provision, on and after August 1, 2002, dealers effecting transactions in municipal fund securities are required to comply with the same municipal securities principal requirements applicable to all other dealers effecting transactions in municipal securities.

The MSRB understands that many dealers that wish to participate in the market for municipal fund securities do not currently, and do not plan to, engage in any municipal securities activities other than with respect to municipal fund securities. Since these dealers will not participate in the market for municipal debt securities and the features of municipal fund securities differ significantly from those of debt securities, the MSRB believes that no investor protection purpose is served by requiring principals responsible for supervision of such firms' municipal fund securities activities to demonstrate their understanding of the application of MSRB rules other than with respect to municipal fund securities.

Thus, the MSRB is proposing the creation of a new category of principals to serve permanently as municipal fund securities limited principals. Qualification as a municipal fund securities limited principal would be by an examination consisting of questions on the broad range of MSRB-specific topics that are relevant to municipal fund securities activities. [5] The examination would require that the individual taking it have previously or concurrently taken and passed the general securities principal qualification examination (Series 24) or investment company and annuity principal qualification examination (Series 26) administered by the National Association of Securities Dealers, Inc. (''NASD''). The qualification examination for municipal fund securities limited principals is scheduled to become available on October 1, 2002. MSRB staff is currently in the process of developing the qualification examination and will file the study outline and specifications with the Commission under separate cover.

An individual qualified as a municipal fund securities limited principal would be permitted to supervise only the municipal fund securities activities of the dealer and would have no authority to supervise the activities of the dealer with respect

[2] A municipal fund security is defined in MSRB's Rule D–12 as a municipal security issued by an issuer that, but for Section 2(b) of the Investment Company Act of 1940 (the ''Investment Company Act''), would constitute an investment company within the meaning of the Investment Company Act. Section 2(b) exempts states and political subdivisions, and agencies, authorities, and instrumentalities thereof, from the Investment Company Act.

[3] *See* SR–MSRB 2001–05; Exchange Act Release No. 44584 (July 23, 2001); 66 FR 39541 (July 31, 2001).

[4] Dealers that have 11 or more associated persons engaged in municipal fund securities activities may also designate a general securities or investment company/variable contracts limited principal to act as a limited principal. If a dealer is required to have two municipal securities principals under Rule G–3(b)(iii), then it may count one such limited principal toward this numerial requirement but must still have one municipal securities principal qualified other than by reason of being a general securities or investment company/variable contracts limited principal. If any dealer having 11 or more associated persons engaged in municipal fund securities activities is permitted to have only one municipal securities principal by virtue of Rule G–3(b)(iii)(A), the numerical requirements may not be satisfied by designation of a limited principal.

[5] Since the qualification examination would be tailored specifically to the application of MSRB rules to municipal fund securities, rather than to all types of municipal securities, the MSRB expects that this examination would not be as lengthy as the existing qualification examination for municipal securities principals (Series 53).

to any other type of municipal securities. However, an individual qualified as a municipal securities principal (Series 53) would continue to be qualified to supervise all municipal securities activities of the dealer, including activities relating to municipal fund securities. Thus, an individual wishing to supervise municipal fund securities activities could qualify to do so either (i) by becoming a municipal securities principal through the municipal securities principal qualification examination (Series 53) or (ii) by becoming a municipal fund securities limited principal through this new qualification examination if the individual is already or concurrently becomes a general securities or investment company/variable contracts limited principal.

If a dealer's municipal securities activities are limited to municipal fund securities, the proposed rule change also would count all municipal fund securities limited principals toward the numerical requirement for principals regardless of the number of associated persons engaging in such activities. Thus, any dealer that does not engage in any municipal securities activities other than with respect to municipal fund securities could fully discharge its obligation with respect to municipal securities principals with individuals qualified as municipal fund securities limited principals.

Further, existing rule language indirectly permits investment company/variable contracts limited representatives (Series 6) to take the Series 53 examination to become qualified as municipal securities principals.[6] Although this was appropriate when there was no other provision under Rule G–3 for qualifying a principal to supervise municipal fund securities activities, the proposed rule change discontinues this method of qualification on October 1, 2002 when the new municipal fund securities limited principal qualification examination becomes available.[7] An investment company/variable contracts limited representative would be able to qualify as a municipal fund securities limited principal by taking both the Series 26 examination and the new municipal fund securities limited principal examination.

In addition, the proposed rule change extends the existing temporary provision permitting general securities principals and investment company/variable contracts limited principals to supervise municipal fund securities activities from July 31, 2002 to December 31, 2002 in order to provide dealers with an adequate opportunity to prepare potential candidates for the new examination. During this extended transition period, the numerical requirement with respect to principals would be simplified so that all dealers, not just those with fewer than 11 associated persons engaged in municipal fund securities activities, could fully meet their principal requirements with principals acting in the temporary capacity permitted under the transition provisions. The proposed rule change makes clear that, beginning on January 1, 2003, all municipal fund securities limited principals (including general securities principals and investment company/variable contracts limited principals supervising municipal fund securities activities under the temporary transition period who wish to continue such supervisory activities after December 31, 2002) must be qualified by taking the new qualification examination.

Finally, the proposed rule change would give the NASD or any other appropriate regulatory agency the power to waive qualification requirements with respect to municipal fund securities limited principals, as with all other qualification categories. As provided in Rule G–3(g)(i), such waivers are to be granted solely in extraordinary cases.

(b) The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Exchange Act, which provides that it is the MSRB's responsibility to propose and adopt rules which:

> provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless * * * such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

Section 15B(b)(2)(A) of the Exchange Act also provides that the MSRB may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the MSRB.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On December 19, 2001, the MSRB published for comment a draft amendment designed to establish a permanent category of municipal fund securities limited principals and to establish permanent professional qualification requirements for dealers that limit their municipal securities activities to municipal fund securities. A municipal fund securities limited principal would have the same authority as a municipal securities principal under MSRB rules, but only with respect to municipal fund securities activities. A general securities principal or an investment company/variable contracts limited principal could qualify as a municipal fund securities limited principal by passing a new qualification examination relating specifically to municipal fund securities.[8] The draft amendment would allow any dealer that limits its municipal securities activities to municipal fund securities, regardless of size, to comply with Rule G–3's numerical requirement for principals solely with municipal fund securities limited principals that have passed the new exam. In addition, the draft amendment would make explicit an existing provision that implicitly allows an investment company/variable contracts limited representative to take the Series 53 exam without first taking the municipal securities representative qualification examination (Series 52).

The MSRB received comments from seven commentators.[9] After reviewing

[6] Rule G–3 permits an investment company/variable contracts representative to act as a municipal securities representative solely with respect to municipal fund securities.

[7] Qualification of an investment company/variable contracts limited representative as a full municipal securities principal allows that individual to supervise any securities activities, including debt securities. The MSRB is concerned that an individual who is solely qualified as an investment company/variable contracts limited representative prior to becoming a municipal securities principal may not have an adequate understanding of municipal debt securities to provide effective supervision under all circumstances.

[8] A general securities representative (Series 7) or investment company/variable contracts limited representative (Series 6) also could qualify as a municipal fund securities limited principal by simultaneously passing the new qualification examination and either the general securities principal or investment company principal examination.

[9] Letter from Erich Sokolower, Repex & Co., Inc. (''Repex''), to the MSRB, dated January 11, 2002;

these comments, the MSRB approved the draft amendment, with certain modifications, for filing with the Commission.[10] The comments and the MSRB's responses are discussed below.

AG Edwards, ICI and TBMA support the draft amendment. ICI commends the MSRB for ''continuing to tailor its regulatory requirements applicable to municipal fund securities in a manner that recognizes the differences between such securities and traditional municipal securities.'' TBMA states that the draft amendment ''appropriately tailors registration requirements to the nature of the business conducted and provides firms with needed flexibility in adapting their compliance programs as their business evolves.'' AG Edwards states, ''the new limited principal category is an appropriate vehicle whereby persons whose activities are limited to the supervision of municipal fund securities activities may be qualified to supervise those activities.''

However, both AG Edwards and TBMA are concerned that the draft amendment might suggest that municipal securities sales principals (Series 8 or Series 9/10) may not supervise sales activities with respect to municipal fund securities and request clarification to the contrary. The MSRB wishes to make clear that it does not intend to limit the power of municipal securities sales principals to supervise sales activities with respect to municipal fund securities by creating the new municipal fund securities limited principal classification. However, municipal securities sales principals may undertake only certain limited types of supervisory functions relating to sales activities in satisfaction of MSRB rules. Many supervisory responsibilities under MSRB rules must be undertaken by municipal securities principals or, in the case of municipal fund securities activities, by municipal fund securities limited principals.

Forest, MetLife, Repex and VBC oppose the draft amendment. MetLife argues that the differences between municipal fund securities and registered investment company securities that justify the need for regulation in this market should be addressed by issuer regulation rather than dealer regulation. MetLife states that ''guiding issuers toward thorough documentation of unique aspects of their municipal fund offerings would help to better educate both the selling agents and the purchasers as to differences among plans—a result that we believe would ultimately be more effective than the addition of a back-office limited principal.'' MetLife further states, ''these issues are better addressed by the selling agent or by field office series 26 or 24 registered principals who are closer to the point of sale, with more applicable knowledge to lend to the review process.'' MetLife recommends that ''the MSRB not create a limited municipal securities principal category to address issues that . . . would be better resolved at the issuer level.''

The MSRB understands MetLife's concern that some issues relating to municipal fund securities might best be resolved through issuer regulation. However, the MSRB has no authority with respect to issuers; rather, the MSRB is charged with protecting investors through dealer regulation.[11] Since MSRB rules do apply to dealers' municipal fund securities activities, the MSRB believes that the ultimate supervision of such activities must be conducted by someone who knows these rules. Contrary to MetLife's characterization of the municipal fund securities limited principal as a ''back-office limited principal,'' the municipal fund securities limited principal would provide dealers with a second (and in many cases easier) means of fulfilling the appropriate top-level supervisory requirement established under MSRB rules which otherwise would be met by a municipal securities principal. With regard to personnel at the point of sale, dealers are permitted under Rule G–3 to use investment company/variable contracts limited representatives to sell municipal fund securities and sales principals to directly supervise such sales activities.

Forest, Repex and VBC believe that the draft amendment would increase their regulatory burden. VBC mistakenly believes that its general securities principals are currently qualified to supervise municipal securities activities and should also be qualified to supervise municipal fund securities activities. VBC states that the ''new proposal would require more testing and sure to follow CE credits. This is unjust, too time consuming and unnecessary.'' Repex views the qualification provisions as an ''absolutely new burden on industry & reps: entirely unnecessary'' and believes that ''more of these rules will force more of the smaller firms to leave the business.'' Forest argues that dealers conducting business in municipal fund securities should not be required to become members of the MSRB, noting that dealers that are ''not currently approved to conduct municipal securities business, would have to enter into a Membership Continuance Request under NASDR Membership Rule 1017. This is an arduous, time consuming and expensive process that would be especially felt by smaller Broker/Dealers.'' Forest also argues that dealers selling securities similar to municipal fund securities, such as mutual fund IRA accounts and municipal bond mutual funds, are not required to be registered with the MSRB.

The MSRB believes that the proposed rule change would in fact decrease dealers' regulatory burden. Without the amendment, dealers would be required to use fully qualified municipal securities principals to meet their Rule G–3 principal requirement. As stated above, the creation of the municipal fund securities limited principal category provides dealers with an alternative means of meeting this requirement. For dealers that do not otherwise engage in municipal securities activities, allowing their general securities principals or investment company principals to take a shorter, more focused examination than the Series 53 exam in order to qualify as a municipal fund securities principal should be less burdensome. The further reduction in regulatory burden that these commentators most likely desire—*i.e.,* no MSRB qualification requirements—is inappropriate since activities regulated

letter from Tamara K. Reed, Associate Counsel, Investment Company Institute (''ICI''), to Ernesto A. Lanza, Senior Associate General Counsel of the MSRB, dated January 15, 2002; letter from Gabriel Borthwick, Compliance Consultant and Molly Diggins, Attorney, Metropolitan Life Insurance Company (''MetLife''), to Ernesto A. Lanza, dated January 18, 2002; letter from Vincent S. Comperatore, Principal, VBC Securities, LLC (''VBC''), to Ernesto Lanza, dated January 23, 2002; letter from E. Allen Cole, VP—Compliance Counsel, A.G. Edwards & Sons, Inc. (''AG Edwards''), to Ernesto A. Laza and Jill C. Finder, Assistant General Counsel of the MSRB, dated January 24, 2002; letter from Warren A. Forest, President, Forest Brokerage Advisers, Inc. (''Forest''), to Ernie Lanza, dated January 25, 2002; and letter from John M. Ramsey, The Bond Market Association (''TBMA''), To Ernesto A. Lanza, dated January 28, 2002.

[10] After reviewing the comments and further considering existing professional qualification provisions under Rule G–3, the MSRB modified the draft amendment by (i) establishing a time frame for implementing the new municipal fund securities limited principal qualification examination, (ii) extending the temporary transition period to December 31, 2002 and simplifying the numerical requirement to permit dealers to make appropriate preparations for qualification under the new category, (iii) phasing out the ability of investment company/variable contracts limited representatives to take the Series 53 examination, and (iv) allowing waivers of the qualification requirements for this category in extraordinary cases.

[11] Because issuers of municipal fund securities are state or local governmental entities, the Commission has restricted regulatory authority over such issuers under the Securities Act of 1933, the Exchange Act and the Investment Company Act. The NASD's dealer rules also do not apply to municipal fund securities because they are issued by state or local governmental entities.

by MSRB rules require ultimate supervision by someone who knows these rules.

The fact that MSRB rules apply at all results, of course, from the Exchange Act and not because the MSRB has sought to regulate municipal fund securities. Dealers selling mutual fund IRA accounts and municipal bond mutual funds are not required to comply with MSRB rules because these securities are not municipal securities and are instead subject to regulation under other regulatory schemes. In contrast, municipal fund securities are municipal securities and therefore are subject to MSRB rules and exempt from most other provisions of federal securities laws (such as the Securities Act and the Investment Company Act).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2002–03 and should be submitted by April 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8041 Filed 4–2–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45663; File No. SR–NASD–2002–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Replacement of an Arbitrator Upon Disqualification or Other Disability of an Arbitrator

March 27, 2002.

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 13, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), 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 NASD Dispute Resolution. NASD Dispute Resolution amended its proposal on March 22, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend the procedure followed upon the disqualification or other disability of an arbitrator on a three-person arbitration panel under Rule 10313 of the Code of Arbitration Procedure (''Code''). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

CODE OF ARBITRATION PROCEDURE

* * * * *

10313. Disqualification or Other Disability of Arbitrators

(a) In the event that any arbitrator, after the commencement of the earlier of [(a)] *(1)* the first pre-hearing conference or [(b)] *(2)* the first hearing but prior to the rendition of the award, should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, [the remaining arbitrator(s) shall continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within 5 days of notification of the vacancy on the panel. Upon objection,] the Director shall appoint a replacement arbitrator to fill the vacancy and the hearing shall continue. *In the alternative, if all parties agree to proceed with any remaining arbitrator(s), they shall inform the Director in writing within 5 business days of notification of the vacancy, and the remaining arbitrator(s) shall continue with the hearing and determination of the controversy.*

(b) The Director shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past 10 years, as well as information disclosed pursuant to Rule 10312. A party may make further inquiry of the Director concerning the replacement arbitrator's background. If the arbitration proceeding is subject to Rule 10308, the party may exercise his or her right to challenge the replacement arbitrator within the time remaining prior to the next scheduled hearing session by notifying the Director in writing of the name of the arbitrator challenged and the basis for such challenge. If the arbitration proceeding is not subject to Rule 10308, within the time remaining prior to the next scheduled hearing session or the 10 day period provided under Rule 10311, whichever is shorter, a party may exercise the party's right to challenge the replacement arbitrator as provided in Rule 10311.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution included statements concerning the purpose of

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Barbara Z. Sweeney, Senior Vice President, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated March 22, 2002 (''Amendment No. 1''). In Amendment No. 1, NASD Dispute Resolution replaced the original rule filing in its entirety and changed the filing to become immediately effective upon filing pursuant to section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b–4. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6).

and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Dispute Resolution 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

NASD Dispute Resolution proposes to amend the procedure followed upon the disqualification or other disability of an arbitrator on a three-person arbitration panel under Rule 10313 of the Code. Currently, Rule 10313 of the Code provides that, when an arbitrator becomes disqualified, resigns, dies, refuses or otherwise becomes unable to perform as an arbitrator, the arbitration proceeds with the remaining arbitrators unless a party objects within five days of notification of the vacancy.[4] If there is an objection, the arbitrator is replaced.

Under the proposed rule change, NASD Dispute Resolution will send the name of a replacement arbitrator along with notification of the vacancy. After having this information, parties then will have five business days in which to decide whether to continue with only the remaining two arbitrators or accept a replacement.

NASD Dispute Resolution staff has indicated that, in their experience, parties almost never want to proceed with only the two remaining arbitrators. Therefore, NASD Dispute Resolution believes that providing a replacement arbitrator immediately, without waiting for an objection, would save the parties time and reduce the administrative costs of producing a letter and waiting for responses when, in most cases, there will be an objection to continuing with only two arbitrators.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change, as amended, is consistent with section 15A(b)(6) of the Act[5] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that the proposed rule change will protect investors and the public interest by providing parties with an immediate replacement arbitrator, thereby reducing delays in the arbitration process and reducing the forum's administrative costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change, as amended, 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, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, 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, and NASD Dispute Resolution provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,[6] it has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, as amended, 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–38 and should be submitted by April 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8008 Filed 4–2–02; 8:45 am]

BILLING CODE 8010–01–P

[4] In very unusual circumstances, two arbitrators may have been disqualified or otherwise unable to serve at the same time, and the parties would have to decide whether to proceed with the one remaining arbitrator or seek two replacements.

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] On March 13, 2002, NASD Dispute Resolution submitted the original rule filing under section 19(b)(2) of Act. 15 U.S.C. 78s(b)(2). In Amendment No. 1, NASD Dispute Resolution requested that the proposed rule change become effective upon filing pursuant to section 19(b)(3)(A) of Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6). The Commission has agreed to accept the original rule filing as satisfying the 5-day pre-filing requirement pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45667; File No. SR–Phlx–2002–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to an Extension of the Interim Intermarket Linkage Program

March 28, 2002.

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 25, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been prepared by the Phlx. Phlx submitted Amendment No. 1 to the proposed rule change on March 27, 2002.[3] The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] 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

The Phlx proposes to extend until January 31, 2003 the pilot program authorizing implementation of ''interim linkages'' with the other options exchanges.

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 Phlx 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to request an extension of an intermarket options linkage on an ''interim'' basis. Currently, the Exchange is operating this interim linkage as a pilot program pursuant to Phlx Rule 1081.[6] The interim linkage utilizes existing market infrastructure to facilitate the sending and receiving of order flow between Phlx Specialists, and may later include Registered Options Traders and their counterparts on the other options exchanges as an interim step towards development of a ''permanent'' linkage. The Exchange now proposes that the interim linkage would remain in effect on a pilot basis until January 31, 2003.

By way of background, the Commission has approved a linkage plan that now includes all five options exchanges.[7] The options exchanges continue to work towards implementation of this linkage, which include contracting with a third party to build a linkage infrastructure. In the meantime, the options exchanges have implemented this interim linkage.

The key component of the interim linkage is the participating exchanges opening their automated customer execution systems, on a limited basis, to market maker orders. Specifically, market makers, such as Phlx Specialists, and later Registered Options Traders, are able to designate certain orders as ''customer'' orders, and thus receive execution under the automatic execution parameters of participating exchanges pursuant to the interim linkage.[8]

The interim linkage authorizes the Phlx to implement bilateral or multilateral interim arrangements with the other exchanges to provide for equal access between market makers on our respective exchanges. Currently the interim linkage pilot program allows Phlx Specialists and their equivalents on the other exchanges, when they are holding customer orders, to send orders reflecting the customer orders to the other market for execution when the other market has a better quote. Such orders are limited in size to the lesser of the size of the two markets' ''firm'' quotes for customer orders. The Exchange expects that the interim linkage may expand to include limited access for pure principal orders of no more than 10 contracts.

All interim linkage orders must be ''immediate or cancel'' (that is, they cannot be placed on an exchange's limit order book), and a market maker can send a linkage order only when the other (receiving) market is displaying the best national bid or offer and the sending market is displaying an inferior price. This allows a Phlx Specialist to access the better price for its customer. In addition, if the interim linkage includes principal orders, it would allow market makers to attempt to ''clear'' another market displaying a superior quote.

Phlx Specialists' participation in the interim linkage is voluntary. Only when a Phlx Specialist and its equivalent on another exchange believe that this form of mutual access is advantageous will the exchanges employ the interim linkage procedures. The Exchange believes that the interim linkage benefits investors and provides useful experience to help the exchanges in implementing the full linkage. For these reasons, the Exchange requests an extension of the pilot program until January 31, 2003.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because it should prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30

[3] In Amendment No. 1, the Exchange made a technical correction to its rule text. *See* letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 26, 2002 (''Amendment No. 1'').

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). The Phlx requested that the Commission waive the rule's requirements of a 30-day operative delay and a five-day pre-filing notice.

[6] *See* Securities Exchange Act Release Nos. 44311 (May 16, 2001), 66 FR 28768 (May 24, 2001) (immediate effectiveness of interim linkage as a pilot program until January 31, 2002); and 45288 (January 16, 2002), 67 FR 3525 (January 24, 2002) (approval of an extension of interim linkage pilot until April 1, 2002).

[7] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000). The Exchange intends and believes that the other options exchange intend to file an amendment to the ''permanent'' linkage plan setting, among other things, the final implementation date for ''permanent'' linkage to be no later than April 30, 2003.

[8] As with other orders that are executed under the automatic execution parameters of the Exchange, when a limit order constitutes the Exchange's best bid or offer, the specialist executes the incoming order against that order.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

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; provided that the self-regulatory organization has provided the Commission with 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 days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designated if such action is consistent with the protection of investors and the public interest. The Phlx has requested, in order to allow the Exchange to continue to participate in the interim options linkage, that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b–4(f)(6)(iii).[14] The Exchange believes that this request for an extension of Phlx Rule 1081 is substantially similar to the proposed rule changes filed by the other options exchanges and approved by the Commission.[15] Further, this extension should allow the Exchange to participate in the interim linkage until the ''permanent'' linkage is closer to being operational. The Commission finds that the proposed rule change is consistent with the protection of investors and the public interest and, therefore, has determined to make the proposed rule change operative as of the date of this notice.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally requires that a self-regulatory organization give 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. However, Rule 19b–4(6)(iii)[18] permits the Commission to designate a shorter time. The Phlx seeks to have the five-business-day pre-filing requirement waived with respect to the proposed rule change. The Commission has determined to waive the five-business-day pre-filing requirement.

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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference, Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–20 and should be submitted by April 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8042 Filed 4–2–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] *Id.*

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* Securities Exchange Act Release Nos. 45373 (January 31, 2002), 67 FR 5860 (February 7, 2002) (approval of extension of interim linkage program on the American Stock Exchange LLC until December 31, 2002); 45336 (January 25, 2002), 67 FR 5137 (February 4, 2002) (approval of extension of interim linkage program on the Chicago Board Options Exchange, Inc. until the earlier of January 31, 2003 or the complete implementation of ''permanent'' linkage); 45337 (January 25, 2002), 67 FR 5018 (February 1, 2002) (approval of extension of interim linkage program on the International Securities Exchange LLC until the earlier of January 31, 2003 or the complete implementation of ''permanent'' linkage); and 45374 (January 31, 2002), 67 FR 5869 (February 7, 2002) (approval of extension of interim linkage program on the Pacific Exchange, Inc. until the earlier of January 31, 2003 or the complete implementation of ''permanent'' linkage).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Economic Injury Disaster Loans as a Result of the September 11, 2001 Terrorist Attacks

ACTION: Notice of extension of application deadline.

FOR FURTHER INFORMATION CONTACT: George Camp, Supervisory Program Analyst, Office of Disaster Assistance, 202–205–6734.

SUPPLEMENTARY INFORMATION:

In response to the President's major disaster declarations with respect to the World Trade Center and the Pentagon and the widespread economic impact caused by the terrorist attacks and the related Federal actions taken directly thereafter, the SBA revised its disaster loan regulations on October 22, 2001. Under the revised regulations, SBA can make economic injury disaster loans (EIDL) to eligible small business concerns outside the declared disaster areas that suffered substantial economic injury as a direct result of the destruction of the World Trade Center or the damage to the Pentagon on September 11, 2001, or as a direct result of any related Federal action taken between September 11, 2001 and October 22, 2001.

As authorized by 13 CFR 123.605, SBA is extending the application deadline for good cause. On March 15, 2002, SBA published in the **Federal Register** (67 FR 11874) an interim final rule that changes the date upon which the size of a business is determined for purposes of this expanded EIDL program. In addition, SBA published in the **Federal Register** on January 23, 2002 (67 FR 3041) an interim final rule which makes adjustments in its monetary-based size standards in recognition of the effect of inflation since 1994. An extension of time to file for expanded EIDL assistance is appropriate and necessary to enable businesses to ascertain if they are now eligible in light of these recent **Federal Register** publications. Accordingly, with this Notice, the SBA extends the filing deadline for expanded economic injury disaster loans under this disaster program from April 22, 2002 to May 22, 2002.

Applications for economic injury disaster loans may be obtained and filed at the SBA disaster office servicing the applicant's state.

The disaster numbers assigned are:

Area 1

Connecticut 9TCT, District of Columbia 9TDC, Delaware 9TDE, Maryland 9TMD, Maine 9TME, Massachusetts 9TMA, New Hampshire 9TNH, New Jersey 9TNJ, New York 9TNY, Pennsylvania 9TPA, Rhode Island 9TRI, Virginia 9TVA, Vermont 9TVT, West Virginia 9TWV, Puerto Rico 9TPR, Virgin Islands 9TVI

Area 2

Alabama 9TAL, Florida 9TFL, Georgia 9TGA, Illinois 9TIL, Indiana 9TIN, Kentucky 9TKY, Michigan 9TMI, Minnesota 9TMN, Mississippi 9TMS, North Carolina 9TNC, Ohio 9TOH, South Carolina 9TSC, Tennessee 9TTN, Wisconsin 9TWI

Area 3

Arkansas 9TAR, Colorado 9TCO, Iowa 9TIA, Kansas 9TKS, Louisiana 9TLA, Missouri 9TMO, Montana 9TMT, North Dakota 9TND, Nebraska 9TNE, New Mexico 9TNM, South Dakota 9TSD, Oklahoma 9TOK, Texas 9TTX, Utah 9TUT, Wyoming 9TWY

Area 4

Alaska 9TAK, Arizona 9TAZ, California 9TCA, Hawaii 9THI, Idaho 9TID, Nevada 9TNV, Oregon 9TOR, Washington 9TWA, American Samoa 9TAS, Federated States of Micronesia 9TFM, Guam 9TGU, Republic of the Marshall Islands 9TMH, Commonwealth of Northern Mariana Islands 9TMP

The interest rate for eligible small businesses is 4 percent.

Authority: 13 CFR part 123, subpart G.

Dated: March 28, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–8015 Filed 4–2–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3969]

Culturally Significant Object Imported for Exhibition; Determinations: ''Treasures From an Unknown Reign: Shunzhi Porcelain''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition ''Treasures from an Unknown Reign: Shunzhi Porcelain,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Honolulu Academy of Arts, Honolulu, Hawaii from on or about May 2, 2002 to on or about September 8, 2002, The Trammell & Margaret Crow Collection of Asian Art, Dallas, TX from on or about September 28, 2002 to on or about January 5, 2003, and the University of Virginia Art Museum, Charlottesville, VA from on or about January 25, 2002 to on or about March 23, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: March 25, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–8057 Filed 4–2–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3957]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 1 p.m. on Friday, May 3, 2002, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. This meeting will discuss the upcoming 45th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on July 22–26, 2002, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. Harmonization of damage stability provisions in the IMO instruments,

b. Revision of technical regulations of the 1966 International Load Line Convention,

c. Revisions to the Fishing Vessel Safety Code and Voluntary Guidelines,

d. Large Passenger Vessel Safety,

e. Matters relating to Bulk Carrier Safety, and

f. Review of the Intact Stability Code

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), Room 1308, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: March 28, 2002.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–8055 Filed 4–2–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 3958]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Friday, May 3, 2002, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC, 20593–0001. The purpose of this meeting will be to finalize preparations for the 75th Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 15–24, 2002, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

—Adoption of amendments to the Convention for the Safety of Life at Sea (SOLAS)
—Large passenger ship safety
—Bulk carrier safety
—Piracy and armed robbery against ships
—Prevention and suppression of acts of terrorism against shipping
—Reports of eight subcommittees—Training and watchkeeping, Stability,

load lines and fishing vessel safety, Radiocommunications and search and rescue, Fire protection, Safety of navigation, Flag State implementation and Ship design and equipment and Dangerous goods, solid cargoes and containers.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: March 23, 2002.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–8056 Filed 4–2–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–23

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 Revenue Procedure 2002–23, Taxation of Canadian Retirement Plans Under U.S.-Canada Income Tax Treaty.

DATES: Written comments should be received on or before June 3, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the Internet *(CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* **TAXATION OF CANADIAN RETIREMENT PLANS UNDER U.S.-CANADA INCOME TAX TREATY.**

OMB Number: 1545–1773.

Revenue Procedure Number: Revenue Procedure 2002–23.

Abstract: Revenue Procedure 2002–23 provides guidance for the application by U.S. citizens and residents of the U.S.-Canada Income Tax Treaty, as amended by the 1995 protocol, in order to defer U.S. Income taxes on income accrued in certain Canadian retirement plans.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 20,000.

Estimated Average Time Per Respondent: 30 minutes.

Estimated Total Annual Reporting Hours: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 27, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–8075 Filed 4–2–02; 8:45 am]

BILLING CODE 4830–01–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of a Finding of No Significant Impact on the Final Environmental Assessment for the Diamond Fork System 2002 Proposed Action Modifications Documenting the Commission's Approval for the Central Utah Water Conservancy District To Proceed With Constructing the Diamond Fork System 2002 Proposed Action Modifications

AGENCIES: Office of the Assistant Secretary—Water and Science, Department of the Interior and the Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice of availability of a Finding of No Significant Impact on the Final Environmental Assessment for the Diamond Fork System 2002 Proposed Action Modifications.

SUMMARY: On March 28, 2002, Michael C. Weland, Executive Director of the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission), signed a FONSI. The FONSI documents selection of the Proposed Action Modifications as presented in the Final Environmental Assessment for the Diamond Fork System 2002 Proposed Action Modifications (2002 Modifications EA). The Mitigation Commission determined that implementing the modifications to the Proposed Action Alternative described in the 2002 Modifications EA will not have a significant impact on the quality of the human environment and that an environmental impact statement is not required.

The Commission's FONSI also approves the Central Utah Water Conservancy District (CUWCD) proceeding with construction of the Diamond Fork System, in accordance with statutory and contractual obligations. The following features will be constructed as part of the modifications to the Proposed Action: (1) Sixth Water Connection; (2) Tanner Ridge Tunnel; (3) Upper Diamond Fork Pipeline; (4) Upper Diamond Fork Flow Control Structure; (5) Upper Diamond Fork Shafts; (6) Aeration Chamber and Connection to Upper Diamond Fork Tunnel; (7) Upper Diamond Fork Tunnel; and (8) Diamond Fork Flow Control Facility.

The Proposed Action Modifications will be operated on an interim basis the same as described in the July 1999 Diamond Fork System Final Supplement to the Final Environmental Impact Statement, including the quantity and timing of minimum streamflows and the flexibility to other operational scenarios, except for the discharge location of the minimum streamflows into Diamond Fork Creek. The potential for generating hydroelectric power would remain the same as described in the FS–FEIS.

ADDRESSES: Address requests for further information to Mark Holden, Projects Manager, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, UT 84101.

FOR FURTHER INFORMATION CONTACT: Mark Holden, Projects Manager, 801–524–3146. mholden@uc.usbr.gov.

Dated: March 28, 2002.

Michael C. Weland,

Utah Reclamation Mitigation and Conservation Commission Executive Director.

[FR Doc. 02–8050 Filed 4–2–02; 8:45 am]

BILLING CODE 4310–05–P

Federal Register

Wednesday,
April 3, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Islands of Maui and Kahoolawe, Hawaii; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH70

Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Islands of Maui and Kahoolawe, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule and notice of determinations of whether designation of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose critical habitat for 61 of the 70 species known historically from the islands of Maui and Kahoolawe that are listed under the Endangered Species Act of 1973, as amended.

We propose critical habitat designations for 61 species within 13 critical habitat units totaling approximately 51,208 hectares (ha) (126,531 acres (ac)) on the island of Maui, and within 2 critical habitat units totaling approximately 714 ha (1,763 ac) on the island of Kahoolawe.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they carry out, fund, or authorize do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designations. We may revise or further refine this rule, including critical habitat boundaries, prior to final designation based on habitat and plant surveys, public comment on the revised proposed critical habitat rule, and new scientific and commercial information.

DATES: We will accept comments until June 3, 2002. Public hearing requests must be received by May 20, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section) (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are 70 plant species that, at the time of listing, were reported from the islands of Maui and Kahoolawe (Table 1). Seventeen of these species are endemic to the islands of Maui and/or Kahoolawe, while 53 species are reported from one or more other islands, as well as Maui and/or Kahoolawe.

We originally determined that designation of critical habitat was prudent for 37 plants from the islands of Maui and Kahoolawe on December 18, 2000 (65 FR 7919). In a previous proposal, published on November 7, 2000 (65 FR 66808), we determined that designation of critical habitat was prudent for 11 plants that are reported from Maui and Kahoolawe as well as from Kauai and Niihau. In addition, at the time we listed *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis,* on September 3, 1999 (64 FR 48307), we determined that designation of critical habitat was prudent for these six taxa from Maui and Kahoolawe. No change is made to these 54 prudency determinations in this revised proposal, and they are hereby incorporated by reference (64 FR 48307; 65 FR 66808; 65 FR 79192).

In the December 18, 2000 proposed rule, we determined that critical habitat was not prudent for *Acaena exigua,* a species known only from Kauai and Maui, because it had not been seen recently in the wild, and no viable genetic material of this species was known to exist. No change is made here to the December 18, 2000, prudency determination for this species and it is hereby incorporated by reference (65 FR 79192).

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 70 SPECIES FROM MAUI AND KAHOOLAWE

Species (common name)	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Isles, kahoolawe Niihau
Acaena exigua (liliwai)	H				H		
Adenophorus periens	C	C	C	R	H	C	
Alectryon macrococcus (mahoe)	C	C	C		C		
Argyroxiphium sandwicense ssp. *macrocephalum* (ahinahina)					C		
Asplenium fragile var. *insulare* (NCN*)					C	C	
Bidens micrantha ssp. *kalealaha* (kookoolau)				H	C		
Bonamia menziesii (NCN)	C	C	H	C	C	C	
Brighamia rockii (pua ala)			C	H	H		
Cenchrus agrimonioides (kamanomano)		C		H	C	R	NW Isles (H).
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Clermontia lindseyana (oha wai)					C	C	
Clermontia oblongifolia ssp. *mauiensis* (oha wai)				C	C		
Clermontia peleana (oha wai)					H	C	
Clermontia samuelii (oha wai)					C		
Colubrina oppositifolia (kauila)		C			C	C	
Ctenitis squamigera (pauoa)	H	C	C	C	C	H	
Cyanea copelandii ssp. *haleakalaensis* (haha)					C		

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 70 SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species (common name)	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Isles, kahoolawe Niihau
Cyanea glabra (haha)					C		
Cyanea grimesiana ssp. *grimesiana* (haha)		C	C	C	C		
Cyanea hamatiflora ssp. *hamatiflora* (haha)					C		
Cyanea lobata (haha)				H	C		
Cyanea mceldowneyi (haha)					C		
Cyrtandra munroi (haiwale)				C	C		
Delissea undulata (NCN)	C				H	C	Ni (H).
Diellia erecta (Asplenium-leaved diellia)	H	H	C	H	C	C	
Diplazium molokaiense (NCN)	H	H	H	H	C		
Dubautia plantaginea ssp. *humilis* (naenae)					C		
Flueggea neowawraea (mehamehame)	C	C	H		C	C	
Geranium arboreum (nohoanu)					C		
Geranium multiflorum (nohoanu)					C		
Gouania vitifolia (NCN)		C			H	C	
Hedyotis coriacea (kioele)		H			C	C	
Hedyotis mannii (pilo)			C	C	C		
Hesperomannia arborescens (NCN)		C	C	H	C		
Hesperomannia arbuscula (NCN)		C			C		
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka (R).
Ischaemum byrone (Hilo ischaemum)	C	H	C		C	C	
Isodendrion pyrifolium (wahine noho kula)		H	H	H	H	C	Ni (H).
Kanaloa kahoolawensis (kohe malama malama o Kanaloa) .							Ka (C).
Lipochaeta kamolensis (nehe)					C		
Lysimachia lydgatei (NCN)		H			C		
Mariscus pennatiformis (NCN)	H	H			C	H	NW Isles (C).
Melicope adscendens (alani)					C		
Melicope balloui (alani)					C		
Melicope knudsenii (alani)	C				C		
Melicope mucronulata (alani)			C		C		
Melicope ovalis (alani)					C		
Neraudia sericea (NCN)			C	H	C		Ka (H).
Nototrichium humile (kului)		C			H		
Peucedanum sandwicense (makou)	C	C	C		C		
Phlegmariurus mannii (wawaeiole)	H				C	C	
Phyllostegia mannii (NCN)			C		H		
Phyllostegia mollis (NCN)		C	H		C		
Phyllostegia parviflora (NCN)		C			H	H	
Plantago princeps (Laukahi kuahiwi)	C	C	C		C	H	
Platanthera holochila (NCN)	C	H	C		C		
Pteris lidgatei (NCN)		C	H		C		
Remya mauiensis (NCN)					C		
Sanicula purpurea (NCN)		C			C		
Schiedea haleakalensis (NCN)					C		
Schiedea hookeri (NCN)		C			H		
Schiedea nuttallii (NCN)	C	C	C		R		
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Ni (H), Ka (C), NW Isles (C).
Solanum incompletum (popolo ku mai)	H		H	H	H	C	
Spermolepis hawaiiensis (NCN)	C	C	C	C	C	C	
Tetramolopium arenarium (NCN)					H	C	
Tetramolopium capillare (pamakani)					C		
Tetramolopium remyi (NCN)				C	H		
Vigna o-wahuensis (NCN)		H	C	C	C	C	Ni (H), Ka (C).
Zanthoxylum hawaiiense (ae)	C		C	H	C	C	

KEY
C (Current)—population last observed within the past 30 years
H (Historical)—population not seen for more than 30 years
R (Reported)—reported from undocumented observations
* NCN—no common name

In the December 18, 2000, proposal we proposed designation of critical habitat for 50 plants from the islands of Maui and Kahoolawe. These species are: *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera,* Cyanea *copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp.

humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Vigna o-wahuensis, and *Zanthoxylum hawaiiense.* In this proposal we have revised the proposed designations for the 50 plants based on new information received during the comment periods. In addition, we incorporate new information, and address comments and new information received during the comment periods on the December 18, 2000, proposal.

In the December 18, 2000, we did not propose critical habitat for four species (*Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis,* and *Schiedea haleakalensis*) found only in Waikamoi Preserve and Haleakala National Park, on Maui. We determined that these lands did not meet the definition of critical habitat in the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). Due to new information received during the comment periods regarding management considerations or protection at Haleakala National Park, we have reconsidered our earlier finding regarding Haleakala National Park lands and propose designation of critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis,* and *Schiedea haleakalensis* within Haleakala National Park.

In the December 18, 2000, proposal we did not propose designation of critical habitat for 14 species that no longer occur on Maui and Kahoolawe but are reported from one or more other islands. We determined that critical habitat was prudent for eight of these species (*Adenophorus periens, Brighamia rockii, Delissea undulata, Isodendrion pyrifolium, Phyllostegia mannii, Schiedea nuttallii, Solanum incompletum,* and *Tetramolopium remyi*) in other proposed rules published on November 7, 2000 (Kauai), December 27, 2000 (Lanai), December 29, 2000 (Molokai), and January 28, 2002 (Kauai revised proposal). No change is made to these prudency determinations for these eight species in this proposal, and they are hereby incorporated by reference (65 FR 66808; 65 FR 82086; 65 FR 83158; and 67 FR 3940). In this proposal, we propose designation of critical habitat for *Brighamia rockii, Isodendrion pyrifolium, Phyllostegia mannii,* and *Tetramolopium remyi* on the island of Maui, based on new information and information received during the comment periods on the December 18, 2000, proposal. Critical habitat is not proposed for *Adenophorus periens, Delissea undulata, Schiedea nuttallii,* and *Solanum incompletum* on the islands of Maui and Kahoolawe because we have not identified habitat essential to their conservation on these islands.

In this proposal, we determine that critical habitat is prudent for six other species (*Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium*) for which prudency determinations have not been made previously, and that no longer occur on Maui but are reported from one or more other islands. These six plants were listed as endangered species under the Act between 1994 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We determine that designation of critical habitat is prudent for these six species because we believe that such designation would be beneficial to these species. Critical habitat is proposed at this time for *Gouania vitifolia* and *Nototrichium humile* on Maui based on new information and information received during the comment periods on the December 18, 2000, proposal. Critical habitat is not proposed for *Clermontia peleana, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* on the island of Maui because we have not identified habitat essential to their conservation on this island.

In this proposal, we determine that critical habitat is prudent for *Asplenium fragile* var. *insulare,* a species recently rediscovered on Maui and for which a prudency determination has not been made previously. Critical habitat is proposed at this time for *Asplenium fragile* var. *insulare* on Maui based on new information and information received during the comment periods on the December 18, 2000, proposal.

Critical habitat for 61 of the 70 species from the islands of Maui and Kahoolawe is proposed at this time. Critical habitat is not proposed for 8 of the 70 species (*Adenophorus periens, Clermontia peleana, Delissea undulata, Phyllostegia parviflora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum,* and *Tetramolopium arenarium*) that no longer occur on the islands of Maui or Kahoolawe, and for which we have not identified habitat essential to their conservation on the islands of Maui or Kahoolawe. However, proposed critical habitat designations, or nondesignations, for these species will be included in other future Hawaiian plants proposed critical habitat rules (see Table 2).

TABLE 2.—LIST OF PROPOSED RULES IN WHICH CRITICAL HABITAT DESIGNATIONS OR NONDESIGNATIONS WILL BE MADE FOR EIGHT SPECIES FOR WHICH WE ARE UNABLE TO DETERMINE HABITAT THAT IS ESSENTIAL FOR THEIR CONSERVATION ON THE ISLANDS OF MAUI AND KAHOOLAWE.

Species	Proposed rules in which critical habitat designations will be made
Adenophorus periens	Kauai; Molokai; Hawaii; Oahu.
Clermontia peleana	Hawaii.
Delissea undulata	Hawaii.
Phyllostegia parviflora	Oahu.
Schiedea hookeri	Oahu.
Schiedea nuttallii	Kauai; Oahu; Molokai.
Solanum incompletum	Hawaii.
Tetramolopium arenarium	Hawaii.

Critical habitat is not proposed for *Acaena exigua* for which we determined, on December 18, 2000, that critical habitat designation is not prudent because it has not been seen recently in the wild, and no viable genetic material of this species is known to exist. No change is made to this prudency determination here, and it is hereby incorporated by reference (65 FR 79192).

The Islands of Maui and Kahoolawe

Maui, the second largest island in Hawaii at 1,888 square kilometers (km^2) (729 square miles (mi^2)) in area, was formed from the remnants of two large shield volcanoes, the older west Maui volcano (1.3 million years) on the west and the larger, but much younger, Haleakala volcano on the east. Stream erosion has cut deep valleys and ridges into the originally shield-shaped West Maui volcano. The highest point on West Maui is Puu Kukui at 1,764 meters (m) (5,787 feet (ft)) elevation, which has

an average rainfall of 1,020 centimeters (cm) (400 inches (in)) per year, making it the second wettest spot in Hawaii (Department of Geography 1998). Having erupted just 200 years ago, East Maui's Haleakala crater, reaching 3,055 m (10,023 ft) in elevation, has retained its classic shield shape and lacks the diverse vegetation typical of the older and more eroded West Maui mountain. Rainfall on the slopes of Haleakala is about 89 cm (35 in) per year, with its windward (northeastern) slope receiving the most precipitation. However, Haleakala's crater is a dry cinder desert because it is above the level at which precipitation develops, and is sheltered from moisture-laden winds (Gagne and Cuddihy 1999).

The island of Kahoolawe measures about 17.7 kilometers (km) (11 miles (mi)) long by 11.3 km (7 mi) wide, comprising some 11,655 ha (28,800 ac). Located in the lee of Haleakala, the island lies approximately 11 km (6.7 mi) from East Maui. The highest point is the rim of an extinct volcano at 450 m (1,477 ft) above sea level. The estimated annual precipitation is approximately 500 millimeters (mm) (20 in), with most of it falling from November through March. In addition to the low precipitation, Kahoolawe is the windiest of the Hawaiian Islands (Gon *et al.* 1992).

Discussion of Plant Taxa

Species Endemic to Maui and/or Kahoolawe

Argyroxiphium sandwicense ssp. macrocephalum (ahinahina)

Argyroxiphium sandwicense ssp. *macrocephalum,* a long-lived perennial and a member of the aster family (Asteraceae), is called the Haleakala silversword. It is a distinctive, globe-shaped rosette plant with a dense covering of silver hairs. This subspecies is distinguished from *Argyroxiphium sandwicense* ssp. *sandwicense* by the shape and ratio of the dimensions of the inflorescence (flowering part of plant), the number of ray florets per head, and the combination of its longer, three-angled leaves; its silvery leaf hairs, which completely hide the leaf surface; and its longer achenes (Carr 1985, 1999a).

This monocarpic (flowers only once, at the end of its lifetime) plant matures from seed to its final stage in approximately 15–50 years. The plant remains a compact rosette until it sends up an erect, central flowering stalk, sets seed, and dies. Flowering occurs from June to September, with annual numbers of flowering plants varying dramatically from year to year. Reliable counts of flowering plants were made in 1935 (217 flowered) and in 1941 (815 flowered). Numbers recorded flowering in recent years have ranged from zero in 1970 to 6,632 in 1991. The environmental stimulus for synchronous flowering is as yet unknown. An apparent relationship of the 1991 mass flowering event to stratospheric alteration by the eruption of Pinatubo Volcano in the Philippines has been considered. Investigations are underway by R. Pharis of the University of Calgary and L.L. Loope to explore whether enhanced flowering is related to increased UV–B radiation due to temporary reduction of stratospheric ozone. Flying insects, especially native bees, moths, flies, bugs, and wasps, many of which are pollinators, are attracted in large numbers to the giant, aromatic inflorescences. It has been demonstrated that *Argyroxiphium sandwicense* ssp. *macrocephalum* cannot fertilize itself and is reliant on insect pollinators for reproduction. Rarely, hybrids between *A. sandwicense* ssp. *macrocephalum* and *Dubautia menziesii* (naenae) have been observed. Primarily found within Haleakala Crater, especially on Puu o Pele and Puu o Maui cinder cones, these hybrid individuals flower for several years before dying (Loope and Crivellone 1986; Loope and Medeiros, in press; Service 1997; Carr 1985; 57 FR 20772).

Currently, *Argyroxiphium sandwicense* ssp. *macrocephalum* occupies all of its historic range, a 1,000 ha (2,500 ac) area at 2,100–3,000 m (6,890–9,840 ft) elevation in the crater and outer slopes of Haleakala Volcano, within Haleakala National Park, and The Nature Conservancy of Hawaii's (TNCH) Waikamoi Preserve. There are a total of four populations on Federal and privately owned land, with a total of 39,025 to 44,025 individual plants (Loope and Crivellone 1986; TNC 1998; Geographic Decision Systems International (GDSI) 2001; Hawaii Natural Heritage Program (HINHP) Database 2001; Service 1997; 57 FR 20772).

The habitat of this species consists primarily of lava flows and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones and in *Deschampsia nubigena* (hair grass) grasslands at elevations between 1,511 and 3,053 m (4,957 and 10,016 ft). Mean annual precipitation is approximately 75 to 250 cm (29.6 to 98.4 in). The substrate has almost no soil development and is subject to frequent formation of ice at night and extreme heating during cloudless days. This species is found in alpine dry shrubland with native species, including *Agrostis sandwicensis* (bent grass), *Dubautia menziesii, Silene struthioloides* (catchfly), *Styphelia tameiameiae* (pukiawe), *Tetramolopium humile* (pamakani), or *Trisetum glomeratum* (pili uka) (Robert Hobdy, Hawaii Division of Forestry and Wildlife (DOFAW), *et al.*, pers. comm., 2001; Service 1997; 57 FR 20772).

The threats to this species are loss of pollinators due to the Argentine ant (*Iridomyrmex humilis*) and alien yellow jackets (*Vespula pennsylvanica*); native seed-eating and herbivorous insects such as the tephritid fly (*Trupanea cratericola*); limited natural range which makes it vulnerable to extinction due to catastrophic events, such as a natural disaster; competition from the alien plant species *Verbascum thapsus* (mullein); and human impacts (trampling and site degradation). Although goats (*Capra hircus*) and cattle (*Bos taurus*) have been removed from the park, they remain a potential threat (Service 1997; 57 FR 20772).

Clermontia samuelii (oha wai)

Clermontia samuelii, a short-lived perennial in the bellflower family (Campanulaceae), is a terrestrial shrub with elliptical leaves which are sometimes broader at the tips. *Clermontia samuelii* ssp. *hanaensis* is differentiated from *C. samuelii* ssp. *samuelii* by the greenish white to white flowers; longer, narrower leaves with the broadest point near the base of the leaves; and fewer hairs on the lower surface of the leaves. This species is separated from other members of this endemic Hawaiian genus by the size of the flowers and the hypanthium (Lammers 1999; Service 2001).

Little is known about the life history of *Clermontia samuelii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Clermontia samuelii* has been reported from Haleakala and from Keanae Valley on the windward side to Manawainui on the more leeward (southeastern) side of Haleakala. Currently, *Clermontia samuelii* is known from Papanalahoa Point, Kuhiwa Valley, the ridge north of Palike Stream, Kawaipapa Gulch, and Mokulehua Gulch. There is a total of four populations with 309 individual plants on State and Federal lands within Haleakala National Park, Hanawi Natural Area Reserve (NAR), the Hana Forest Reserve, and within the East Maui Watershed Partnership (Medeiros and Loope 1989; Warshauer 1998; 64 FR

48307; GDSI 2001; HINHP Database 2001; Robert Hobdy, DOFAW, *in litt.* 2000; Ken Wood, National Tropical Botanical Garden (NTBG) *in litt.* 2000; Service 2001).

Clermontia samuelii is found at elevations between 723 and 2,244 m (2,372 and 7,362 ft). *Clermontia samuelii* ssp. *hanaensis* is found in wet *Metrosideros polymorpha* (ohia) and *Metrosideros polymorpha-Dicranopteris linearis* (uluhe) forest containing one or more of the following associated native plant species: *Adenophorus tamariscinus* (pendant fern), *Broussaisia arguta* (kanawao), *Carex alligata* (NCN), *Cheirodendron trigynum* (olapa), *Cibotium* spp. (hapuu), *Diplazium sandwichianum* (hoio), *Dubautia* spp. (naenae), *Hedyotis hillebrandii* (manono), *Hedyotis terminalis* (manono), *Melicope clusiifolia* (kolokolo mokihana), *Melicope* spp. (alani), *Peperomia obovatilimba* (ala ala wai nui), *Psychotria mariniana* (kopiko), *Tetraplasandra oahuensis* (ohe ohe), or *Vaccinium* spp. (ohelo). *Clermontia samuelii* ssp. *samuelii* is found in wet *Metrosideros polymorpha* and *M. polymorpha-Cheirodendron trigynum* forest and containing one or more of the following native plant species: *Hedyotis hillebrandii*, *Hedyotis* spp. (NCN), *Cibotium* spp., *Broussaisia arguta*, *Dubautia* spp., *Diplazium sandwichianum*, *Rubus hawaiiensis* (akala), *Clermontia arborescens* ssp. *waihiae* (oha wai), *Clermontia* spp. (oha wai), *Vaccinium* spp., *Carex alligata*, or *Melicope* spp. (Service 2001; K. Wood, *in litt.* 2000; HINHP Database 2001; 64 FR 48307; R. Hobdy *et al.*, pers. comm., 2001).

Threats to *Clermontia samuelii* ssp. *hanaensis* include habitat degradation and destruction by feral pigs (*Sus scrofa*) and competition with alien plant species such as *Tibouchina herbacea* (glorybush), *Paspalum urvillei* (vasey grass), *Paspalum conjugatum* (Hilo grass), *Juncus* spp. (NCN), *Hedychium coronarium* (white ginger), or *Hedychium gardnerianum* (Kahili ginger). In addition, two extremely invasive alien plant species, *Miconia calvescens* (velvet tree) and *Clidemia hirta* (Koster's curse), are found in nearby areas and may invade this habitat if not controlled. The habitat of *C. samuelii* ssp. *samuelii* was extensively damaged by pigs in the past, and pigs are still a major threat to the populations on State owned lands. The population within the National Park has been fenced and pigs have been eradicated. However, due to the large populations of pigs in adjacent areas, the park populations must constantly be monitored to prevent further ingress. Competition with alien plant species such as *Holcus lanatus* (velvet grass) and *Juncus planifolius* (NCN) is a major threat to this subspecies. In addition, rats (mainly black rats (*Rattus rattus*)) and slugs (mainly *Milax gagetes*) are known to eat leaves, stems, and fruits of other members of this genus, and therefore are a potential threat to both subspecies (Service 2001; 64 FR 48307; K. Wood *in litt.* 2000).

Cyanea copelandii ssp. haleakalaensis (haha)

Cyanea copelandii ssp. *haleakalaensis*, a short-lived perennial member of the bellflower family (Campanulaceae), is a vine-like shrub with sprawling stems and tan latex (sap). This subspecies is differentiated from the other subspecies by its shorter elliptical leaves. The species differs from others in this endemic Hawaiian genus by the vine-like stems and the yellowish flowers that appear red due to the covering of hairs (Service 2001; Lammers 1999).

Little is known about the life history of *Cyanea copelandii* ssp. *haleakalaensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Cyanea copelandii* ssp. *haleakalaensis* was reported from the windward side of Haleakala and from Waikamoi to Kipahulu Valley. Currently, this taxon is known from three populations with a total of 204 individuals on Federal, State, and privately owned land within the East Maui Watershed Partnership in Haiku Uka, the ridge above Kuhiwa Valley, and Kipahulu Valley within Haleakala National Park and Hanawi NAR (Lammers 1999; Service 2001; 64 FR 48307; Warshauer 1998; HINHP Database 2001; GDSI 2001).

Cyanea copelandii ssp. *haleakalaensis* is found on stream banks or wet scree (a sloping mass of rocks at the base of a cliff) slopes or forest understory in montane wet or mesic forests dominated by *Acacia koa* (koa) and *Metrosideros polymorpha* at elevations between 616 and 1,411 m (2,021 and 4,630 ft). Associated species include *Broussaisia arguta*, *Cibotium* spp., *Hedyotis acuminata* (au), *Perrottetia sandwicensis* (olomea), and *Psychotria hawaiiensis* (kopiko ula) (Service 2001; 64 FR 48307; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The major threats to this species are habitat degradation and destruction by feral pigs; competition with several alien plant species; rats; slugs; human activities; and potential extinction due to random environmental events due to small population sizes (Service 2001; 64 FR 48307).

Cyanea glabra (haha)

Cyanea glabra, a member of the bellflower family (Campanulaceae), is a short-lived, perennial shrub, with the leaves of juvenile plants deeply pinnately lobed, while those of the adult plants are more or less entire and elliptical. This species is differentiated from others in this endemic Hawaiian genus by the size of the flower and the pinnately-lobed juvenile leaves (Service 2001; Lammers 1999).

Little is known about the life history of *Cyanea glabra.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Cyanea glabra* has been reported from West Maui and on Haleakala, East Maui. Currently, this species is known from a single population of 12 individual plants on privately owned land in Kauaula Valley (64 FR 48307; GDSI 2001; HINHP Database 2001).

Cyanea glabra is found on soil and rock stream banks in wet lowland forests dominated by *Acacia koa* and *Metrosideros polymorpha,* at elevations between 413 and 1,572 m (1,355 and 5,156 ft). Associated native plants include *Xylosma hawaiiense* (maua), *Dodonaea viscosa* (aalii), *Psychotria* spp. (kopiko), *Pipturus albidus* (mamaki), *Touchardia latifolia* (olona), *Boehmeria grandis* (akolea), *Clermontia kakeana* (ohai wai), *Cyanea elliptica* (haha), *Perrottetia sandwicensis, Coprosma* spp. (pilo), *Cibotium* spp., *Dubautia plantaginea* (naenae), *Cheirodendron trigynum, Thelypteris cyatheoides* (palapalaia), *Diplazium* spp. (NCN), and *Sadleria* spp. (amau) (HINHP Database 2001; Joel Lau, Hawaii Natural Heritage Program, pers. comm., 2001; Service 2001; 64 FR 48307; R. Hobdy *et al.,* pers. comm., 2001).

The threats to this species are slugs; habitat degradation and destruction by feral pigs; flooding; competition with several alien plant species; rats; the two-spotted leafhopper (*Saphonia rufofascia*); and extinction caused by random environmental events due to the small number individuals in the only remaining population (Service 2001; 64 FR 48307).

Cyanea hamatiflora ssp. hamatiflora (haha)

Cyanea hamatiflora ssp. *hamatiflora,* a short-lived perennial and member of the bellflower family (Campanulaceae), is a palm-like tree with tan colored latex. This subspecies is differentiated from the other listed subspecies (*C. hamatiflora* ssp. *carlsonii*) by its longer calyx lobes and shorter individual flower stalks. This species is separated from others in this endemic Hawaiian genus by fewer flowers per inflorescence and narrower leaves (Service 2001; Lammers 1999).

Little is known about the life history of *Cyanea hamatiflora* ssp. *hamatiflora.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Cyanea hamatiflora* ssp. *hamatiflora* was known from the windward side of Haleakala, stretching from Puu o Kakae to Manawainui. Currently, this taxon is known from seven populations with a total of 12 individuals within the East Maui Watershed Partnership in Honomanu, Wailuaiki, Kipahulu Valley, Koukouai, and Puu Ahulili on State (Koolau and Kipahulu Forest Reserves), Federal (Haleakala National Park), and privately owned lands (Service 2001; Warshauer 1998; GDSI 2001; HINHP Database 2001; 64 FR 48307).

Typical habitat for this taxon is montane wet forest dominated by *Metrosideros polymorpha,* with a *Cibotium* spp. and/or native shrub understory or closed *Acacia koa-M. polymorpha* wet forest containing one or more of the following associated native plant species: *Dicranopteris linearis, Cheirodendron trigynum, Broussaisia arguta, Cyanea aculeatiflora* (haha), *Cyanea kunthiana* (haha), *Vaccinium* spp., *Melicope* spp., *Athyrium microphyllum* (akolea), *Diplazium sandwichianum,* and *Myrsine* spp. (kolea) at elevations between 767 and 1,553 m (2,515 and 5,095 ft) (Service 2001; 64 FR 48307; HINHP Database 2001; R. Hobdy *et al.,* pers. comm., 2001).

The threats to this species are habitat degradation and destruction by feral pigs; landslides; competition with the alien plant *Ageratina adenophora* (Maui pamakani); rats; and slugs (Service 2001; 64 FR 48307).

Cyanea mceldowneyi (haha)

Cyanea mceldowneyi, a member of the bellflower family (Campanulaceae), is a short-lived, unbranched perennial shrub with rough to prickly stems. This species is distinguished from other species of *Cyanea* by the combination of a densely armed trunk; long (40 mm (1.6 in)), white-colored corollas; and leaf blade size and shape (Service 2001; Lammers 1999).

Little is known about the life history of *Cyanea mceldowneyi.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (57 FR 20772; Service 1997).

Historically, *Cyanea mceldowneyi* was known from rainforest west of Waikamoi to Honomanu on northwestern Haleakala. Currently, this species is known from six populations with a total of 36 individuals on State (Makawao Forest Reserve and Hanawi NAR) and privately owned lands within the East Maui Watershed Partnership at Kahakapao Gulch, Opana Gulch, Waikamoi, Puohokamoa, Makapipi, and the flats above Kuhiwa Valley (Lammers 1999; Warshauer 1998; GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

The habitat of this species is montane wet and mesic forest with mixed *Metrosideros polymorpha-Acacia koa* containing one or more of the following associated native plant species: *Melicope clusiifolia, Hedyotis* spp., *Clermontia arborescens, Diplazium sandwichianum, Broussaisia arguta, Cibotium* spp., *Cyrtandra* spp. (haiwale), *Dicranopteris linearis,* or *Cheirodendron trigynum* at elevations between 779 and 1,357 m (2,555 and 4,453 ft) (Service 1997; 57 FR 20772; R. Hobdy *et al.,* pers. comm., 2001).

The threats to this species are habitat degradation and physical destruction by feral pigs; small number of populations and individuals; human activities; and competition with alien plant species, especially *Setaria palmifolia* (palmgrass) (Service 1997; 57 FR 20772).

Dubautia plantaginea ssp. humilis (naenae)

Dubautia plantaginea ssp. *humilis,* a short-lived perennial of the aster family (Asteraceae), is a dwarf shrub less than 80 cm (30 in) tall with hairless or strigillose (bulbous-based hairs, all pointing in the same direction) stems. This species differs from other Hawaiian members of the genus by the number of nerves in the leaves and by the close resemblance of the leaves to the genus *Plantago.* The subspecies *humilis* differs from the other two subspecies (*D. plantaginea* ssp. *magnifolia* and *Dubautia plantaginea* ssp. *plantaginea*) by having fewer heads per inflorescence, but more florets per head (Service 2001; Carr 1985; Carr 1999b).

Little is known about the life history of *Dubautia plantaginea* ssp. *humilis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Dubautia plantaginea ssp. *humilis* has only been reported from Iao Valley, on West Maui. This population with 60 to 65 individuals occurs on privately owned land (GDSI 2001; HINHP Database 2001; Service 2001; 64 FR 48307).

The typical habitat of the species is wet, barren, steep, rocky, wind-blown cliffs containing one or more of the following associated native plant species: *Metrosideros polymorpha, Pipturus albidus, Eragrostis variabilis* (kawelu), *Carex* spp. (NCN), *Hedyotis formosa* (NCN), *Lysimachia remyi* (kolokolo kuahiwi), *Bidens* spp. (kookoolau), *Pritchardia* spp. (loulu), or *Plantago princeps* (laukahi kuahiwi) and elevations between 266 and 1,593 m (873 and 5,226 ft) (Service 2001; 64 FR 48307; HINHP Database 2001; R. Hobdy *et al.,* pers. comm., 2001).

Threats to *Dubautia plantaginea* ssp. *humilis* include landslides and competition from alien plant species. Random environmental events, such as landslides, are a threat because of the limited number of individuals and populations and their narrow distribution (Service 2001; 64 FR 48307).

Geranium arboreum (nohoanu)

Geranium arboreum, a long-lived perennial and a member of the geranium family (Geraniaceae), is a many branched, spreading, woody shrub about 1.8 to 3.7 m (6 to 12 ft) tall. This species can be distinguished from other *Geranium* species by its red petals with the upper three petals erect and the lower two reflexed, causing the flower to appear curved (Wagner *et al.* 1999).

Geranium arboreum is the only species in its genus that appears to be adapted to bird-pollination. Native honeycreepers appear to be a major pollination vector. *Geranium arboreum* from the southwest area of Haleakala in the Kula Forest Reserve produce seeds that are larger and fuller than seeds from the northwest extension of its distribution. Native honeycreepers are reasonably abundant in both areas. Little else is known about the life history of *Geranium arboreum.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Funk 1982; 1988; Service 1997; 57 FR 20772).

The original range and abundance of the species is unknown, but late 19th and early 20th century collections indicate that it once grew on the southern slopes of Haleakala and that its distribution on the northern slopes extended beyond its presently known range. Currently, there are seven populations totaling 158 individuals, within the East Maui Watershed Partnership on State (Kula and Kahikinui Forest Reserves), private and federally owned or leased (Haleakala National Park) lands. These populations are found in Kahua, Kanahau, Waiohuli, Kaipoioi Gulch, Hapapa Gulch, Keauaiwi Gulch, Kalialinui, and south of Puu Luau and east of Puu Nianiau (Warshauer 1998; HINHP Database 2001; GDSI 2001; Service 1997; 57 FR 20772).

Geranium arboreum grows in steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams in *Sophora chrysophylla* (mamane) subalpine dry shrubland or *Metrosideros polymorpha* montane forest and containing one or more of the following associated native plant species: *Vaccinium reticulatum* (ohelo ai), *Dodonaea viscosa, Styphelia tameiameiae, Rubus hawaiiensis,* or *Dryopteris wallichiana* (io nui) and elevations between 1,451 and 2,184 m (4,760 and 7,164 ft) (Service 1997; 57 FR 20772; R. Hobdy *et al.,* pers. comm., 2001).

The greatest immediate threat to the survival of this species is the encroachment and competition from naturalized, exotic vegetation, chiefly grasses and trees. Soil disturbance, caused by trampling cattle and rooting by feral pigs, also is a major threat as it destroys plants and facilitates the encroachment of competing species of naturalized plants. Other less important threats include browsing by cattle; fires; and pollen from exotic pine trees, which at times of the year completely cover the stigmas of the geraniums, precluding any fertilization by its own species. The small number of individual plants increases the potential for extinction from random environmental events, and the limited gene pool may depress reproductive vigor (Funk 1982, 1988; 57 FR 20772; Service 1997).

Geranium multiflorum (nohoanu)

Geranium multiflorum, a long-lived member of the geranium family (Geraniaceae), is a perennial many-branched shrub 1 to 3 m (3 to 10 ft) tall. Flowers are in clusters of 25 to 50, and have 5 white petals that are 10 to 15 mm (0.4 to 0.6 in) long with purple veins or bases. This species is distinguished from others of the genus by its white, regularly symmetrical flowers and by the shape and pattern of teeth on its leaf margins (Wagner *et al.* 1999).

Little is known about the life history of *Geranium multiflorum.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Geranium multiflorum* was known from Ukulele, Waieleele, and Waianapanapa on East Maui. This species is now known from Federal (Haleakala National Park), State (Hanawi NAR and Koolau Forest Reserve), and private lands within the East Maui Watershed Partnership in Haiku Ula, Kalialinui, Koolau Gap, Koolau Gap near Haiku Ula, between East Waiuaki and Kopiliula Streams, near Puu Alaea along Kalapawili Ridge, Kipahulu Valley, Waiakekeehia, and Haleakala Crater. The eight known populations extend over a distance of about 10.5 by 5.5 km (6.5 by 3.5 mi). Due to the inaccessibility of the populations, and the difficulty in determining the number of individuals (due to the plant's multi-branched form), the total number of individuals of this species is not known; however, it probably does not exceed 3,000 plants (Warshauer 1998; GDSI 2001; Service 1997; 57 FR 20772; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

Geranium multiflorum is found in wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Styphelia tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands containing one or more of the following associated native plant species: *Coprosma montana* (pilo), *Dryopteris glabra* (hohui), *Dryopteris wallichiana, Rubus hawaiiensis, Vaccinium* spp., *Hedyotis spp.,* or *Sadleria cyatheoides* (amau) at elevations between 1,499 and 2,710 m (4,918 and 8,890 ft) (Wagner *et al.* 1999; HINHP Database 2001; Service 1997; 57 FR 20772).

The major threat to *Geranium multiflorum* is competition with encroaching alien plant species, particularly *Rubus argutus* (prickly Florida blackberry). A potential threat is habitat destruction by feral pigs and goats in unfenced areas (Service 1997; 57 FR 20772).

Kanaloa kahoolawensis (kohe malama malama o kanaloa)

Kanaloa kahoolawensis, a short-lived perennial and a member of the legume family (Fabaceae), is a densely branched shrub 0.75 to 1 m (2.5 to 3.5 ft) tall. The leaves are divided into three pairs of leaflets, with a leaf nectary (nectar-bearing gland) at the joint between each pair of leaflets. One to three inflorescences are found in the leaf axils (joint between leaf and stem), developing with the flush of new leaves. The inflorescence is a globose head with 20 to 54 white flowers. Up to four fruits develop in each flowering head. The fruit is egg-shaped to subcircular, compressed, hairy at the base, and open along two sides. One heart-shaped, brown seed, 1.0 to 1.4 by 1.1 to 1.6 cm (0.4 to 0.5 by 0.4 to 0.6 in), is found in each fruit. There is no other species of legume in Hawaii that bears any resemblance to this species, which is the only one in this genus (Service 2001; Lorence and Wood 1994).

Little is known about the life history of *Kanaloa kahoolawensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Kanaloa kahoolawensis was unknown to science until its discovery by Steve Perlman and Ken Wood of NTBG in 1992 on a steep rocky spire on the coast of Kahoolawe. The only known location of *Kanaloa kahoolawensis* is this rocky stack on the southern coast of the island of Kahoolawe, which is owned by the State of Hawaii. While there are no previous records of the plant, pollen core studies on the island of Oahu revealed a legume pollen that could not be identified but is most likely this species. The pollen cores indicate that this previously unidentified species was a codominant with D*odonaea viscosa* and *Pritchardia* spp. from before 1210 B.C. to 1565 A.D., at which point *K. kahoolawensis* disappeared from the pollen record and *D. viscosa* and *Pritchardia* spp. declined dramatically. Only one population with two living individuals is known (Athens *et al.* 1992; Athens and Ward 1993; Lorence and Wood 1994; Paul Higashino, Kahoolawe Island Reserve Commission (KIRC), pers. comm., 2000; Service 2001; 64 FR 48307).

The only known habitat is steep rocky talus slopes in mixed coastal shrubland at elevations between 45 to 60 m (150 to 200 ft) and containing one or more of the following associated native plant species: *Sida fallax* (ilima), *Senna gaudichaudii* (kolomona), *Bidens mauiensis* (kookoolau), *Lipochaeta lavarum* (nehe), *Portulaca molokiniensis* (ihi), or *Capparis sandwichiana* (maiapilo) (Service 2001; 64 FR 48307; R. Hobdy *et al.,* pers. comm., 2001).

The major threats to *Kanaloa kahoolawensis* are landslides and competition with the alien plant species *Emilia fosbergii* (pualele), *Chloris barbata* (swollen finger grass), or *Nicotiana glauca* (tobacco tree). Goats played a major role in the destruction of vegetation on Kahoolawe before they were removed, and K. kahoolawensis probably survived only because the rocky stack is almost completely separated from the island and inaccessible to goats. Rats are a potential threat to *K. kahoolawensis,* because the species has seeds similar in appearance and presentation to the seeds of the federally endangered *Caesalpinia kavaiensis* (uhiuhi), which are eaten by rats. Rats may have been the cause of the decline of this species 800 years ago. Trampling and habitat degradation from introduced cats and native seabirds are also potential threats. Random environmental events and reduced reproductive vigor are also threats to this species, because only two individuals are known (P. Higashino, pers. comm., 2000; Cuddihy and Stone 1990; Lorence and Wood 1994; Service 2001; 64 FR 48307).

Lipochaeta kamolensis (nehe)

Lipochaeta kamolensis, a short-lived perennial herb of the aster family (Asteraceae), has trailing or climbing stems that are woody at the base and reach a length of 0.3 to 3 m (1 to 10 ft). This species is distinguished from others of the genus by the simple leaves which are pinnately lobed or cut and by the size of the flower heads (Wagner *et al.* 1999).

Lipochaeta kamolensis has been observed flowering from December through February, as well as in April. The growing season coincides with the wet season between November and April to May. Plants are deciduous and appear to be metabolically inactive during the dry season. Little else is known about the life history of *Lipochaeta kamolensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Lipochaeta kamolensis* was known from Kamole Gulch, west of Kepuni Gulch, and 7.2 km (11.8 mi) southeast of Ulupalakua Ranch Office. This species still occurs in Kamole Gulch, on State owned (Department of Hawaiian Home Lands) land. The only known population, which extends over an area of about 40 ha (100 ac), is estimated to contain less than 500 individuals (Wagner *et al.* 1999; GDSI 2001; HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1997; 57 FR 20772).

Lipochaeta kamolensis typically grows in gulches or on gentle slopes outside gulches in dry shrubland at elevations between 40 and 602 m (132 and 1,974 ft) and containing one or more of the following associated native plant species: *Dodonaea viscosa, Plumbago zeylanica* (iliee), or *Ipomoea indica* (koali awa) (Wagner *et al.* 1999; K. Wood, *in litt.* 1999; Service 1997; 57 FR 20772; R. Hobdy *et al.,* pers. comm., 2001).

The major threats to *Lipochaeta kamolensis* are habitat destruction and predation by cattle and goats, competition with alien plants such as *Lantana camara* (lantana), fire, and the one population subject to extinction by random environmental events (57 FR 20772; Service 1997).

Melicope adscendens (alani)

Melicope adscendens, a long-lived perennial of the rue family (Rutaceae), is a sprawling shrub with long, slender branches covered with gray hairs when young, which become hairless when older. *M. adscendens* is distinguished from other species of the genus by its growth habit, the distinct follicles of its fruit, and the persistent (remaining attached) sepals and petals (Stone *et al.* 1999).

Melicope adscendens fruits have been collected in March and July. Little else is known about the life history of *Melicope adscendens.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 59 FR 62346).

Melicope adscendens has been found only on the southwestern slope of Haleakala; two plants, separated by an unspecified distance, were found by Forbes in 1920. Today, there are two known populations with a total of 16 individuals on State (Kanaio NAR) and privately owned lands at Puu Ouli and on the border of the Hana and Makawao Districts (GDSI 2001; HINHP Database 2001; Service 1997; 59 FR 62346).

This species typically grows on aa lava (a particular type of lava flow with very sharp edges) with pockets of soil in *Nestegis sandwicensis* (olopua)-*Pleomele auwahiensis* (hala pepe)-*Dodonaea viscosa* lowland mesic forest or open dry forest and containing one or more of the following associated native plant species: *Osteomeles anthyllidifolia* (ulei), *Alphitonia ponderosa* (kauila), *Chamaesyce celastroides* var. *lorifolia* (akoko), *Santalum ellipticum* (iliahialoe), *Pouteria sandwicensis* (alaa), *Styphelia tameiameiae,* or *Xylosma hawaiiensis* (maua) at elevations between 761 and 1,209 m (2,497 and 3,967 ft) (HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1997; 59 FR 62346; R. Hobdy *et al.,* pers. comm., 2001).

Major threats are habitat damage and trampling by cattle; competition with alien plant species, including *Lantana camara, Bocconia frutescens* (NCN), and *Pennisetum clandestinum* (kikuyu grass), and reduced reproductive vigor or extinction from random environmental events due to the small number of individuals and narrow distribution. Potential threats include habitat degradation and damage to plants by axis deer (*Axis axis*), feral goats, feral pigs, black twig borer, fire, and ranch activities (Service 1997; 59 FR 62346; HINHP Database 2001).

Melicope balloui (alani)

Melicope balloui, a long-lived perennial of the rue family (Rutaceae), is a small tree or shrub. New growth has yellowish brown woolly hairs and waxy scales; plant parts later become nearly hairless. *Melicope balloui* is distinguished from other species of the genus by the partially fused carpels of its four-lobed capsule and usually persistent sepals and petals (Stone *et al.* 1999).

Little is known about the life history of Melicope balloui. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 59 FR 62346).

Melicope balloui has been found only on the northern and southeastern slopes of Haleakala. There are two known populations with a total of approximately 50 individuals on private and federally owned (Haleakala National Park) lands within the East Maui Watershed Partnership at Puu O Kakae and Palikea Stream (GDSI 2001; HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1997; 59 FR 62346).

Melicope balloui typically grows in mesic to wet forest between 781 and 1,596 m (2,561 and 5,235 ft), containing one or more of the following associated native plant species: *Acacia koa, Cibotium chamissoi* (hapuu), *Cibotium glaucum* (hapuu), *Diplazium sandwichianum, Melicope clusiifolia, Metrosideros polymorpha,* or *Sadleria pallida* (amau) (HINHP Database 2001; J. Lau, pers. comm., 2001; Service 1997; 59 FR 62346).

Major threats are habitat degradation and damage to plants by feral pigs and axis deer and reduced reproductive vigor or extinction caused by random environmental events due to the small

number of existing populations and individuals. Potential threats include competition with alien plant species such as *Paspalum conjugatum, Clidemia hirta, Paspalum urvillei, Andropogon virginicus* (broomsedge), and *Psidium cattleianum* (strawberry guava); susceptibility to black twig borer (Xylosandrus compactus); and predation by rats (59 FR 62346; Service 1997; HINHP Database 2001).

Melicope ovalis (alani)

Melicope ovalis, a long-lived perennial of the rue family (Rutaceae), is a tree growing up to 5 m (16 ft) tall. New growth has fine, short, brownish hairs, but soon becomes hairless. Leaves are opposite, leathery, and broadly elliptic. The upper and lower surfaces of the leaves are hairless, and bruised foliage has an anise odor similar to that of *M. anisata* (mokihana). Each flower cluster is on a main stalk and comprises three to seven flowers on individual stalks. Further details of the flowers are unknown. The fruit, a capsule, has carpels that are fused along almost their entire length. Each fertile carpel contains one or two glossy black seeds. The exocarp and endocarp are both hairless. *M. ovalis* is distinguished from other species of the genus by the almost entirely fused carpels of its capsule, its nonpersistent sepals and petals, and its well-developed petioles (Stone *et al.* 1999).

Little is known about the life history of *Melicope ovalis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 59 FR 62346).

Melicope ovalis has been found only on the eastern and southeastern slopes of Haleakala. There is one known population with approximately 200 individuals, found on federally owned land along the Palikea Stream in Haleakala National Park within the East Maui Watershed Partnership (GDSI 2001; HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1997; 59 FR 62346).

This species typically grows in *Acacia koa* and *Metrosideros polymorpha*-dominated montane wet forests along streams at elevations between 753 and 1,537 m (2,469 and 5,042 ft). Associated plant species include *Dicranopteris linearis, Machaerina angustifolia* (uki), *Labordia hedyosmifolia* (NCN), *Wikstroemia oahuensis* (akia), *Dubautia plantaginea, Hedyotis hillebrandii, Broussaisia arguta, Cheirodendron trigynum,* or *Perrottetia sandwicensis* (Service 1997; 59 FR 62346; HINHP Database 2001; R. Hobdy *et al.,* pers. comm., 2001).

Major threats to the only known population are habitat degradation and damage to plants by feral pigs and reduced reproductive vigor and/or extinction due to random environmental events. Competition with introduced plants such as *Paspalum conjugatum, Clidemia hirta, Rubus rosifolius* (thimbleberry), and *Psidium cattleianum;* seed predation by rats; and susceptibility to black twig borer are also threats to this species. Habitat degradation and damage to plants by feral goats and axis deer are potential threats if the integrity of the fence currently surrounding the population is compromised (Service 1997; 59 FR 62346; HINHP Database 2001; K. Wood, *in litt.* 1999).

Remya mauiensis (NCN)

Remya mauiensis is a short-lived perennial member of the aster family (Asteraceae). The genus *Remya* is endemic to the Hawaiian Islands. It is a small perennial shrub, about 90 cm (3 ft) tall, with many slender, sprawling, or scandent to weakly erect branches, covered with a fine tan fuzz near their tips. The leaves are narrow, up to about 15 cm (6 in) long, and are bunched at the ends of the branches. The coarsely toothed leaf blade is 5 to 12 times longer than wide, has a long-attenuate base, and a petiole of less than 1 cm (0.4 in) long. The leaves are green on the upper surface and covered with a dense mat of fine white hairs on the lower surface. The flowers are small, about 0.7 cm (0.3 in) in diameter, dark yellow, and densely clustered at the ends of their stems (Wagner *et al.* 1999).

Little is known about the life history of *Remya mauiensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 56 FR 1450).

Remya mauiensis was collected twice by William Hillebrand on West Maui between 1851 and 1871, and again in 1920 by Charles Forbes, also on West Maui. It was thought to be extinct until its rediscovery in 1971 by L.E. Bishop, W. Gagne, and S. Montgomery on the slopes of Manawainui Gulch, West Maui. Currently, *R. mauiensis* is known from three small populations on State owned land within the West Maui Mountains Watershed Partnership at Paupau, Kokuula, Kanaulaiki, and Maunawainui Gulch in the Panaewa section of the West Maui NAR, the West Maui Forest Reserve, and the Manawainui Plant Sanctuary. Because of the sprawling habit of this species, and the often dense growth of the surrounding vegetation, it is difficult to determine the exact number of individuals in a population; however, there is an estimate of 21 individuals (HINHP Database 2001; GDSI 2001; Service 1997; 56 FR 1450).

Remya mauiensis grows chiefly on steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests and containing one or more of the following associated native species: *Diospyros sandwicensis* (lama), *Xylosma hawaiiensis, Nestegis sandwicensis, Myrsine lessertiana* (kolea lau nui), *Wikstroemia* spp. (akia), *Dodonaea viscosa*, *Diplazium sandwichianum*, *Lysimachia remyi*, *Microlepia strigosa* (palapalai), *Melicope* spp., *Alyxia oliviformis* (maile), *Pleomele auwahiensis, Psychotria mariniana,* or *Styphelia tameiameiae* at elevations between 400 and 1,228 m (1,312 and 4,029 ft) (HINHP Database 2001; Service 1997; 56 FR 1450; R. Hobdy *et al.,* pers. comm., 2001).

This species is threatened by extinction due to random catastrophic environmental events by virtue of the extremely small size of the populations coupled with a limited distribution of the remaining populations. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals. However, the primary threat to this species is the loss and degradation of its habitat due to the introduction of alien plants, such as *Rubus rosifolius, Schinus terebinthifolius* (Christmas berry), *Adiantum hispidulum* (rough maidenhair fern), or *Tibouchina herbacea*; human activities; and feral goats and pigs (56 FR 1450; Service 1997).

Schiedea haleakalensis (NCN)

Schiedea haleakalensis, a short-lived perennial of the pink family (Caryophyllaceae), is a hairless shrub, with slightly fleshy, narrow leaves and a single vein. Flowers are arranged in clusters at the ends of the branches. The flower has five green, oval sepals; no petals; five nectaries; and ten stamens. Capsules contain grayish to reddish brown seeds. This species differs from other species of the genus on East Maui by its crowded, hairless inflorescence composed of bisexual flowers (Wagner *et al.* 1999).

Schiedea haleakalensis is gynodioecious (individuals either have only female flowers or only perfect flowers) and so likely needs cross pollination by small insects. Small, short-flighted flies and moths have been observed visiting flowers. Fruits and seeds have been observed from August

through September. Little else is known about the life history of *Schiedea haleakalensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Due to the lack of early collections or sightings, the historical range of *Schiedea haleakalensis* is unknown. This species is known only from Leleiwi Pali and Kaupo Gap in Haleakala National Park within the East Maui Watershed Partnership. The two populations are estimated to contain a total of 100 to 200 individuals, which together extend over a total area of 11 ha (28 ac) (GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

Schiedea haleakalensis typically grows in rock cracks on sheer cliffs adjacent to barren lava and subalpine shrublands and grasslands with cinder, weathered volcanic ash, or bare lava substrate with little or no soil development and periodic freezing temperatures and containing one or more of the following associated plant species: *Artemisia mauiensis* (hinahina), *Bidens micrantha* (kookoolau), *Dubautia menziesii*, *Styphelia tameiameiae*, *Vaccinium reticulatum*, or *Viola chamissoniana* (pamakani) at elevations between 1,678 and 2,434 m (5,505 and 7,986 ft) (Service 1997; 57 FR 20772; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The greatest threats to *Schiedea haleakalensis* are fire and other catastrophic events that could severely impact the species due the small number and restricted distribution of remaining individuals and populations (Service 1997; 57 FR 20772).

Tetramolopium capillare (pamakani)

Tetramolopium capillare, a short-lived perennial of the sunflower family (Asteraceae), is a sprawling shrub with stems measuring 50 to 80 cm (20 to 31 in) long and covered with many glands when young. The very firm, stalkless leaves are involute (edges rolled under). Flower heads are situated singly at the ends of stalks. Located beneath each flower head are 45 to 50 bracts, arranged in a structure 3 to 4 mm (about 0.1 in) high and 7 to 10 mm (0.3 to 0.4 in) in diameter. In each flower head, 30 to 50 white, male ray florets are surround by 15 to 25 greenish yellow tinged with red, functionally female florets. The achenes (dry, one-seeded fruits) are topped by a white pappus comprising a single series of bristles. *Tetramolopium capillare* differs from other species of the genus by its very firm leaves with edges rolled under, its solitary flower heads, the color of its disk florets, and its shorter pappus. It differs from *T. remyi*, with which it sometimes grows, by its more sprawling habit and the shorter stalks of its smaller flower heads (Lowrey 1999).

Little is known about the life history of *Tetramolopium capillare*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Lowrey 1999).

Historically, *Tetramolopium capillare* is known from Lahaina Luna to Wailuku on West Maui. Currently, four known populations with a total of 166 individuals are known from State (West Maui Forest Reserve) and privately owned lands within the West Maui Mountains Watershed Partnership, south of Kanaha Stream, Kauaula, Ulaula, and Koia (Lowrey 1999; GDSI 2001; Service 1997; 59 FR 49860).

Tetramolopium capillare typically grows on rocky substrates in *Heteropogon contortus* (pili grass) lowland dry forest containing one or more of the following associated native plant species: *Dodonaea viscosa* or *Myoporum sandwicense* (naio); or in *Metrosideros polymorpha-Styphelia tameiameiae* montane mesic or wet shrubland and wet cliff faces and containing one or more of the following associated plant species: *Metrosideros polymorpha*, *Styphelia tameiameiae*, or *Dodonaea viscosa* at elevations between 131 and 1,432 m (430 and 4,698 ft) (Service 1997; 59 FR 49860; R. Hobdy *et al.*, pers. comm., 2001).

The major threats to *Tetramolopium capillare* are fires; competition from alien plant species, particularly *Lantana camara*, *Leucaena leucocephala* (koa haole), or *Melinis repens* (natal redtop); and reduced reproductive vigor and/or extinction from random environmental events due to the small number of existing populations and individuals (Service 1997; 59 FR 49860).

Multi-Island Species

Acaena exigua (liliwai)

Acaena exigua is a small perennial rosette herb in the rose family (Rosaceae) with narrow, fern-like, divided leaves and slender flowering stalks 5–15 cm (2–5.9 in) long. It is easily hidden among the other low, tufted bog plants with which it grows. The narrow, oblong leaves are usually 10–25 mm (0.4–1.0 in) long with 6–17 leaflets 1–4 mm (0.04–0.16 in) long and 1–2 mm (0.04–0.08 in) wide. The leaflet on the end is wider (to 3 mm (0.12 in)). The upper surface of the leaves is glossy with conspicuous veins; the lower surface is whitish. The flowers lack petals and are arranged in short, dense spikes 5–10 mm (0.2–0.4 in) long held on slender, sparsely leafy stalks 5–15 cm (2–6 in) tall. The base of the flower is urn-shaped, sometimes with very short spines or bristles, and encloses a single cone-shaped dry fruit (achene) 1 mm (0.04 in) long (Wagner *et al.* 1999).

Little is known about the life history of *Acaena exigua*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Acaena exigua* was known from Puu Kukui on West Maui and from Mount Waialeale on Kauai. On Maui, *Acaena exigua* was last seen by Hank Oppenheimer and Steve Perlman in 1999 within the Puu Kukui Watershed Management Area. It has not been seen in the wild since March 2000 (Hank Oppenheimer, Maui Pineapple Company Limited, pers. comm., 2001; Service 1997; 57 FR 20772).

Acaena exigua is known only from montane bogs characterized by a thick peat substrate overlying an impervious clay substrate, with hummocks of sedges and grasses, stunted trees, and shrubs at elevations between 1,178 and 1,764 m (3,865 and 5,787 ft). Associated native species include the sedges and grasses *Carex montis-eeke* (NCN), *Deschampsia nubigena*, *Dichanthelium cynodon* (NCN), *Dichanthelium hillebrandianum* (NCN), *Dichanthelium isachnoides* (NCN), *Oreobolus furcatus* (NCN), or *Rhynchospora chinensis* (kuolohia), and the shrubs *Metrosideros polymorpha*, *Viola maviensis* (pamakani), *Myrsine* spp., *Lagenifera maviensis* (NCN), or *Vaccinium* spp. (Service 1997; 57 FR 20772; R. Hobdy *et al.*, pers. comm., 2001).

The reason for the disappearance of this species is not known. The main current threats to *Acaena exigua*, if it exists, are believed to include small population size; human impacts (collecting and site degradation); potentially consumption of vegetative or floral parts of this species by non-native slugs and/or rats; predation and habitat disturbance by feral pigs; and non-native plant species (Service 1997; 57 FR 20772).

Adenophorus periens (pendant kihi fern)

Adenophorus periens, a member of the grammitis family (Grammitidaceae) and a short-lived perennial, is a small, pendant, epiphytic fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna margins, by the

pinnae being at right angles to the midrib axis, by the placement of the sori on the pinnae, and the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens*, which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects. Spores lack a thick resistant coat which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not known (Linney 1989).

Historically, *Adenophorus periens* was reported from Kauai, Oahu, Lanai, Maui, and the island of Hawaii. Currently, it is known from Kauai, Molokai, and Hawaii. On Maui, it has not been seen in the wild since 1929 (HINHP Database 2001; Service 1999; 59 FR 56333; GDSI 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Adenophorus periens* on the island of Maui (Service 1999; 59 FR 56333).

Nothing is known of the threats to *Adenophorus periens* on the island of Maui (Service 1999; 59 FR 56333).

Alectryon macrococcus (mahoe)

Alectryon macrococcus, a long-lived perennial and a member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis*, both trees with reddish-brown branches and net-veined paper- or leather-like leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, only when young in *A. macrococcus* var. *macrococcus*, and persistent in *A. macrococcus* var. *auwahiensis*. The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.5 cm (1 in) or more in diameter (Service 1997; 57 FR 20772; Wagner et al. 1999).

Alectryon macrococcus is a relatively slow-growing, long-lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of *A. macrococcus*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Service 1997; 57 FR 20772).

Historically and currently, *Alectryon macrococcus* var. *macrococcus* is known from Kauai, Oahu, Molokai, and Maui. On Maui, three populations with a total of 22 individuals is found along the Honokowai Ditch Trail, Launiupoko Valley, and Iao Valley on privately owned land within the West Maui Mountains Watershed Partnership. Currently, *A. macrococcus* var. *auwahiensis* is known from two populations with 22 individuals on leeward East Maui in Auwahi in the Hana District and on the ridge east of Pahihi Gulch on private and State owned (Kahikinui Forest Reserve) lands (Medeiros *et al.* 1986; GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

The habitat of *Alectryon macrococcus* var. *macrococcus* is mesic forests with *Pouteria sandwicensis*, *Nestegis sandwicensis*, *Xylosma* spp. (maua), *Antidesma platyphylla* (hame), *Antidesma pulvinatum* (hame), *Bobea sandwicensis* (ahakea), *Pittosporum confertiflorum* (hoawa), or *Pittosporum glabrum* (hoawa) at elevations between 1,017 and 3,562 m (1,168 and 3,337 ft). The habitat of *A. macrococcus* var. *auwahiensis* is mesic to wetter mesic and upper dryland forest containing one or more of the following associated native plant species: *Diospyros sandwicensis*, *Dodonaea viscosa*, *Osteomeles anthyllidifolia*, *Alphitonia ponderosa*, *Santalum ellipticum*, *Xylosma hawaiiensis*, *Streblus pendulinus* (aiai), *Pouteria sandwicensis*, or *Pleomele auwahiensis* at elevations between 333 and 1,210 m (1,092 and 3,969 ft) (HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1997; 57 FR 20772; R. Hobdy *et al.*, pers. comm., 2001).

The threats to *Alectryon macrococcus* var. *macrococcus* on Maui include feral goats and pigs; alien plant species, such as *Melinus minutiflora* (molasses grass), *Pennisetum clandestinum*, *Schinus terebinthifolius*, or *Psidium cattleianum*; damage from the black twig borer; seed predation by rats and mice (*Mus musculus*); fire; seed predation by insects (probably the endemic microlepidopteran *Prays* cf. *fulvocanella*); loss of pollinators; depressed reproductive vigor; and due to the very small remaining number of individuals and their limited distribution, a single natural or human-caused environmental disturbance could easily be catastrophic. The threats to *A. macrococcus* var. *auwahiensis* on Maui are damage from the black twig borer; seed predation by rats and mice; habitat degradation by feral pigs, deer, and escaped cattle; seed predation by insects (probably *Prays* cf. *fulvocanella*); alien plant species; loss of pollinators; depressed reproductive vigor; and due to the very small remaining number of individuals and their limited distribution, a single natural or human-caused environmental disturbance could easily be catastrophic (Service 1997; 57 FR 20772).

Asplenium fragile var. insulare (NCN)

Asplenium fragile var. *insulare*, a short-lived perennial and a member of the spleenwort family (Aspleniaceae), is a fern with a short sub-erect stem with a dull gray or brown main axis with two greenish ridges. This Hawaiian fern species is most similar to *Asplenium macraei*. The two can be distinguished by the size and shape of the pinnae and the number of sori per pinna (Wagner and Wagner 1992).

Little life history information is available for *Asplenium fragile* var. *insulare*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown. Researchers have collected information on species composition, extent of cover, and age-class structure in six sub-populations at Pohakuloa Training Area in order to describe the populations. No gametophytes (gamete-producing life stage) were found, and the age-class structure of the sub-populations sampled was determined to be 100 percent reproductive adults because all the sporophytes (spore-producing life stage) had sori (spore-bearing structures) on some fronds (Service 1998a; 59 FR 49025).

Asplenium fragile var. *insulare* was known historically and currently from East Maui and on the island of Hawaii. Currently, on Maui there is one population with 18 individuals found in Kalialinui within the East Maui Watershed Partnership on private and federally (Haleakala National Park) owned lands (GDSI 2001; Service 1998a; 59 FR 49025).

On Maui, *Asplenium fragile* var. *insulare* is found in streamside hollows and grottos in gulches that occur in mesic to dry subalpine shrubland dominated by *Styphelia tameiameiae* and *Sadleria cyatheoides*, with scattered *Metrosideros polymorpha* between 1,682 and 2,407 m (5,518 and 7,896 ft). Associated native plant species include *Grammitis hookeri* (makue lau lii), and *Dryopteris wallichiana* (Service 1998a; 59 FR 49025; R. Hobdy *et al.*, pers. comm., 2001).

The primary threat to *Asplenium fragile* var. *insulare* on the island of Maui is the risk of extinction due to random naturally occurring events due

to the small number of existing individuals (Service 1998a; 59 FR 49025; Shaw 1992).

Bidens micrantha ssp. kalealaha (ko oko olau)

Bidens micrantha ssp. kalealaha, a short-lived member of the aster family (Asteraceae), is an erect perennial herb. This subspecies can be distinguished from other subspecies by the shape of the seeds, the density of the flower clusters, the numbers of ray and disk florets per head, differences in leaf surfaces, and other characteristics (57 FR 20772; Ganders and Nagata 1999).

Bidens micrantha is known to hybridize with other native *Bidens*, such as *B. mauiensis* and *B. menziesii*, and possibly *B. conjuncta*. Little else is known about the life history of *B. micrantha* ssp. *kalealaha*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Ganders and Nagata 1999; Service 1997; 57 FR 20772).

Historically, *Bidens micrantha ssp. kalealaha* was known from Lanai, the south slope of Haleakala on East Maui, and from one locality on West Maui. Currently, this taxon remains only on East Maui in Kahua, Nakula, and Haleakala Crater and Kaupo Gap, on State (Kahikinui Forest Reserve) and Federal (Haleakala National Park) lands within the East Maui Watershed Partnership. There are a total of three populations with less than a total of 2,000 individuals (Ganders and Nagata 1999; HINHP Database 2001; Service 1997; 57 FR 20772; GDSI 2001; HINHP Database 2001).

The habitat of *Bidens micrantha ssp. kalealaha* is blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy *Metrosideros polymorpha-Acacia koa* forest, montane shrubland, *Sophora chrysophylla* forests or cliff faces containing one or more of the following associated native plant species: *Styphelia tameiameiae*, *Coprosma montana* (pilo), *Dodonaea viscosa*, *Dubautia platyphylla* (naenae), *Vaccinium reticulatum*, or *Santalum haleakalae* (iliahi) at elevations between 1,317 and 2,565 m (4,321 and 8,414 ft) (Ganders and Nagata 1999; HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy *et al.*, pers. comm., 2001).

The threats to this species on Maui are habitat destruction by feral goats, pigs, and cattle; competition from a variety of invasive plant species; and fire (Service 1997; 57 FR 20772).

Bonamia menziesii (NCN)

Bonamia menziesii, a short-lived perennial member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Bonamia menziesii* was known from Kauai, Oahu, Molokai, one location on West Maui, and the island of Hawaii. Currently, this species is known from Kauai, Oahu, Lanai, Maui, and Hawaii. On Maui, there are four populations containing a total of eight individuals on State (Kanaio NAR) and privately owned lands within the West Maui Mountains Watershed Partnership at Honokawai, Keokea, Haunauhane, and Kanaio (GDSI 2001; HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1999; 59 FR 56333).

Bonamia menziesii is found on aa lava in mixed open dry forest, or *Erythrina sandwicensis* (wiliwili) lowland dry forest, and in mesic mixed *Metrosideros polymorpha* forest and containing one or more of the following associated native plant species: *Nestegis sandwicensis*, *Pleomele auwahiensis*, *Dodonaea viscosa*, *Alyxia oliviformis*, *Diospyros sandwicensis*, *Osteomeles anthyllidifolia*, *Alphitonia ponderosa*, *Santalum ellipticum*, *Xylosma hawaiiensis*, *Nothocestrum latifolium* (aiea), *Pouteria sandwicensis*, *Achyranthes splendens* (NCN), *Acacia koaia* (koaia), *Sida fallax*, *Reynoldsia sandwicensis* (ohe), *Sicyos* spp. (anunu), *Lipochaeta rockii* (nehe), *Nototrichium* spp. (kului), or *Myoporum sandwicense* at elevations between 184 and 906 m (604 and 2,971 ft) (HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1999; 59 FR 56333; R. Hobdy *et al.*, pers. comm., 2001).

The primary threats to this species on Maui are habitat degradation and possible predation by feral pigs, goats, axis deer, and cattle; competition with a variety of alien plant species, particularly *Lantana camara* or *Bocconia frutescens*; and an alien beetle (*Physomerus grossipes*) (Service 1999; 59 FR 56333).

Brighamia rockii (pua ala)

Brighamia rockii, a long-lived perennial member of the bellflower family (Campanulaceae), grows as an unbranched stem succulent with a thickened stem that tapers from the base. This species is a member of a unique endemic Hawaiian genus with only one other species, found on Kauai, from which it differs by the color of its petals, its longer calyx (fused sepals) lobes, and its shorter flower stalks (Lammers 1999).

Observations of *Brighamia rockii* have provided the following information: the reproductive system is protandrous, meaning there is a temporal separation between the production of male and female gametes, in this case a separation of several days; only five percent of the flowers produce pollen; very few fruits are produced per inflorescence; there are 20 to 60 seeds per capsule; and plants in cultivation have flowers at an age of 9 months. This species was observed in flower during August. Little else is known about the life history of *Brighamia rockii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996b; 57 FR 4632).).

Historically, *Brighamia rockii* ranged along the northern coast of East Molokai from Kalaupapa to Halawa and may possibly have grown on Lanai and Maui. Currently, it is only extant on Molokai (Lammers 1999; HINHP Database 2001; K. Wood, *in litt.* 2000; Service 1996b; 57 FR 46325).

On Maui, *Brighamia rockii* occurs in rock crevices on steep sea cliffs, often within the spray zone, in coastal dry to mesic forests and shrublands between 0 and 195 m (0 and 640 ft). Associated plant species include *Psydrax odorata* (alahee), *Diospyros sandwicensis, Osteomeles anthyllidifolia, and Scaevola sericea* (naupaka kahahai) (J. Lau, pers. comm., 2001; Service 1996b; 57 FR 46325).

Nothing is known of the threats to *Brighamia rockii* on the island of Maui (Service 1996b; 57 FR 46325).

Cenchrus agrimonioides (kamanomano)

Cenchrus agrimonioides is a short-lived perennial member of the grass family (Poaceae) with leaf blades which are flat or folded and have a prominent midrib. There are two varieties, *C. agrimonioides* var. *laysanensis* and *C. agrimonioides* var. *agrimonioides.* They differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of *Cenchrus agrimonioides.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. This species has been observed to produce fruit year round (Service 1999; 61 FR 53108).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from the Oahu, Lanai, and the south slope of Haleakala and Ulupalakua on Maui, and an undocumented report from the Island of Hawaii. Historically, *C. agrimonioides* var *laysanensis* was known from Laysan, Kure, and Midway, all within the Northwestern Hawaiian Islands National Wildlife Refuge. This variety has not been seen since 1973. Currently, *C. agrimonioides* var. *agrimonioides* is known from Oahu and Maui. On Maui, this variety is known from two populations on State owned land (West Maui Forest Reserve within the West Maui Mountains Watershed Partnership and Kanaio NAR) at Ukumehame and Kanaio, East Maui containing an unknown number of individuals (Corn 1980; Service 1999; 61 FR 53108; HINHP Database 2001).

Cenchrus agrimonioides var. *agrimonioides* is found in mid-elevation dry forest or *Pleomele-Diospyros* forest associated with *Dodonaea viscosa, Osteomeles anthyllidifolia, Alyxia oliviformis,* or *Santalum ellipticum* at elevations between 471 and 1,091 m (1,544 and 3,579 ft) (Service 1999; 61 FR 53108; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The major threats to the only known population of *Cenchrus agrimonioides* var. *agrimonioides* on Maui are competition with alien plant species; browsing and habitat degradation by goats and cattle; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals (Service 1999; 61 FR 53108).

Centaurium sebaeoides (awiwi)

Centaurium sebaeoides is an annual herb in the gentian family (Gentianaceae), with fleshy leaves and stalkless flowers. This species is distinguished from C. erythraea, which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Populations are found in dry areas, and plants are more likely to be found following heavy rains. Other than that, little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental regulations, and limiting factors are generally unknown (Service 1999; 56 FR 55770).

Historically and currently, *Centaurium sebaeoides* is known from Kauai, Oahu, Molokai, Lanai, and Maui. On Maui, there are three populations of this species, with a total of more than 50 individuals, on State and privately owned lands at Kahakuloa Head, Lahoole, and Kupaa Gulch (Wagner *et al.* 1999; HINHP Database 2001; Service 1999; 56 FR 55770).

This species typically grows in volcanic or clay soils or on cliffs in windward coastal areas at elevations between 0 and 194 m (0 and 636 ft) and containing one or more of the following associated native plant species: *Panicum torridum* (kakonakona), *Lysimachia mauritiana* (kolokolo kuahiwi), *Schiedea globosa* (NCN), *Lipochaeta integrifolia* (nehe), *Bidens mauiensis, Scaevola sericea,* or *Lycium sandwicense* (ohelo kai) (Service 1999; 56 FR 55770; Wagner *et al.* 1999; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The major threats to this species on Maui are habitat degradation by feral goats and cattle; competition from the alien plant species *Leucaena leucocephala;* trampling by humans on or near trails; and fire (Service 1999; 56 FR 55770).

Clermontia lindseyana (oha wai)

Clermontia lindseyana, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a small, branched tree that grows 2.5 to 6 m (8.2 to 20 ft) tall. *Clermontia lindseyana* is either terrestrial or epiphytic, living on the surface of other plants. The upper surface of the oblong-shaped leaves is dark green while the lower is pale green or purplish and hairy. Leaf stalks are 2.5–7 cm (1–2.8 in) long and hairy. Berries are 2.5–4 cm (1–1.6 in) wide, almost round, and orange. *Clermontia lindseyana* is easily separable from the other species within this genus by several characters: much larger leaves and flowers, similar petals and sepals, and spreading floral lobes. Rock (1962) commented on the leaves being conspicuously hairy beneath (Cuddihy *et al.* 1983; Lammers 1999).

This species was observed in fruit from June to October, and in flower from February to August. Little else is known about the life history of *Clermontia lindseyana.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305; HINHP Database 2001).

Historically, *Clermontia lindseyana* was known from Maui and the island of Hawaii. The two Maui populations are located in Waiopai and Wailaulau Gulches in the Kahikinui and Kula Forest Reserves on State and private lands, and are estimated to total about 330 individuals (Service 1996a; 59 FR 10305; Arthur Medeiros, U.S. Geological Survey, Biological Resources Division, *in litt.* 2000; HINHP Database 2001; GDSI 2001).

On Maui, *Clermontia lindseyana* grows in *Acacia koa* mesic forest containing one or more of the following associated native plant species: *Cyrtandra* spp., native fern species, *Ilex anomala* (kawau), *Coprosma* spp., or *Myrsine* spp. at elevations between 1,142 and 1,870 m (3,747 and 6,134 ft) (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy *et al.,* pers. comm., 2001).

The threats to *Clermontia lindseyana* are trampling and grazing by cattle, trampling and browsing by goats, and rooting and trampling by pigs; competition with the alien plant *Pennisetum clandestinum;* and consumption of berries, flowers, and vegetation by black rats (Service 1996a; 59 FR 10305).

Clermontia oblongifolia ssp. mauiensis (oha wai)

Clermontia oblongifolia ssp. *mauiensis*, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a shrub or tree with oblong to lance-shaped leaves on leaf stalks (petioles). *Clermontia oblongifolia* is distinguished from other members of the genus by its calyx and corolla, which are similar in color and are each fused into a curved tube that falls off as the flower ages. The species is also distinguished by the leaf shape, the male floral parts, the shape of the flower buds, and the lengths of the leaf and flower stalks, the flower, and the smooth green basal portion of the flower (the hypanthium). *Clermontia oblongifolia* ssp. *mauiensis* is reported from Maui and Lanai, while ssp. *oblongifolia* is only known from Oahu and ssp. *brevipes* is only known from Molokai (57 FR 20772; Lammers 1988, 1999).

Clermontia oblongifolia ssp. *mauiensis* is known to flower from November to July. Little else is known about the life history of *Clermontia oblongifolia* ssp. *mauiensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and

limiting factors are unknown (Rock 1919; Service 1997; 57 FR 20772).

Historically, *Clermontia oblongifolia* ssp. *mauiensis* known from Lanai and from Honomanu Valley on Haleakala, East Maui. Currently, it is known from Lanai and Maui. On West Maui, this taxon is currently known from one population with an unknown number of individuals, at Kaulalewelewe on privately owned land within the West Maui Mountains Watershed Partnership (Service 1997; 57 FR 20772; GDSI 2001; HINHP Database 2001; Lammers 1999).

This plant typically grows on the sides of ridges and ridge tops in *Metrosideros polymorpha*-dominated montane wet forests at elevations between 414 and 1,764 m (1,358 and 5,787 ft) and containing one or more of the following associated native plant species: *Dicranopteris linearis, Ilex anomala, Myrsine* spp., *Cheirodendron* spp. (NCN), *Coprosma* spp., *Clermontia* spp., *Hedyotis* spp., or *Melicope* spp. (Service 1997; 57 FR 20772; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The only known population of this species on Maui is vulnerable to extinction from a natural or human-caused environmental disturbance due to its small size; depressed reproductive vigor; competition with the alien plan species *Tibouchina herbacea;* and habitat degradation by feral pigs (Service 1997; 57 FR 20772).

Clermontia peleana (oha wai)

Clermontia peleana, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an epiphytic shrub or tree that grows on native trees and tree ferns. Two subspecies are recognized: *C. peleana* ssp. *singuliflora* (greenish-white petals) and *C. peleana* ssp. *peleana* (blackish-purple petals). This species can be separated from other Hawaiian members of the genus by its epiphytic growth, small triangular green calyx lobes, and single-lipped flowers (Lammers 1999).

Clermontia peleana has been observed in flower during June and November, and in fruit during November. Little else is known about the life history of *Clermontia peleana*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305; HINHP Database 2001).

Clermontia peleana ssp. *singuliflora* was formerly found on the island of Hawaii and on East Maui, but has not been seen in either place since the early 1900s (HINHP Database 2001; Wagner *et al.* 1999, L. Perry, pers. comm., 2000; Service 1996a; 59 FR 10305).

Nothing is known of the preferred habitat of or native plant species: associated with *Clermontia peleana* on the island of Maui (Service 1996a; 59 FR 10305; R. Hobdy *et al.*, pers. comm., 2001).

Nothing is known of the threats to *Clermontia peleana* on the island of Maui (Service 1996a; 59 FR 10305).

Colubrina oppositiofolia (kauila)

Colubrina oppositiofolia, a member of the buckthorn family (Rhamnaceae), is a long-lived tree with extremely hard red wood. This species is readily distinguished from the other species in Hawaii by the opposite leaf position, dull leaf surface, and entire leaf margins (Wagner *et al.* 1999).

This species has been observed in fruit and flower in September and June, and in flower during December and January. Little else is known about the life history of *Colubrina oppositiofolia.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996a; 59 FR 10305).

Historically and currently, *Colubrina oppositiofolia* is known from Oahu, Maui, and the Island of Hawaii. Currently on Maui, there are two populations containing one individual each on privately owned land in Honokawai and in Auwahi in the Hana District (Service 1996a; 59 FR 10305; Warshauer 1998; GDSI 2001; HINHP Database 2001).

Habitats of this species are lowland dry and mesic forests dominated by *Diospyros sandwicensis*, at elevations between 192 and 929 m (630 and 3,047 ft) and containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Canavalia* spp. (awikiwiki), *Wikstroemia* spp., *Psydrax odorata*, *Pleomele auwahiensis*, *Freycinetia arborea* (ieie), *Metrosideros polymorpha*, *Microlepia strigosa*, *Bidens micrantha* spp. *micrantha* (kookoolau), or *Reynoldsia sandwicensis* (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy *et al.*, pers. comm., 2001).

The threats to this species on Maui are habitat destruction by feral pigs; competition with the alien plants *Lantana camara, Pennisetum setaceum,* or *Schinus terebinthifolius;* black twig borer; Chinese rose beetles (*Adoretus sinicus*); fire; and its small population numbers and limited distribution (Service 1996a; 59 FR 10305).

Ctenitis squamigera (pauoa)

Ctenitis squamigera is a short-lived perennial of the spleenwort family (Aspleniaceae). It has a rhizome (horizontal stem) 5 to 10 mm (0.2 to 0.4 in) thick, creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. The leaf stalks are densely clothed with tan-colored scales up to 1.8 cm (0.7 in) long and 1 mm (0.04 in) wide. The sori are tan-colored when mature and are in a single row one-third of the distance from the margin to the midrib of the ultimate segments. The indusium (the membrane enclosing the sori) is whitish before wrinkling, thin, suborbicular with a narrow sinus extending about half way, glabrous except for a circular margin which is ciliolate with simple several-celled glandular and nonglandular hairs arising directly from the margin or from the deltoid base. *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Degener and Degener 1957; Wagner and Wagner 1992).

Little is known about the life history of *Ctenitis squamigera.* Flowering cycles, pollination vectors, seed dispersal agents, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Ctenitis squamigera* was recorded from the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. It is currently found on Oahu, Lanai, Molokai, and Maui. On Maui, there are currently six populations with 41 individuals on State (West Maui Forest Reserve) and privately owned lands at Honolua, Kahana, Honokawai, Wahikuli, Kapilau Ridge, Paupau, and Hukoula within the West Maui Mountains Watershed Partnership (GDSI 2001; H. Oppenheimer, *in litt.* 2000; K. Wood, pers. comm., 2000; J. Lau, pers. comm., 2000 and *in litt.* 2000; HINHP Database 2001; Service 1998a; 59 FR 49025).

This species is found in the forest understory, in *Metrosideros polymorpha* montane wet forest or diverse mesic forest at elevations between 74 and 1,593 m (243 and 5,226 ft) and containing one or more of the following native plant species: *Alyxia oliviformis, Freycinetia arborea, Coprosma* spp., *Pleomele* spp. (hala pepe), *Sadleria* spp., *Doodia* spp. (okupukupu lauii), *Pittosporum* spp. (hoawa), *Dryopteris* spp. (NCN), *Bobea* spp. (ahakea), *Antidesma* spp. (hame), *Peperomia* spp. (ala ala wainui), *Dicranopteris linearis, Schiedea pubescens* var. *pubescens* (NCN), *Hibiscus kokio* ssp. *kokio*

(kokio), *Hedyotis terminalis, Pritchardia* spp., *Remya mauiensis, Canavalia* spp., *Myrsine* spp., *Psychotria* spp., or *Xylosma* spp. (Service 1998a; 59 FR 49025; HINHP Database 2001; H. Oppenheimer, pers. comm., 2000; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats to *Ctenitis squamigera* are habitat degradation by feral pigs, goats, and axis deer; competition with alien plant species, especially *Psidium cattleianum* and *Schinus terebinthifolius;* fire; and extinction from naturally occurring events due to the small number of existing populations and individuals (Service 1998a; 59 FR 49025).

Cyanea grimesiana ssp. grimesiana (haha)

Cyanea grimesiana ssp. *grimesiana,* a short-lived member of the bellflower family (Campanulaceae), is a perennial shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1990).

On Molokai, flowering plants have been reported in July and August. Little else is known about the life history of *Cyanea grimesiana* ssp. *grimesiana.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically and currently, *Cyanea grimesiana* ssp. *grimesiana* is known from Oahu, Molokai, Lanai, and scattered locations on Maui. Currently on Maui, there are two populations with a total of five individuals on privately owned land in Iao Valley and Kapilau Ridge (Service 1999; 61 FR 53108; GDSI 2001; HINHP Database 2001).

This species is typically found on rocky or steep slopes of stream banks in wet forest gulch bottoms often dominated by *Metrosideros polymorpha* at elevations between 312 and 1,617 m (1,024 and 5,305 ft) and containing one or more of the following associated native plant species: *Antidesma* spp., *Bobea* spp., *Myrsine* spp., *Nestegis sandwicensis, Psychotria* spp., or *Xylosma* spp. (Service 1999; 61 FR 53108; R. Hobdy *et al.,* pers. comm., 2001).

The threats to this species on Maui are habitat degradation and/or destruction caused by axis deer, goats, and pigs; competition with various alien plants; randomly naturally occurring events that could cause extinction due to the small number of existing individuals; trampling by hikers; landslides; rats; and slugs (Service 1999; 61 FR 53108).

Cyanea lobata (haha)

Cyanea lobata, a short-lived member of the bellflower family (Campanulaceae), is a sparingly branched perennial shrub with smooth to somewhat rough stems and oblong, irregularly lobed leaves. This species is distinguished from other species of *Cyanea* by the size of the flower and the irregularly lobed leaves with petioles (Lammers 1990).

Cyanea lobata is known to flower from August to February, even in individuals as small as 50 cm (20 in) in height. Little else is known about the life history of *Cyanea lobata*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Rock 1919; Degener 1936; Service 1997; 57 FR 20772).

Historically, *Cyanea lobata* was known from Lanai and West Maui. It is no longer extant on Lanai. On Maui, there are currently four populations with a total of 12 individuals on privately owned land within the West Maui Mountains Watershed Partnership at Kaulalewelewe, Honolowai, Honokohau, and Waikapu (Lammers 1999; GDSI 2001: HINHP Database 2001; Service 1997; 57 FR 20772).

This species has been seen and collected on steep stream banks in deep shade in wet forest at elevations between 204 and 1,531 m (669 and 5,020 ft) and containing one or more of the following associated native plant species: *Touchardia latifolia, Morinda trimera* (noni kuahiwi), *Metrosideros polymorpha, Clermontia kakeana, Cyrtandra* spp., *Xylosma* spp., *Psychotria* spp., *Antidesma* spp., *Pipturus albidus, Peperomia* spp., *Touchardia latifolia, Freycinetia arborea, Pleomele* spp., or *Athyrium* spp. (akolea) (Service 1997; 57 FR 20772; Lammers 1999; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The threats to this species on Maui are habitat degradation by feral pigs; depressed reproductive vigor; and natural or human-caused environmental disturbance that could easily be catastrophic to the only known population due to the small number of remaining individuals and the limited and scattered distribution of the species (Service 1997; 57 FR 20772).

Cyrtandra munroi (ha iwale)

Cyrtandra munroi, a short-lived perennial and member of the African violet family (Gesneriaceae), is a shrub with opposite, elliptic to almost circular leaves which are sparsely to moderately hairy on the upper surface and covered with velvety, rust-colored hairs underneath. This species is distinguished from other species of the genus by the broad opposite leaves, the length of the flower cluster stalks, the size of the flowers, and the amount of hair on various parts of the plant (Wagner *et al.* 1999).

Some work has been done on the reproductive biology of some species of *Cyrtandra*, but not on that of *C. munroi* specifically. The pollinators of these plants have not been identified, although studies indicate that a specific pollinator may be necessary for successful pollination. Seed dispersal may be carried out by birds which eat the fruits. Little else is known about the life history of *Cyrtandra munroi*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995b; 57 FR 20772).

Historically and currently, *Cyrtandra munroi* is known from Lanai and West Maui. Currently on Maui, there are four populations with a total of approximately 1,000 individuals on private and State (West Maui Forest Reserve) owned lands within the West Maui Mountains Watershed Partnership in Kahanaiki Gulch, Pulepule Gulch, Honokahua Gulch, along Makamakaole Stream, and Hahakea (Wagner *et al.* 1999; GDSI 2001; HINHP Database 2001; Service 1995b; 57 FR 20772).

The habitat of this species is rich, moist to wet, moderately steep talus slopes in lowland wet *Metrosideros polymorpha* forest at elevations between 390 and 1,108 m (1,280 and 3,635 ft) and containing one or more of the following associated native plant species: *Diospyros* spp. (lama), *Strongylodon ruber* (nuku iiwi), *Hedyotis acuminata, Clermontia* spp., *Alyxia oliviformis, Bobea* spp., *Coprosma* spp., *Freycinetia arborea, Melicope* spp., *Myrsine* spp., *Perrottetia sandwicensis, Pipturus* spp. (mamaki), *Pittosporum* spp., *Pouteria sandwicensis, Psychotria* spp., *Sadleria* spp., *Scaevola* spp. (naupaka), *Xylosma* spp., *Sicyos* spp., *Zanthoxylum kauense* (ae), or other *Cyrtandra* spp. (Service 1995b; 57 FR 20772; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The threats to this species on Maui are from competition with the alien

plant species *Psidium cattleianum, Pluchea symphytifolia* (sourbush), *Melinis minutiflora, Rubus rosifolius*, and *Paspalum conjugatum*; loss of appropriate pollinators; a very small number of extant individuals which can cause depressed reproductive vigor; and the effects of random environmental events that could easily be catastrophic to the only known population on Maui (Service 1995b; 57 FR 20772).

Delissea undulata (NCN)

Delissea undulata, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched, palm-like, woody-stemmed tree, with a dense cluster of leaves at the tips of the stems. One or two knob-like structures often occur on the back of the flower tube. Three subspecies, all but the last of which are considered extinct, may be separated on the basis of leaf shape and margin characters: *D. undulata* var. *kauaiensis* (leaf blades are oval and flat-margined with sharp teeth) (Kauai), *D. undulata* var. *niihauensis* (leaf blades are heart shaped and flat-margined with shallow, rounded teeth) (Niihau) and *D. undulata* var. *undulata* (leaf blades are elliptic to lance-shaped and wavy-margined with small, sharply pointed teeth) (Maui, Hawaii). This species is separated from the other closely related members of the genus by its large flowers and berries and broad leaf bases. *Delissea undulata* ssp. *undulata* is the only subspecies known from Maui (Lammers 1999).

Delissea undulata var. *undulata* was observed in fruit and flower during December. Little else is known about the life history of *Delissea undulata* var. *undulata.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 61 FR 53124; HINHP Database 2001).

Delissea undulata var. *undulata* was known from southwestern Maui, western Hawaii and Niiahu. Currently it occurs Kauai and the island of Hawaii (GDSI 2001; HINHP Database 2001; Linda Pratt, U.S. Geological Survey-Biological Resources Division, *et al.,* pers. comm., 2001; K. Wood pers comm., 2001; Service 1996a; 61 FR 53124).

Nothing is known of the preferred habitat of or native plant species associated with *Delissea undulata* var. *undulata* on the island of Maui (Service 1996a; 61 FR 53124; R. Hobdy *et al.,* pers. comm., 2001).

Nothing is known of the threats to *Delissea undulata* var. *undulata* on the island of Maui (Service 1996a; 61 FR 53124).

Diellia erecta (Asplenium-leaved diellia)

Diellia erecta, a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of three to nine lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having brown or dark gray scales usually more than 2 cm (0.8 in) in length, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Smith 1934; Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of *Diellia erecta.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. Currently, it is only known from Molokai, Maui, and Hawaii. On Maui, there are five known populations with a total of 35 individual plants on State (West Maui Forest Reserve, Manawainui Plant Sanctuary, and Department of Hawaiian Home Lands) or privately owned lands within the West Maui Mountains Watershed Partnership in Iao Valley, Hanaulaiki, Manawainui Gulch, Near Polipoli in Kamaole and West of Waiopai Gulch (Service 1999; 59 FR 56333; GDSI 2001; HINHP Database 2001).

This species is found in steep slopes or gulch sides in deep shade in *Acacia koa-Metrosideros polymorpha* low-to mid-elevation mesic forests at elevations between 338 and 1,744 m (1,109 and 5,722 ft) and containing one or more of the following associated native plant species: *Styphelia tameiameiae, Melicope* spp., *Coprosma* spp., *Dodonaea viscosa, Dryopteris unidentata* (NCN), *Myrsine* spp., *Psychotria* spp., or *Osteomeles anthyllidifolia* (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy *et al.,* pers. comm., 2001).

The major threats to *Diellia erecta* on Maui are habitat degradation by pigs, goats, and cattle; competition with alien plant species, including *Blechnum occidentale* (NCN); and random naturally occurring events that could cause extinction and/or reduced reproductive vigor due to the small number of existing individuals (Service 1999; 59 FR 56333).

Diplazium molokaiense (NCN)

Diplazium molokaiense, a short-lived perennial member of the woodfern family (Dryopteridaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Little is known about the life history of *Diplazium molokaiense.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Ainahou Valley and Maliko Gulch (East Maui) and Wailuku (Iao) Valley and Waikapu (West Maui) on Maui. Currently, this species is only known from Maui. Four populations with a total of 23 individuals are found on State (Kula and Kahikinui Forest Reserves) and privately owned lands within the East Maui Watershed Partnership Near Polipoli in Kamaole, between Kahakapao Gulch and Puu O Kakae, Honomanu, and Waiopai Gulch (Warshauer 1998; GDSI 2001; HINHP Database 2001; Service 1998a; 59 FR 49025).

This species occurs near water courses often in proximity to waterfalls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest at elevations between 273 and 1,917 m (896 and 6,289 ft) (Service 1998a; 59 FR 49025; HINHP Database 2001; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats on Maui are habitat degradation by feral goats, cattle, pigs, and axis deer; competition with alien plant species; decreased reproductive vigor; and extinction from randomly occurring natural events due to the small number of populations and individuals (Service 1998a; 59 FR 49025; HINHP Database 2001).

Flueggea neowawraea (mehamehame)

Flueggea neowawraea, a long-lived perennial and a member of the spurge family (Euphorbiaceae), is a large tree with white oblong pores covering its scaly, pale brown bark. This species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size, scaly bark, the shape, size, and color of the leaves, flowers clustered along the branches, and the size and shape of the fruits (Linney 1982; Hayden 1999).

Individual trees of *Flueggea neowawraea* bear only male or female

flowers, and must be cross-pollinated from a different tree to produce viable seed. Little else is known about the life history of *Flueggea neowawraea.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Hayden 1999; Service 1999; 59 FR 56333).

Historically, *Flueggea neowawraea* was known from the islands of Molokai, Oahu, Kauai, and Hawaii. Currently, populations are known from Kauai, Oahu, East Maui, and Hawaii. On Maui, there are three populations with a total of five trees on State (Department of Hawaiian Home Lands) and privately owned lands at Auwahi, and above the Lualailua and Alena (GDSI 2001; HINHP Database 2001; Mahealani Kaiaokamelie, (formerly with) Ulupalakua Ranch, *in litt.* 2000; Service 1999; 59 FR 56333).

Flueggea neowawraea occurs in dry or mesic forest at elevations between 633 and 971 m (2,078 and 3,186 ft) and containing one or more of the following associated native plant species: *Alectryon macrococcus, Bobea timonioides* (ahakea), *Charpentiera* spp. (papala), *Myrsine lanaiensis* (kolea), *Tetraplasandra* spp. (oheohe), *Diplazium sandwichianum, Nesoluma polynesicum* (keahi), *Diospyros* spp., *Antidesma pulvinatum, Psydrax odorata, Nestegis sandwicensis, Rauvolfia sandwicensis* (hao), *Pleomele* spp., *Pouteria sandwicensis,* or *Pleomele auwahiensis* (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy *et al.,* pers. comm., 2001).

The threats to the populations on Maui are the black twig borer; habitat degradation by feral pigs, goats, deer, and cattle; competition with alien plant species; depressed reproductive vigor; the risk of extinction from a random environmental event due to the small number of individuals; and predation of the fruit by rats (Service 1999; 59 FR 56333; HINHP Database 2001).

Gouania vitifolia (NCN)

Gouania vitifolia, a member of the buckthorn family (Rhamnaceae) and a short-lived perennial, is a climbing shrub with tendriled flowering branches. This species differs from other members of its genus by having flowering branches with a tendril and coarsely crenate (wavy) to serrate-dentate (toothed) leaf margins (Wagner *et al.* 1999).

In winter and late spring the main vine of *Gouania vitifolia* produces new young side shoots which soon die. Plants have been observed flowering from late November to January, but flowering probably depends on precipitation. Little else is known about the life history of *Gouania vitifolia.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 59 FR 32932).

Historically, *Gouania vitifolia* was known from West Maui, the Kau District of the island of Hawaii, and Oahu. The species currently occurs on Oahu and on the island of Hawaii (GDSI 2001; Jon Giffin, DOFAW, *in litt.* 2000; Service 1998b; 59 FR 32932).

On Maui, *Gouania vitifolia* typically grows on the sides of ridges and gulches in dry to mesic forests at elevations between 155 and 1,326 m (509 and 4,350 ft). Associated plant species include *Erythrina sandwicensis, Dodonaea viscosa, Hibiscus arnottianus* (kokio keokeo), *Pipturus albidus, Urera glabra* (opuhe), *Chamaesyce* spp. (akoko), *Psychotria* spp., *Hedyotis* spp., *Melicope* spp., *Nestegis sandwicensis, Bidens* spp., *Carex meyenii* (NCN), and *Diospyros sandwicensis* (J. Lau, pers. comm., 2001; Service 1998b; 59 FR 32932).

Nothing is known of the threats to *Gouania vitifolia* on the island of Maui (Service 1998b; 59 FR 32932).

Hedyotis coriacea (kio ele)

Hedyotis coriacea, a member of the coffee family (Rubiaceae), is a small, short-lived perennial shrub with leathery leaves which are generally elliptic to oblong in shape, 3 to 8 cm (1.2 to 3.1 in) long and usually 1.5 to 3 cm (0.6 to 1.2 in) wide. This species is distinguished from others of the genus by its small, triangular calyx lobes, which do not enlarge in fruit, and the combination of capsules which are longer than wide and flower buds which are square in cross section (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis coriacea.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Hedyotis coriacea* was known from Oahu and the Island of Hawaii. Considered extinct on all islands in recent years, this species was discovered in 1990 by Steve Perlman in the State owned Lihau section of the West Maui NAR and in 1991 on the 1859 lava flow in the Pohakuloa Training Area, Island of Hawaii. Currently, only a single individual is known from West Maui on State owned land withing the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

Hedyotis coriacea is found on steep, rocky, slopes in dry lowland *Dodonaea viscosa* dominated shrublands at elevations between 110 and 937 m (361 and 3,074 ft) and containing one or more of the following associated native plant species: *Sida fallax, Gouania hillebrandii* (NCN), *Bidens menziesii* (kookoolau), *Lipochaeta lavarum, Myoporum sandwicense,* or *Schiedea menziesii* (NCN) (HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy *et al.,* pers. comm., 2001).

The single remaining individual of *Hedyotis coriacea* on Maui is threatened by extinction from a random naturally occurring event (Service 1997; 57 FR 20772).

Hedyotis mannii (pilo)

Hedyotis mannii, a member of the coffee family (Rubiaceae), is a short-lived perennial plant with smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long, which are woody at the base and four-angled or winged. The leaves are opposite, thin in texture, and elliptic to sometimes lance-shaped. Stipules (leaf-like appendages), which are attached to the slightly winged leaf stalks where they join and clasp the stem, are triangular. Flowers are arranged in loose clusters up to 30 cm (1 ft) long at the ends of the stems and are either bisexual or female. This species' growth habit, its quadrangular or winged stems, the shape, size, and texture of its leaves, and its dry capsule, which opens when mature, separate it from other species of the genus (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis mannii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b; 57 FR 46325).

Currently and historically, *Hedyotis mannii* is known from Lanai, West Maui, and Molokai. On Maui, there is a single population of approximately 20 individuals located on private land in Kauaula Valley (Service 1996b; 57 FR 46325; GDSI 2001; K. Wood *in litt.* 2000).

The population on Maui is found on basalt cliffs along stream banks in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest at elevations between 340 and 1,593 m (1,115 and 5,226 ft) and containing one or more of the following associated native plant species: *Machaerina* spp. (uki), *Carex meyenii, Phyllostegia* spp. (NCN), *Hedyotis acuminata, Cyrtandra platyphylla* (haiwale), *Cyanea* spp.

(haha), *Psychotria* spp., *Pipturus albidus, Boehmeria grandis, Urera glabra, Touchardia latifolia, Cyrtandra grayi* (haiwale), *Cyrtandra hawaiensis* (haiwale), or *Isachne distichophylla* (ohe) (K. Wood *in litt.* 2000; Service 1996b; 57 FR 46325; R. Hobdy *et al.,* pers. comm., 2001).

Hedyotis mannii on Maui is threatened by landslides; competition with the alien plant species *Rubus rosifolius, Ageratina adenophora, Buddleia asiatica* (butterfly bush), *Pluchea carolinensis* (sourbush), and *Clidemia hirta;* and the low number of individuals makes it extremely vulnerable to extinction by random naturally occurring events (Service 1996b; 57 FR 46325; K. Wood *in litt.* 2000).

Hesperomannia arborescens (NCN)

Hesperomannia arborescens, a long-lived perennial of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomannia* species in having the following combination of characteristics: erect to ascending flower heads, thick flower head stalks, and usually hairless and relatively narrow leaves (Wagner *et al.* 1999).

This species has been observed in flower from April through June and fruit during March and June. Little else is known about the life history of *Hesperomannia arborescens.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 59 FR 14482).

Hesperomannia arborescens was formerly known from Lanai, Molokai, and Oahu. This species is now known from Oahu, Molokai, and Maui. There are currently two populations with a total of six individuals on State (Kahukuloa section West Maui NAR) and privately-owned lands in Honokohau and Lanilii within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1998b; 59 FR 14482).

Hesperomannia arborescens is found on slopes or ridges in lowland mesic or wet forest at elevations between 346 and 1,335 m (1,135 and 4,380 ft) and containing one or more of the following associated native plant species: *Metrosideros polymorpha, Myrsine sandwicensis* (kolea), *Isachne distichophylla, Pipturus* spp., *Antidesma* spp., *Psychotria* spp., *Clermontia* spp., *Cibotium* spp., *Dicranopteris linearis, Bobea* spp., *Coprosma* spp., *Sadleria* spp., *Melicope* spp., *Machaerina* spp., *Cheirodendron* spp., or *Freycinetia arborea* (HINHP Database 2001; Service 1998b; 59 FR 14482; R. Hobdy *et al.,* pers. comm., 2001).

The major threats to *Hesperomannia arborescens* on Maui are habitat degradation by feral pigs and goats; competition with alien plant species; extinction due to random environmental events or reduced reproductive vigor due to the small number of individuals in one remaining population; and impact by humans (Service 1998b; 59 FR 14482; HINHP Database 2001).

Hesperomannia arbuscula (NCN)

Hesperomannia arbuscula, a long-lived perennial member of the aster family (Asteraceae), is a small shrubby tree, 2 to 3.3 m (7 to 11 ft) tall. This species can be distinguished from other members of the genus by the erect flower heads and the leaves, usually hairy beneath, which are one to two times as long as wide (Wagner *et al.* 1999).

Hesperomannia arbuscula usually flowers in the spring depending on precipitation. Seeds mature in about 6 weeks and trees live about 10 to 15 years. Little else is known about the life history of *Hesperomannia arbuscula.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 56 FR 55770).

Historically and currently, *Hesperomannia arbuscula* is known from Oahu and West Maui. On Maui, this species is found in two populations with a total of 37 individuals, on privately owned land along the Waihee Stream and Nakalaloa within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1998b; 56 FR 55770).

Hesperomannia arbuscula typically grows on steep forested slopes and ridges in mesic forest dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* at elevations between 354 and 1,453 m (1,161 and 4,767 ft) and containing one or more of the following associated native plant species: *Bidens* spp., *Tetraplasandra* spp., *Alyxia oliviformis, Clermontia* spp., *Cyanea* spp., *Cheirodendron* spp., or *Psychotria* spp. (HINHP Database 2001; J. Lau, pers. comm., 2001; Service 1998b; 56 FR 55770; R. Hobdy *et al.,* pers. comm., 2001).

The major threats to *Hesperomannia arbuscula* on Maui are habitat degradation by feral pigs, competition from alien plant species, trampling by humans, and extinction from naturally occurring random events due to the small number of populations (Service 1998b; 56 FR 55770).

Hibiscus brackenridgei (ma o hau hele)

Hibiscus brackenridgei, a short-lived perennial and a member of the mallow family (Malvaceae), is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptic scar. Two subspecies are currently recognized, *Hibiscus brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1990).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length. Little else is known about the life history of *Hibiscus brackenridgei.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, Kahoolawe and Hawaii. Currently, *Hibiscus brackenridgei* ssp. *mokuleianus* is known from Oahu and from undocumented observations on Kauai. *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and Hawaii. On Maui, *Hibiscus brackenridgei* ssp. *brackenridgei* is found in five populations, containing 40 individuals, on State (Lihau section of West Maui NAR and Department of Hawaiian Home Lands) and privately owned lands at Lihau, Kaonohua, Keokea, and near Puu O Kali (Bates 1990; Service 1999; 59 FR 56333; GDSI 2001; HINHP Database 2001).

Hibiscus brackenridgei ssp. *brackenridgei* occurs in lowland dry forest sometimes with *Erythrina sandwicensis* as the dominant tree at elevations between 43 and 610 m (141 and 2,001 ft) and containing one or more of the following associated native plant species: *Myoporum sandwicense, Chenopodium* spp. (aheahea), *Achyranthes* spp. (NCN), *Nototrichium* spp., *Diospyros* spp., *Chamaesyce celastroides* var. *lorifolia, Dodonaea viscosa, Psydrax odorata, Schiedea salicaria* (NCN), *Lipochaeta lavarum,* annual *Panicum* spp., or *Sida fallax* (HINHP Database 2001; Service 1999; 59

FR 56333; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats to *Hibiscus brackenridgei* ssp. *brackenridgei* on Maui and or Kahoolawe are habitat degradation and possible predation by pigs, goats, cattle, axis deer, and rats; competition with alien plant species; fire; and susceptibility to extinction caused by random environmental events or reduced reproductive vigor due to small population size and a limited number of populations (Service 1999; 59 FR 56333).

Ischaemum byrone (Hilo ischaemum)

Ischaemum byrone, a short-lived member of the grass family (Poaceae), is a perennial species with creeping underground and erect stems. *Ischaemum byrone* can be distinguished from other Hawaiian grasses by its tough outer flower bracts, dissimilar basic flower units, which are awned (slender bristle) and two-flowered, and a dichotomously- or trichotomously-branching (forking or branching in two's or three's) inflorescence (O'Connor 1999).

Little is known about the life history of *Ischaemum byrone.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Historically, *Ischaemum byrone* was reported from Oahu, Molokai, East Maui, the Island of Hawaii, and an undocumented site on Kauai. Currently, this species is found on Kauai, Molokai, Hawaii, and Maui. On Maui, it is currently found State and privately owned lands at Keopuka Rock, Paupalu Point, Moku Huki, West of Kalahu Point, between Keakulikuli Point and Pukaulua Point, and Kauiki Head. There is a total of six populations with less than 2,000 individuals (GDSI 2001; HINHP Database 2001; Service 1996a; 59 FR 10305).

Ischaemum byrone grows in close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland at elevations between 0 and 190 m (0 and 623 ft) and containing one or more of the following associated native plant species: *Bidens* spp., *Fimbristylis cymosa* (mauu akiaki), or *Scaevola sericea* (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy *et al.,* pers. comm., 2001).

The most serious threat to *Ischaemum byrone* is the invasion of alien plant species, particularly *Digitaria ciliaris* (Henry's crabgrass), *Ardisia elliptica* (shoebutton ardisia) and *Casuarina equisetifolia* (ironwood). Additionally, fire may pose a threat in areas infested with alien grasses, provided enough fuel is present. Other potential threats include grazing and browsing by goats and axis deer. Disturbance incurred from these ungulates further promotes the introduction and establishment of alien weeds. Some populations are also threatened by residential development (Service 1996a; 59 FR 10305; HINHP Database 2001).

Isodendrion pyrifolium (wahine noho kula)

Isodendrion pyrifolium, a short-lived perennial of the violet family (Violaceae), is a small, branched shrub with elliptic to lance-shaped leaf blades. The papery-textured blade is moderately hairy beneath (at least on the veins) and stalked. The petiole (stalk) is subtended by oval, hairy stipules. Fragrant, bilaterally symmetrical flowers are solitary. The flower stalk is white-hairy, and subtended by two bracts. Bracts arise at the tip of the main flower stalk. The five sepals are lance-shaped, membranous-edged and fringed with white hairs. Five green-yellow petals are somewhat unequal, and lobed, the upper being the shortest and the lower the longest. The fruit is a three-lobed, oval capsule, which splits to release olive-colored seeds. *Isodendrion pyrifolium* is distinguished from other species in the genus by its smaller, green-yellow flowers, and hairy stipules and leaf veins (Wagner *et al.* 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening 1 to 2 months later. Little else is known about the life history of *Isodendrion pyrifolium*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Isodendrion pyrifolium is known historically from six of the Hawaiian Islands: Niihau, Molokai, Lanai, Oahu, Maui, and the island of Hawaii. Currently, it is only found on the island of Hawaii (Service 1996a; 59 FR 10305; GDSI 2001; HINHP Database 2001; Marie Bruegmann, Service, pers. comm., 2000).

On Maui, *Isodendrion pyrifolium* occurs in dry shrubland at elevations between 54 and 557 m (177 and 1,827 ft) with one or more of the following associated native plant species: *Psydrax odorata, Capparis sandwichiana, Dodonaea viscosa,* or *Myoporum sandwicense* (J. Lau, pers. comm., 2001; Service 1996a; 59 FR 10305; R. Hobdy *et al.,* pers. comm., 2001).

Nothing is known of the threats to *Isodendrion pyrifolium* on the island of Maui (Service 1996a; 59 FR 10305).

Lysimachia lydgatei (NCN)

Lysimachia lydgatei, a short-lived perennial member of the primrose family (Primulaceae), is a sprawling, branched shrub with stems from 1 to 1.3 m (3 to 4 ft) long. This species is distinguished from others in the genus by the dense hairs on both the upper and lower surfaces of mature leaves (Wagner *et al.* 1999).

Little is known about the life history of *Lysimachia lydgatei.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Lysimachia lydgatei was known historically from a gulch behind Lahaina on West Maui and from Oahu. Currently, it is found only on Maui on State (Lihau section of West Maui NAR and the West Maui Forest Reserve) and privately owned lands Helu, Lihau, east of Halepohaku, and Ulaula within the West Maui Mountains Watershed Partnership. The four Maui populations number approximately 240 individuals (Wagner *et al.* 1999; HINHP Database 2001; GDSI 2001; Service 1997; 57 FR 20772).

Lysimachia lydgatei typically grows on the sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis* dominated wet to mesic shrubland or *Metrosideros-Cheirodendron* spp. montane forest at elevations between 829 and 1,432 m (2,720 and 4,698 ft) and containing one or more of the following associated native plant species: *Lycopodium* spp. (wawae iole), *Ilex anomala, Dodonaea viscosa, Vaccinium* spp., *Eurya sandwicensis* (anini), *Styphelia tameiameiae, Coprosma* spp., *Ochrosia* spp. (holei), *Astelia* spp. (painiu), *Broussaisia arguta*, or mat ferns such as *Dicranopteris* spp. (HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy *et al.,* pers. comm., 2001).

The greatest threats to *Lysimachia lydgatei* are the threat of extinction from a random environmental event due to the small number of populations; competition with alien plant species such as *Rubus argutus*; and fire (Service 1997; 57 FR 20772).

Mariscus pennatiformis (NCN)

Mariscus pennatiformis, a short-lived member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with brown scales. *Mariscus pennatiformis* is a subdivided into two subspecies, ssp.

bryanii and ssp. *pennatiformis,* which are distinguished by the length and width of the spikelets; color, length, and width of the glume; and by the shape and length of the achenes. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems (Koyama 1990).

Mariscus pennatiformis is known to flower from November to December after heavy rainfall. Little else is known about the life history of *Mariscus pennatiformis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Mariscus pennatiformis* was known from Kauai, Oahu, East Maui (Keanae Valley, Hana, and Nahiku), the Island of Hawaii, and from Laysan in the Northwestern Hawaiian Islands. *Mariscus pennatiformis* ssp. *bryanii* is only known from Laysan Island in the Northwestern Hawaiian Islands National Wildlife Refuge. *Mariscus pennatiformis* ssp. *pennatiformis* is currently found only on East Maui. One population of approximately 30 individuals is found on State owned land near the mouth of Hanawi Stream (HINHP Database 2001; GDSI 2001; K. Wood *in litt.* 1999; Service 1999; 59 FR 56333).

On Maui, *Mariscus pennatiformis* ssp. *pennatiformis* is found on cliffs with brown soil and talus within reach of ocean spray in *Pandanus tectorius* (hala) coastal wet forests at elevations between 0 and 188 m (0 and 615 ft) and containing one or more of the following associated native plant species: *Sadleria pallida, Lysimachia mauritiana* (kolokolo kuahiwi), *Cyperus laevigatus* (makaloa), *Eragrostis* spp. (NCN), or *Ipomoea* spp. (morning glory) (HINHP Database 2001; K. Wood *in litt.* 1999; J. Lau, pers. comm., 2001; Service 1999; 59 FR 56333).

Threats to the only known population of *Mariscus pennatiformis* ssp. *pennatiformis* on Maui include grazing and habitat destruction caused by ungulates; competition from alien plant species; and extinction from random naturally occurring events (Service 1999; 59 FR 56333).

Melicope knudsenii (alani)

Melicope knudsenii, a long-lived perennial and a member of the rue family (Rutaceae), is a tree with smooth gray bark and yellowish brown to olive-brown hairs on the tips of the branches. The species is distinguished from *M. haupuensis* and other members of the genus by the distinct carpels present in the fruit, a hairless endocarp, a larger number of flowers per cluster, and the distribution of hairs on the underside of the leaves (Stone *et al.* 1999).

Little is known about the life history of *Melicope knudsenii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995a; 59 FR 9304).

Historically and currently, *Melicope knudsenii* was known from the southeast slope of Haleakala on Maui and from Kauai. Currently on Maui, there is one population with three individuals on State (Department of Hawaiian Home Lands) and privately owned lands from Puu Mahoe to east of Puu Ouli (GDSI 2001; HINHP Database 2001; Service 1995a; 59 FR 9304).

Melicope knudsenii grows in *Nestegis-Pleomele* mixed open dry forests at elevations between 648 and 1,331 m (2,125 and 4,367 ft) and containing one or more of the following associated native plant species: *Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum,* or *Xylosma hawaiiensis* (HINHP Database 2001; Service 1995a; 59 FR 9304; R. Hobdy *et al.,* pers. comm., 2001).

Threats to *Melicope knudsenii* include habitat degradation by alien animals, such as goats, cattle, and pigs; reduced reproductive vigor; fire; natural aging and death; and invasive plant species, such as *Pennisetum clandestinum* (Service 1995a; 59 FR 9304).

Melicope mucronulata (alani)

Melicope mucronulata, a long-lived perennial of the rue family (Rutaceae), is a small tree up to 4 m (13 ft) tall with oval to elliptic-oval leaves, 8 to 16 cm (3 to 6.5 in) long and 3.5 to 6.5 cm (1.5 to 2.5 in) wide. This species is distinguished from others in the genus by the growth habit, the number of flowers in each flower cluster, the size and shape of the fruit, and the degree of hairiness of the leaves and fruit walls (Stone *et al.* 1999).

Little is known about the life history of *Melicope mucronulata.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

First discovered in 1920 in Kanaio, East Maui, *Melicope mucronulata* was not relocated until 1983 when it was reported from privately owned land with an unknown number of plants in Auwahi. This species was also found 2 years later on East Molokai (Stone *et al.* 1999; GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

Melicope mucronulata typically grows on gentle south-facing slopes in lowland dry to mesic forest at elevations between 625 and 1,331 m (2,050 and 4,367 ft) and containing one or more of the following associated species: *Pleomele auwahiensis, Dodonaea viscosa, Nestegis sandwicensis, Pouteria sandwicensis, Antidesma pulvinatum, Streblus pendulinus,* and *Melicope hawaiensis* (alani) (Service 1997; 57 FR 20772; J. Lau, pers. comm., 2001).

The major threat to the continued existence of the only known population of *Melicope mucronulata* on Maui is the risk of extinction from a random environmental event. Habitat degradation by goats and pigs, predation by goats, and competition with alien plant species, particularly *Melinis minutiflora,* also pose immediate threats to this species (Service 1997; 57 FR 20772).

Neraudia sericea (NCN)

Neraudia sericea, a short-lived perennial member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The elliptic or oval leaves have smooth margins or slightly toothed margins on young leaves. The upper leaf surface is moderately hairy and the lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. The male flowers may be stalkless or have short stalks. The female flowers are stalkless and have a densely hairy calyx that is either toothed, collar-like, or divided into narrow unequal segments. The fruits are achenes with the apical section separated from the basal portion by a deep constriction. Seeds are oval with a constriction across the upper half. *Neraudia sericea* differs from the other four closely related species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.* 1999).

Little is known about the life history of *Neraudia sericea.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Neraudia sericea was known historically from Molokai, Lanai, Olowalu Valley on West Maui, the southern slopes of Haleakala on East Maui, and from Kahoolawe. Currently, this species is known from Molokai and Maui. On Maui, three populations totaling more than five individuals are found on State (Department of Hawaiian

Home Lands) and privately owned lands in Pohakea Gulch (West Maui) and in Manawainui and Kamole Gulches (East Maui) (GDSI 2001; HINHP Database 2001; M. Kaiaokamelie, *in litt.* 2000; Service 1999; 59 FR 56333).

Neraudia sericea generally occurs in dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland or forest or *Acacia koa* forest at elevations between 198 and 1,658 m (650 and 5,439 ft) and containing one or more of the following associated native plant species: *Urera glabra, Cyrtandra oxybapha* (haiwale), *Cyrtandra* spp., *Sida fallax, Diospyros* spp., *Bobea* spp., *Coprosma* spp., or *Hedyotis* spp. (Wagner *et al.* 1999; HINHP Database 2001; M. Bruegmann, *in litt.* 1995; Service 1999; 59 FR 56333; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats to *Neraudia sericea* on Maui are habitat degradation by feral pigs and goats; competition with the alien plant species, *Melinus minutiflora, Pennisetum clandestinum, Holcus lanatus, Cymbopogon refractus* (barbwire grass), and alien *Eragrostis* spp. (love grass); and a risk of extinction due to random environmental events (Service 1999; 59 FR 56333).

Nototrichium humile (kulu i)

Nototrichium humile, a member of the amaranth family (Amaranthaceae), is an upright to trailing shrub with branched stems to 1.5 m (5 ft) long. Stems and young leaves are covered with short hairs. Leaves are oppositely arranged, oval to oblong in outline, 3 to 9 cm (1.2 to 3.5 in) long, and 2 to 5 cm (0.8 to 2.0 in) wide. Stalkless flowers are arranged in a spike at the ends of the stem. Membranous bracts grow below each flower. Two of the bracts and the sepals fall off with the mature fruit. This species is distinguished from the only other species in the genus by its inflorescence, a slender spike 4 mm (0.2 in) in diameter or less, which is covered with short hairs (Wagner *et al.* 1999).

Nototrichium humile has been observed flowering after heavy rain, but flowering is generally heaviest in the spring and summer. Fruits mature a few weeks after flowering. In cultivation, this species is known to live for more than a decade. Little else is known about the life history of *Nototrichium humile.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 56 FR 55770).

Historically, *Nototrichium humile* was known from Oahu and Maui. It currently occurs only on Oahu. On Maui, *Nototrichium humile* was last seen in the wild by Robert Hobdy in 1979 in Pohakea Gulch (HINHP Database 2001; Service 1998b; 56 FR 55770).

On Maui, *Nototrichium humile* occurred on old cinder cones in dry shrubland at elevations between 338 and 734 m (1,110 and 2,407 ft) with one or more of the following associated native plant species: *Dodonaea viscosa, Erythrina sandwicensis, Heteropogon contortus,* and *Nototrichium sandwicense* (J. Lau, pers. comm., 2001; Service 1998b; 56 FR 55770).

Nothing is known of the threats to *Nototrichium humile* on the island of Maui (Service 1998b; 56 FR 55770).

Peucedanum sandwicense (makou)

Peucedanum sandwicense, a member of the parsley family (Apiaceae), is a short-lived, parsley-scented, sprawling herb. Hollow stems arise from a short, vertical, perennial stem with several fleshy roots. This species is the only member of the genus in the Hawaiian Islands (Constance and Affolter 1999).

Little is known about the life history of *Peucedanum sandwicense.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995a; 59 FR 9304).

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai. Discoveries in 1990 extended the known distribution of this species to the island of Oahu. Currently, on Maui there are three populations on State and privately owned lands at Keopuka Islet, near Pauwalu Point, and east of Hanawi Stream, with a total of 32 individuals (Service 1995a; 59 FR 9304; GDSI 2001; HINHP Database 2001).

This species grows sparsely vegetated steep to vertical cliff habitats with little soil in mesic or coastal communities at elevations between 0 and 1,131 m (0 and 3,711 ft) and containing one or more of the following associated native species: *Artemisia australis*, *Eragrostis* spp., *Metrosideros polymorpha*, *Carex* spp., *Bidens* spp., *Diospyros sandwicensis, Chamaesyce* spp., *Peperomia* spp., *Pandanus tectorius, Scaevola sericea, Lysimachia mauritiana, Schiedea globosa* (NCN), or *Hedyotis littoralis* (NCN) (Constance and Affolter 1999; Service 1995a; HINHP Database 2001; 59 FR 9304; R. Hobdy *et al.*, pers. comm., 2001; J. Lau pers. comm., 2001).

Competition with introduced plants is the major threat to *Peucedanum sandwicense* on Keopuka Rock. Additionally, small population sizes also make the species subject to extinction due to random environmental events (Service 1995a; 59 FR 9304).

Phlegmariurus mannii (wawae iole)

Phlegmariurus mannii (=*Huperzia mannii, = Lycopodium mannii*), a short-lived member of the clubmoss family (Lycopodiaceae), is a hanging epiphyte (growing on the outside of other plants instead of being rooted in the ground) with clustered, delicate red stems and forked reproductive spikes. These traits distinguish it from others in the genus in Hawaii (Degener and Degener 1959; St. John 1981; Wagner and Wagner 1992).

Little is known about the life history of *Phlegmariurus mannii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Phlegmariurus mannii* was known from Kauai, West Maui (Haelaau and Hanaula), and the Island of Hawaii. Currently, this species is found on Maui and Hawaii. On Maui, this species is now known on State (Lihau section West Maui NAR, Makawao Forest Reserve, Department of Hawaiian Home Lands, and Kipahulu Forest Reserve), Federal and privately owned lands in Honokohau, Lihau, Puu Okakae, Manawainui, Healani Stream, Puu Ahulili, and Kaapahu within the East Maui Watershed Partnership and the West Maui Mountains Watershed Partnership. There are seven populations with a total of 22 individuals on Maui (GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

On Maui, *Phlegmariurus mannii* typically grows as an epiphyte on *Metrosideros polymorpha, Dodonaea viscosa* and *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *Metrosideros polymorpha-Acacia koa* forests or wet montane *Metrosideros polymorpha-Acacia koa* forests at elevations between 446 and 1,688 m (1,464 and 5,539 ft) and containing one or more of the following associated native plant species: *Thelypteris* spp. (NCN), *Athyrium* spp., *Styphelia tameiameiae, Cyanea* spp., *Machaerina* spp., *Cyrtandra* spp., *Sadleria* spp., *Vaccinium* spp., *Astelia menziesii* (kaluaha), *Coprosma* spp., *Cheirodendron trigynum,* or *Ilex anomala* (Service 1997; 57 FR 20772; R. Hobdy *et al.*, pers. comm., 2001).

The primary reasons for the endangerment of this species are habitat alteration by goats, cattle and pigs, and the impacts of alien plant species. Additionally, small population sizes

also make the species subject to extinction due to random environmental events (Service 1997; 57 FR 20772).

Phyllostegia mannii (NCN)

Phyllostegia mannii, a nonaromatic member of the mint family (Lamiaceae), is a climbing vine with many-branched, four-sided, hairy stems. The opposite, hairy leaves, which are shaped like narrow triangles or narrow triangular ovals, have coarsely toothed margins. Clusters of four to six white flowers are arranged in each of several false whorls along an unbranched flowering stem. The fruits are fleshy, dark-green to black nutlets (dry seeds with a hard outer covering). This species is distinguished from others in the genus by its hairiness; its thin, narrow leaves, which are not pinnately divided; and the usually six flowers per false whorl in a terminal inflorescence (Wagner *et al.* 1999).

This species was observed with fruit in July. Little else is known about the life history of *Phyllostegia mannii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b; 57 FR 46325).

Historically, *Phyllostegia mannii* was found from Hanalilolilo to Ohialele on East Molokai and at Ukulele on East Maui. It has not been seen on Maui for over 70 years. This species is now known only from Molokai (HINHP Database 2001; Service 1996b; 57 FR 46325).

On Maui, *Phyllostegia mannii* occurs in gentle slopes and the steep sides of gulches in mesic to wet forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* at elevations between 1,069 and 1,615 m (3,506 and 5,297 ft) with one or more of the following associated native plant species: *Cheirodendron trigynum, Melicope* spp., *Alyxia oliviformia, Diplazium sandwichianum, Myrsine lessertiana,* or *Dicranopteris linearis* (J. Lau, pers. comm., 2001; Service 1996b; 57 FR 46325).

Nothing is known of the threats to *Phyllostegia mannii* on the island of Maui (Service 1996b; 57 FR 46325).

Phyllostegia mollis (NCN)

Phyllostegia mollis, a short-lived member of the mint family (Lamiaceae), grows as a nearly erect, densely hairy, nonaromatic, perennial herb. Leaves are oval in outline with rounded teeth. Flowers, usually in groups of six, are spaced along a stem; there are two shorter flowering stems directly below the main stem. The flowers have fused sepals and white petals fused into a tube and flaring into a smaller upper and a larger lower lip. Fruits are fleshy, dark green to black nutlets. A suite of technical characteristics concerning the kind and amount of hair, the number of flowers in a cluster, and details of the various plant parts separate this species from other members of the genus (Wagner *et al.* 1990).

Individual *Phyllostegia mollis* plants live for approximately 5 years. The species is known to flower in late winter and spring. Little else is known about the life history of *Phyllostegia mollis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 56 FR 55770).

Historically, *Phyllostegia mollis* was known from Oahu, Molokai, and East Maui. Currently, this species is only known from Oahu and Maui. On East Maui, a single population of an unknown number of individuals remains on State (on the border of Kahikinui Forest Reserve and Department of Hawaiian Home Lands) land in Waiopai Gulch (Wagner *et al.* 1999; GDSI 2001; HINHP Database 2001; Service 1998b; 56 FR 55770).

Phyllostegia mollis typically grows on steep slopes and in gulches in mesic forests dominated by *Metrosideros polymorpha* and/or *Acacia koa* at elevations between 1,144 and 1,970 m (3,754 and 6,463 ft). Associated native plant species include *Cheirodendron trigynum, Melicope* spp., *Diplazium sandwichianum, Myrsine lessertiana,* and *Alyxia oliviformis* (J. Lau, pers. comm., 2001; Service 1998b; 56 FR 55770).

The major threats to *Phyllostegia mollis* are competition from the alien plant species *Rubus* spp. and *Schinus terebinthifolius;* and a risk of extinction of the only known population of this species on Maui due to random environmental events (Service 1998b; 56 FR 55770).

Phyllostegia parviflora (NCN)

Phyllostegia parviflora, a member of the mint family (Lamiaceae), is a perennial herb with forward-bending hairs on the stems and straight or slightly curved hairs on the flowering stalk. The species is distinguished from others of the genus by the egg-shaped to broadly egg-shaped leaves, leaf stalks usually 6 to 13.5 cm (2.4 to 5.3 in) long, and the lower corolla lip 6 to 9 mm (0.24 to 0.36 in) long. *Phyllostegia parviflora* var. *glabriuscula* has fewer glandular hairs in the inflorescence, less pubescent leaves, and usually unbranched inflorescences compared with *Phyllostegia parviflora* var. *parviflora. Phyllostegia parviflora* var. *lydgatei* has shorter leaf stalks, spreading hairs on the leaf stalks, and fewer gland-tipped hairs in the inflorescence. At the time of listing of this species only two varieties were recognized, *glabriuscula* and *parviflora.* Subsequent to the final rule listing this species in 1996, we became aware of Wagner's (1999) taxonomic treatment of this group in which *P. parviflora* var. *lydgatei* was changed to variety status and recognized as distinct from *P. parviflora* var. *parviflora.* Wagner's (1999) treatment is cited in the supplement in the revised edition of the Manual of the Flowering Plants of Hawaii as the basis for recognizing *P. parviflora* var. *lydgatei.* This name change will be addressed in a future **Federal Register** notice (Wagner *et al.* 1999).

Historically *Phyllostegia parviflora* was known from three islands, Oahu, Hawaii, and Maui. This species is now known only from two populations on Oahu (HINHP Database 2001; GDSI 2001; Service 1999; 61 FR 53108).

Nothing is known of the preferred habitat of or native plant species associated with *Phyllostegia parviflora* on the island of Maui (Service 1999; 61 FR 53108; R. Hobdy *et al.*, pers. comm., 2001).

Nothing is known of the threats to *Phyllostegia parviflora* on the island of Maui (Service 1999; 61 FR 53108).

Plantago princeps (laukahi kuahiwi)

Plantago princeps, a short-lived member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, *anomala, laxiflora, longibracteata*, and *princeps*, are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Individuals have been observed in fruit from April through September. Little else is known about the life history of *Plantago princeps.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Plantago princeps is historically and currently found on Kauai, Oahu, Molokai, and Maui. It is no longer extant on the island of Hawaii. *Plantago princeps* var. *anomala* is currently

known from Kauai and Oahu; var. *longibracteata* is known from Kauai and Oahu; var. *princeps* is known from Oahu; and var. *laxiflora* is known from Molokai and Maui. On Maui, there are five populations of *Plantago princeps* var. *laxiflora,* with a total of 118 individuals, on Federal (Haleakala National Park) and privately owned lands within the East Maui Watershed Partnership. This variety is found at Kahoolewa Ridge, Nakalaloa Stream, Iao Valley near the Needle, Hanakauhi, the west side of Kaupo Gap, and Palikea Stream (Service 1999; 59 FR 56333; GDSI 2001; HINHP Database 2001).

On Maui, *Plantago princeps* var. *laxiflora* is typically found on basalt cliffs that are windblown with little vegetation in *Metrosideros polymorpha* lowland wet forest; or *Acacia koa-Metrosideros polymorpha* montane wet forest; or *Metrosideros polymorpha* montane wet shrubland at elevations between 281 and 2,539 m (922 and 8,329 ft) and containing one or more of the following associated native plant species: *Eragrostis variabilis, Hedyotis formosa, Dubautia plantaginea* spp. *humilis*, *Pipturus albidus, Perrottetia sandwicensis, Touchardia latifolia, Dryopteris* spp., various other ferns, *Cyanea* spp, and *Melicope ovalis*, *Bidens micrantha* ssp. *kalealaha, Chamaesyce celastroides, Styphelia tameiameiae* or *Dubautia menziesii* (Service 1999; 59 FR 56333; HINHP Database 2001; R. Hobdy et al., pers. comm., 2001).

The primary threats to *Plantago princeps* var. *laxiflora* on Maui are herbivory and habitat degradation by feral pigs and goats and competition with various alien plant species (Service 1999; 59 FR 56333).

Platanthera holochila (NCN)

Platanthera holochila, a short-lived, perennial member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance to egg-shaped and the greenish-yellow flowers occur in open spikes. This is the only species of this genus that occurs in the Hawaiian Islands (Wagner *et al.* 1999).

Little is known about the life history of *Platanthera holochila.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically, *Platanthera holochila* was known from Maui, Oahu, Molokai, and Kauai. Currently, *Platanthera holochila* is extant on Kauai, Molokai, and Maui. On Maui, four populations with 22 individuals are reported on State (West Maui Forest Reserve) and privately owned lands within the West Maui Mountains Watershed Partnership and the East Maui Watershed Partnership from Kapaloa Stream, Waihee River, the border of Lahaina and Wailuku Districts and Koolau Gap (GDSI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

Platanthera holochila is found in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed montane bog or mesic scrubby *M. polymorpha* forest at elevations between 536 and 2,314 m (1,759 and 7,592 ft) containing one or more of the following associated native plant species: *Cibotium* spp., *Coprosma ernodeoides* (kukae nene), *Oreobolus furcatus, Styphelia tameiameiae, Wikstroemia* spp., *Scaevola chamissoniana* (naupaka kuahiwi), *Sadleria* spp., *Deschampsia nubigena, Metrosideros polymorpha, Luzula hawaiiensis* (wood rush), *Sisyrinchium acre* (mauu laili), *Broussaisia arguta, Clermontia* spp., *Lycopodium cernuum* (wawae iole), *Dubautia scabra* (naenae), *Polypodium pellucidum* (ae), *Morelotia gahniiformis* (NCN), or *Vaccinium reticulatum* (Service 1999; 61 FR 53108; R. Hobdy et al., pers. comm., 2001).

The primary threats to *Platanthera holochila* on Maui are habitat degradation and/or destruction by feral pigs; landslides; competition with alien plant species; and a risk of extinction on Maui from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining populations and individuals. Predation by slugs may also be a potential threat to this species (Service 1999; 61 FR 53108).

Pteris lidgatei (NCN)

Pteris lidgatei, a short-lived member of the maidenhair fern family (Adiantaceae), is a coarse perennial herb, 0.5 to 1 m (1.6 to 3.3 ft) tall. It has a horizontal rhizome 1.5 cm (0.6 in) thick and at least 10 cm (3.9 in) long when mature. The fronds, including the leaf stalks, are 60 to 95 cm (24 to 37 in) long and 20 to 45 cm (8 to 18 in) wide. The leafy portion of the frond is oblong-deltoid to broadly ovate-deltoid, thick, brittle, and dark gray-green. The sori are apparently marginal in position, either fused into long linear sori, or more typically separated into distinct shorter sori, with intermediate conditions being common. *Pteris lidgatei* can be distinguished from other species of *Pteris* in the Hawaiian Islands by the texture of its fronds and the tendency of the sori along the leaf margins to be broken into short segments instead of being fused into continuous marginal sori (Wagner 1949; Wagner and Wagner 1992).

Little is known about the life history of *Pteris lidgatei.* Flowering cycles, pollination vectors, seed dispersal agents, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Pteris lidgatei* was found on Oahu, Molokai, and Waihee on West Maui. Currently, this species is known from Oahu and Maui. Two populations with approximately 20 individuals occur on Maui on State (Kahakuloa section of the West Maui NAR) and privately owned lands within the West Maui Mountains Watershed Partnership north of Eke Crater and at Kauala (GDSI 2001; HINHP Database 2001; Service 1998a; 59 FR 49025).

This species grows on steep stream banks in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest at elevations between 201 and 1,717 m (659 and 5,633 ft) and containing one or more of the following native plant species: *Cibotium chamissoi* (hapuu), *Dicranopteris linearis, Elaphoglossum crassifolium* (ekaha), *Sadleria squarrosa* (amau), *Thelypteris cyatheoides,* or *Sphenomeris chusana* (palaa) (HINHP Database 2001; Service 1998a; 59 FR 49025; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats to *Pteris lidgatei* on Maui are the alien plants *Clidemia hirta, Tibouchina herbacea,* and *Ageratina adenophora;* habitat destruction by feral pigs; and a risk of extinction due to random environmental events (Service 1998a; 59 FR 49025).

Sanicula purpurea (NCN)

Sanicula purpurea, a short-lived member of the parsley family (Apiaceae), is a stout perennial herb, 8 to 36 cm (3 to 14 in) tall, arising from a massive perennial stem. The stems are tufted and branched, with the lower portion of the stem lying close to the ground, while the upper portion rises. The basal leaves are numerous and leathery in texture and are kidney-shaped or circular to egg-heart-shaped, with three to seven lobes. The leaf lobes are circular to inversely egg-shaped. The leaf veins are impressed on the upper surface and prominent on the lower surface. The leaf margins bear short, sharp teeth. The basal leaf stalks are slender and abruptly sheathed at the base. The leaves are palmately three-to five-lobed. The small purple, or cream-colored with a purple tinge, flowers occur in branched terminal clusters, each of which contains six to 10 flowers. Each flower cluster contains one to three perfect flowers and five to

seven staminate flowers. Below the inflorescence is a series of about 10 oblong or inversely lance-shaped bracts. The nearly spherical fruits are covered with prickles. This species is distinguished from others in the genus by the number of flowers per cluster and by the color of the petals (Constance and Affolter 1999).

Little is known about the life history of *Sanicula purpurea.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically and currently, *Sanicula purpurea* is known from Oahu and West Maui. On Maui, five populations totaling between 200 individuals are currently known on State (Kahakuloa and Honokawai sections of the West Maui NAR) and private lands within the West Maui Mountains Watershed Partnership north of Eke Crater and east of Kahakuloa Stream, south of Eke Crater, near Violet Lake, the ridge west of Puu Kukui, and Kahoolewa Ridge east of Puu Kukui (GSDI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

This species typically grows in open *Metrosideros polymorpha* mixed montane bogs at elevations between 1,195 and 1,764 m (3,921 and 5,787 ft) containing one or more of the following associated plant species *Styphelia tameiameiae, Gahnia beecheyi* (NCN), *Geranium hillebrandii* (nohoanu), *Myrsine vaccinioides* (kolea), *Viola maviensis, Argyroxiphium caliginis* (eke silversword), *Plantago pachyphylla* (laukahi kuahiwi), *Lycopodium* spp., *Argyroxiphium grayanum* (green sword), *Lagenifera maviensis, Machaerina* spp., or *Oreobolus furcatus* (HINHP Database 2001; Service 1999; 61 FR 53108; R. Hobdy *et al.,* pers. comm., 2001).

Habitat degradation by feral pigs; a risk of extinction due to random environmental events, and/or reduced reproductive vigor due to the small number of existing populations; and slugs are the major threats to *Sanicula purpurea* (Service 1999; 61 FR 53108; HINHP Database 2001).

Schiedea hookeri (NCN)

Schiedea hookeri, a member of the pink family (Caryophyllaceae), is a sprawling or clumped perennial herb. The stems, 0.3 to 0.5 m (1 to 1.6 ft) long, curve slightly upward or lie close to the ground and often produce matted clumps. The thin, opposite leaves are narrowly lance-shaped to narrowly elliptic. The petalless, perfect flowers are borne in open branched inflorescences, which are hairy, somewhat sticky, and 5 to 22 cm (2 to 9 in) long. The lance-shaped sepals are green to purple and 3 to 4.5 mm (1.2 to 1.8 in) long. The fruit is a capsule about 3 mm (0.1 in) long. This species is distinguished from others in this endemic Hawaiian genus by its open, hairy, and sometimes sticky inflorescence, and by the size of the capsules (Wagner *et al.* 1999).

Based on field and greenhouse observations, it is hermaphroditic, which means each individual has both male and female reproductive organs. Mature fruits have been observed in June and August. *Schiedea hookeri* appears to be an outcrossing species. Under greenhouse conditions, flowers do not set fruit unless pollinated. In the field, the species is presumed to be pollinated by insects, although none have been observed (a related species, *Schiedea lydgatei* on Molokai, is apparently pollinated by native, night-flying moths). A series of self-pollinations, intra-populational crosses, and crosses among populations have demonstrated that *Schiedea hookeri* experiences moderately strong inbreeding depression. These results indicate that reductions in population size could result in expression of inbreeding depression among progeny, with deleterious consequences for the long-term persistence of this species. Individuals of *Schiedea hookeri* appear to be long-lived, but there is no evidence of reproduction from seed under field conditions. Seedlings of *Schiedea* occurring in mesic or wet sites are apparently consumed by introduced slugs and snails, which have been observed feeding on *Schiedea membranacea,* another mesic forest species that occurs on Kauai. In contrast to mesic-forest species, *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because the drier sites have fewer alien consumers. *Schiedea hookeri* differs considerably through its range in potential for clonal growth. Plants from Kaluakauila Gulch are upright and show little potential for clonal spread. In contrast, clonal growth has been detected for individuals at Kaluaa Gulch, where the growth form is decumbent and plants apparently root at the nodes. Little else is known about the life history of *Schiedea hookeri.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Weller and Sakai, unpublished data; Service 1999; HINHP Database 2001; 61 FR 53108).

Historically, *Schiedea hookeri* was known from the Waianae Mountains of Oahu and from a single fragmentary collection from Haleakala on Maui that may represent *Schiedea menziesii* rather than *Schiedea hookeri.* Currently, this species is known only from Oahu (Service 1999; 61 FR 53108; HINHP Database 2001; EDA Database 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Schiedea hookeri* on the island of Maui (Service 1999; 61 FR 53108; R. Hobdy *et al.,* pers. comm., 2001).

Nothing is known of the threats to *Schiedea hookeri* on the island of Maui (Service 1999; 61 FR 53108).

Schiedea nuttallii (NCN)

Schiedea nuttallii, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. This long-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of the inflorescence, number of flowers per inflorescence, and smaller leaves, flowers, and seeds (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea nuttallii.* Based on field and greenhouse observations, it is hermaphroditic. Plants on Oahu have been under observation for 10 years, and they appear to be long-lived. *Schiedea nuttallii* appears to be an outcrossing species. Under greenhouse conditions, plants fail to set seed unless hand pollinated, suggesting that this species requires insects for pollination. Fruits and flowers are abundant in the wet season but can be found throughout the year. Little else is known about the life history of *Schiedea nuttallii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically, *Schiedea nuttallii* was known from Kauai and Oahu and was reported from Maui. Currently, it is found on Kauai, Oahu, and Molokai (Service 1999; 61 FR 53108; HINHP Database 2001; GDSI 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Schiedea nuttallii* on the island of Maui (Service 1999; 61 FR 53108; R. Hobdy *et al.,* pers. comm., 2001).

Nothing is known of the threats to *Schiedea nuttallii* on the island of Maui (Service 1999; 61 FR 53108).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a short-lived member of the legume family

(Fabaceae), is typically a sprawling shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon tinged with yellow, orange-red, scarlet or rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that populations at Kaena Point on Oahu are probably pollinator limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Little else is known about the life history of *Sesbania tomentosa.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Sesbania tomentosa* occurred on all eight of the main Hawaiian Islands and on the Northwestern Hawaiian Islands of Nihoa and Necker. Currently, *Sesbania tomentosa* occurs on Kauai, Oahu, Molokai, Kahoolawe, Maui, the island of Hawaii, Nihoa and Necker. On Maui, *S. tomentosa* is known from seven populations with a total of 83 individuals. The populations are located on State owned and/or leased land (Lihau section of West Maui NAR, Hana Forest Reserve, and Kanaio Training Area), under Federal jusisdiction (Kanaio National Guard Training Area) and on privately owned land within the East Maui Watershed Partnership and West Maui Mountains Watershed Partnership at Poelua Bay, Mokolea Point, between Kahakuloa Head and Puu Kahulianapa Mahinanui, Olowalu, Pimoe, south of Puu Puou. Off the south central coast of Kahoolawe, approximately 100 individuals of *S. tomentosa* are found on a small islet, Puu Koae, a State owned seabird sanctuary (R. Hobdy *in litt.* 2000; Service 1999; 59 FR 56333; GDSI 2001; HINHP Database 2001).

Sesbania tomentosa is found in windswept slopes, sea cliffs and cinder cones in *Scaevola sericea* coastal dry shrublands at elevations between 0 and 608 m (0 and 1,993 ft) and containing one or more of the following associated native plant species: *Jacquemontia ovalifolia* ssp. *sandwicensis* (pauohiiaka), *Sida fallax, Diospyros sandwicensis, Lipochaeta integrifolia* (nehe), *Bidens* spp., or stunted *Dodonaea viscosa* (Service 1999; 59 FR 56333; HINHP Database 2001; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats to *Sesbania tomentosa* on Maui are habitat degradation caused by competition with various alien plant species such as *Lantana camara, Waltheria indica* (uhaloa), and various grass species; feral cattle; lack of adequate pollination; seed predation by rats, mice and, potentially, alien insects; fire; and destruction by off-road vehicles and other human disturbances. Threats to *Sesbania tomentosa* on Kahoolawe include habitat degradation caused by competition with various alien plant species, erosion, and trampling by cats and seabirds (Service 1999; 59 FR 56333; P. Higashino, pers. comm., 2000).

Solanum incompletum (popolo ku mai)

Solanum incompletum, a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. The oval to elliptic leaves have prominent veins on the lower surface and lobed leaf margins. Numerous flowers grow in loose branching clusters with each flower on a stalk. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in) long, and berries 1 to 2 cm (0.4 to 0.8 in) in diameter (Symon 1999).

Little is known about the life history of *Solanum incompletum.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Solanum incompletum* was known from central and northeastern Lanai, scattered locations on Maui, and the island of Hawaii. According to David Symon (1999), the known distribution of *Solanum incompletum* also extended to the islands of Kauai and Molokai. Currently, *Solanum incompletum* is only known from the island of Hawaii (Service 1999; 59 FR 56333; HINHP Database 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Solanum incompletum* on the island of Maui (Service 1999; 59 FR 56333; R. Hobdy *et al.,* pers. comm., 2001).

Nothing is known of the threats to *Solanum incompletum* on the island of Maui (Service 1999; 59 FR 56333).

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a nonsucculent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Spermolepis hawaiiensis* was known from the islands of Kauai, Oahu, Lanai, and Hawaii. Currently, it is extant on Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. On Maui, there are four known populations with hundreds to thousands of individuals on State (Lihau section of West Maui NAR and Kanaio NAR) and privately owned lands within the West Maui Mountains Watershed Partnership in Puu Hipa, south of Kanaha Stream, Olowalu, and Kanaio (Service 1999; 59 FR 56333; GDSI 2001; HINHP Database 2001; Charles Chimera, USGS Biological Research Division, pers. comm., 2000).

Spermolepis hawaiiensis is known from *Dodonaea viscosa* lowland dry shrubland at elevations between 221 and 742 m (725 and 2,434 ft) and containing one or more of the following associated native species: *Eragrostis variabilis, Wikstroemia* spp., *Erythrina sandwicensis, Diospyros* spp., *Pleomele* spp., *Lipochaeta lavarum, Sida fallax, Myoporum sandwicensis, Santalum ellipticum, Gouania hillebrandii,* or *Heteropogon contortus* (Service 1999; 59 FR 56333; HINHP Database 2001; C. Chimera, pers. comm., 2000; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats to *Spermolepis hawaiiensis* on Maui are habitat degradation by feral goats, pigs, cattle,

and axis deer; competition with various alien plants, such as *Melinis repens* and *Lantana camara;* fire; and erosion, landslides, and rock slides due to natural weathering which result in the death of individual plants as well as habitat destruction (Service 1999; 59 FR 56333).

Tetramolopium arenarium (NCN)

Tetramolopium arenarium is a short-lived perennial and an upright, branched shrub in the sunflower family (Asteraceae). Alternate leaves are lance-shaped, hairy, glandular, and gray-green. This species is separated from other species of the genus in the Hawaiian Islands by several characters: upright habit; number of heads per flower cluster (five to 11); presence and type of glands and hairs; size of male ray flowers (1.3 to 2.2 mm (.002 to .009 in); number of bisexual disk flowers (five to nine) and their maroon color; and a wide, two- to four-nerved fruit with white hairs at the tip. Three infra-specific species are recognized: *Tetramolopium arenarium* ssp. *arenarium* var. *arenarium* (Maui and Hawaii), *T. arenarium* ssp. *arenarium* var. *confertum* (Hawaii), and *T. arenarium* ssp. *laxum* (Maui). These species are distinguished one from the other by a combination of characters. *T. arenarium* ssp. *arenarium* var. *confertum* and *T. arenarium* ssp. *laxum* have not been seen the late 1800s (Lowrey 1999).

Little is known about the life history of *Tetramolopium arenarium.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Tetramolopium arenarium was historically known from the islands of Maui and Hawaii. The taxon was considered extinct until *Tetramolopium arenarium* ssp. *arenarium* var. *arenarium* was recently rediscovered on the island of Hawaii. Both supspecies were last seen on Maui in the late 1800s (Service 1996a; 59 FR 10305; HINHP Database 2001; GDSI 2001).

Nothing is known about the preferred habitat of *Tetramolopium arenarium* on Maui (Service 1996a; 59 FR 10305; R. Hobdy *et al.,* pers. comm., 2001).

Nothing is known of the threats to *Tetramolopium arenarium* on the island of Maui (Service 1996a; 59 FR 10305).

Tetramolopium remyi (NCN)

Tetramolopium remyi, a short-lived perennial member of the sunflower family (Asteraceae), is a much branched, decumbent (reclining, with the end ascending) or occasionally erect shrub up to about 38 cm (15 in) tall. Its leaves are firm, very narrow, and with the edges rolled inward when the leaf is mature. There is a single flower head per branch. The heads are each comprised of 70 to 100 yellow disk and 150 to 250 white ray florets. The stems, leaves, flower bracts, and fruit are covered with sticky hairs. *Tetramolopium remyi* has the largest flower heads in the genus. Two other species of the genus are known historically from Lanai, but both have purplish rather than yellow disk florets and from four to 60 rather than one flower head per branch (Lowrey 1999).

Tetramolopium remyi flowers between April and January. Field observations suggest that the population size of the species can be profoundly affected by variability in annual precipitation; the adult plants may succumb to prolonged drought, but apparently there is a seedbank in the soil that can replenish the population during favorable conditions. Such seed banks are of great importance for arid-dwelling plants to allow populations to persist through adverse conditions. The aridity of the area, possibly coupled with human-induced changes in the habitat and subsequent lack of availability of suitable sites for seedling establishment, may be a factor limiting population growth and/or expansion. Requirements of this taxon in these areas are not known, but success in greenhouse cultivation of these plants with much higher water availability implies that, although these plants are drought-tolerant, perhaps the dry conditions in which they currently exist are not optimum. Individual plants are probably not long-lived. Pollination is hypothesized to be possibly by butterflies, bees, or flies. Little else is known about the life history of *Tetramolopium remyi.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995b; 56 FR 47686).

Historically, the species was known from the Lahaina area of West Maui and Lanai. Currently, *T. remyi* is known from two populations on Lanai. It was last seen on Maui in 1944 by E. Y. Hosaka (GDSI 2001; HINHP Database 2001; Service 1995b; 56 FR 47686).

On Maui, *Tetramolopium remyi* occurs in lowland dry shrubland on dry, exposed ridges or flats at elevations between 52 and 550 m (171 and 1,804 ft). Associated plant species include *Dodonaea viscosa, Heteropogon contortus, Bidens mauiensis, Bidens menziesii, Eragrostis atropioides* (lovegrass), *Lipochaeta heterophylla* (NCN), or *Waltheria indica* (Service 1995b; 56 FR 47686; R. Hobdy *et al.*, pers. comm., 2001).

Nothing is known of the threats to *Tetramolopium remyi* on the island of Maui (Service 1995b; 56 FR 47686).

Vigna o-wahuensis (NCN)

Vigna o-wahuensis, a member of the legume family (Fabaceae), is a slender, twining, long-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain seven to 15 gray to black seeds. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods which may or may not be slightly inflated (Geesink *et al.* 1999).

Little is known about the life history of *Vigna o-wahuensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, and on East Maui in Makawao, Waiakoa, and Haleakala, and at an unspecified site on West Maui. Currently, *Vigna o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and Hawaii. There are no currently known populations on Niihau or Oahu. On the State owned island of Kahoolawe, there are a total of three populations with an unknown number of individuals in the Makaalae/Lua Kealialalo, the Puhi a Nanue area near a tidal pond, and on Lua Makika. On Maui, there is a single population of at least one individual on State owned land at Kamanamana (HINHP Database 2001; GDSI 2001; C. Chimera, pers. comm., 2000; Service 1999; 59 FR 56333).

On Kahoolawe and Maui, *Vigna o-wahuensis* occurs in dry to mesic grassland and shrubland at elevations between 0 and 50 m (0 and 164 ft) containing one or more of the following associated plant species: *Sida fallax, Chenopodium* spp., or *Chamaesyce* spp. (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy *et al.*, pers. comm., 2001).

The primary threats to *Vigna o-wahuensis* on Kahoolawe are competition with various alien plant

species, fire; and a risk of extinction due to random environmental events, and/or reduced reproductive vigor due to the small number of existing populations and individuals. The primary threats to this species on Maui are competition with the alien plant species *Lantana camara* and *Cenchrus ciliaris* (buffelgrass), and herbivory by axis deer and goats (Service 1999; 59 FR 56333).

Zanthoxylum hawaiiense (ae)

Zanthoxylum hawaiiense, a long-lived perennial, is a medium-size tree with pale to dark gray bark, and lemon-scented leaves in the rue family (Rutaceae). Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaves (leaflets) with surfaces usually without hairs. *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characters: three leaflets all of similar size, one joint on lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.* 1999).

Little is known about the life history of *Zanthoxylum hawaiiense.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Historically, *Zanthoxylum hawaiiense* was known from the islands of Kauai, Molokai, Lanai, Hawaii, and southern and southwestern slopes of Haleakala on Maui. Currently, *Zanthoxylum hawaiiense* is extant on the islands of Kauai, Molokai, Maui, and Hawaii. This species is found on Maui in four populations with a total of 11 individuals on private and State (Makawao Forest Reserve and Department of Hawaiian Home Lands) owned lands at Kahakapao, and in the Hana District north and south of Jeep Trail and north of Kula Pipeline (GDSI 2001; HINHP Database 2001; Service 1996a; 59 FR 10305).

Zanthoxylum hawaiiense is reported from open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forests, *Acacia koa-Pleomele auwahiensis* forest, or montane dry forest at elevations between 882 and 1,540 m (2,894 and 5,051 ft) containing one or more of the following associated native species: *Metrosideros polymorpha, Diospyros sandwicensis, Pisonia* spp. (papala kepau), *Xylosma hawaiiensis, Santalum ellipticum, Alphitonia ponderosa, Osteomeles anthyllidifolia, Alectryon macrococcus, Charpentiera* spp., *Melicope* spp., *Dodonaea viscosa, Streblus pendulinus, Myrsine lanaiensis,* or *Sophora chrysophylla* (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy *et al.*, pers. comm., 2001).

The threats to *Zanthoxylum hawaiiense* on Maui include browsing, grazing, and trampling by feral goats and cattle; competition with the alien plant species *Melia azedarach* (chinaberry), *Lantana camara*, and *Pennisetum clandestinum;* fire; human disturbance; and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of populations (Service 1996a; 59 FR 10305).

A summary of populations and landownership for the 70 plant species reported from the islands of Maui and Kahoolawe is given in Table 3.

TABLE 3.—SUMMARY OF EXISTING POPULATIONS OCCURRING ON MAUI AND KAHOOLAWE, AND LANDOWNERSHIP FOR 70 SPECIES REPORTED FROM MAUI AND KAHOOLAWE.

Species	Number of current populations	Landownership		
		Federal	State	Private
Acaena exigua	0			
Adenophorus periens	0			
Alectryon macrococcus	7		X	X
Argyroxiphium sandwicense ssp. *macrocephalum*	4	X		X
Asplenium fragile var. *insulare*	1	X		X
Bidens micrantha ssp *kalealaha*	3	X	X	
Bonamia menziesii	4		X	X
Brighamia rockii	0			
Cenchrus agrimonioides	2		X	
Centaurium sebaeoides	3		X	X
Clermontia lindseyana	2		X	X
Clermontia oblongifolia ssp. *mauiensis*	1			X
Clermontia peleana	0			
Clermontia samuelii	4	X	X	
Colubrina oppositifolia	2			X
Ctenitis squamigera	6		X	X
Cyanea copelandii ssp. *haleakalaensis*	3	X	X	X
Cyanea glabra	1			X
Cyanea grimesiana spp. *grimesiana*	2			X
Cyanea hamatiflora spp. *hamatiflora*	7	X	X	X
Cyanea lobata	4			X
Cyanea mceldowneyi	6		X	X
Cyrtandra munroi	4		X	X
Delissea undulata	0			
Diellia erecta	5		X	X
Diplazium molokaiense	4		X	X
Dubautia plantaginea spp. *humilis*	1			X
Flueggea neowawraea	3		X	X
Geranium arboreum	7	X	X	X
Geranium multiflorum	8	X	X	X
Gouania vitifolia	0			
Hedyotis coriacea	1		X	
Hedyotis mannii	1			X
Hesperomannia arborescens	2		X	X
Hesperomannia arbuscula	2			X

TABLE 3.—SUMMARY OF EXISTING POPULATIONS OCCURRING ON MAUI AND KAHOOLAWE, AND LANDOWNERSHIP FOR 70 SPECIES REPORTED FROM MAUI AND KAHOOLAWE.—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
Hibiscus brackenridgei	5		X	X
Ischaemum byrone	6		X	X
Isodendrion pyrifolium	0			
Kanaloa kahoolawensis	1		X	
Lipochaeta kamolensis	1		X	
Lysimachia lydgatein	4		X	X
Mariscus pennatiformis	1		X	
Melicope adscendens	2		X	X
Melicope balloui	2	X		X
Melicope knudsenii	1		X	X
Melicope mucronulata	1			X
Melicope ovalis	1	X		
Neraudia sericea	3		X	X
Nototrichium humile	0			
Peucedanum sandwicense	3		X	X
Phlegmariurus mannii	7	X	X	X
Phyllostegia mannii	0			
Phyllostegia mollis	1		X	
Phyllostegia parvilfora	0			
Plantago princeps	5	X		X
Platanthera holochila	3		X	X
Pteris lidgatei	2		X	X
Remya mauiensis	3		X	
Sanicula purpurea	5		X	X
Schiedea haleakalensis	2	X		
Schiedea hookeri	0			
Schiedea nuttallii	0			
Sesbania tomentosa	8	X	X	X
Solanum incompletum	0			
Spermolepis hawaiiensis	4		X	X
Tetramolopium arenarium	0			
Tetramolopium capillare	4		X	X
Tetramolopium remyi	0			
Vigna o-wahuensis	4		X	
Zanthoxylum hawaiiense	4		X	X

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Alectryon macrococcus* (as *Alectryon macrococcum* var. *macrococcum* and *Alectryon mahoe*), *Bonamia menziesii, Brighamia rockii, Clermontia lindseyana, Colubrina oppositifolia, Cyanea glabra* (as *Cyanea scabra* var. *variabilis*), *Cyanea lobata* (as *Cyanea baldwinii*), *Cyanea mceldowneyi, Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Geranium arboreum, Geranium multiflorum* (as *Geranium multiflorum* var. *multiflorum,* var. *ovatifolium,* and var. *superbum*), *Hedyotis mannii* (as *Hedyotis thyrsoidea* var. *thyrsoidea*), *Hesperomannia arborescens* (as *Hesperomannia arborescens* var. *bushiana* and var. *swezeyi*), *Hesperomannia arbuscula, Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei,* var. *mokuleianus,* and var. ''from Hawaii''), *Ischaemum byrone, Melicope balloui* (as *Pelea balloui*), *Melicope knudsenii* (as *Pelea multiflora*), *Melicope ovalis* (as *Pelea ovalis*), *Neraudia sericea* (as *Neraudia kahoolawensis*), *Nototrichium humile, Peucedanum sandwicense* (as *Peucedanum kauaiense*), *Phyllostegia mollis, Plantago princeps* (as *Plantago princeps* var. *elata,* var. *laxiflora,* var. *princeps*), *Remya mauiensis, Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citriodora*), were considered to be endangered; *Cyrtandra munroi, Diellia erecta,* and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered to be threatened; and, *Asplenium fragile* var. *insulare* (as *Asplenium fragile*), *Bidens micrantha* ssp. *kalealaha* (as *Bidens distans* and *Bidens micrantha* spp. *kalealaha*), *Ctenitis squamigera, Diplazium molokaiense, Gouania vitifolia, Hedyotis coriacea, Isodendrion pyrifolium, Melicope knudsenii* (as *Pelea knudsenii* and *Pelea tomentosa*), *Melicope mucronulata* (as *Pelea mucronulata*), *Phlegmariurus mannii* (as *Lycopodium mannii*), *Plantago princeps* (as *Plantago princeps* var. *acaulis,* var. *denticulata,* and var. *queleniana*), *Pteris lidgatei, Tetramolopium arenarium* (as *Tetramolopium arenarium* var. *arenarium,* var. *confertum,* and var. *dentatum*), *Tetramolopium capillare,* and *Tetramolopium remyi* were considered extinct. On July 1, 1975, we published notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16,

1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa considered to be endangered or thought to be extinct except for *Cyanea glabra* and *Cyrtandra munroi;* additionally, *Argyroxiphium sandwicense* ssp. *macrocephalum* (as *Argyroxiphium macrocephalum*) appeared in the 1976 proposed rule as endangered. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated Notices of Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). A summary of the status categories for these 70 plant species in the 1980–1996 notices of review can be found in Table 4(a). We listed the 70 species as endangered or threatened between 1991 and 1999. A summary of the listing actions can be found in Table 4(b).

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE.

Species	FEDERAL REGISTER notice of review				
	1980	1985	1990	1993	1996
Acaena exigua	C1	C1	C1		
Adenophorus periens	C1	C1	C1		
Alectryon macrococcus	C1	C1	C1		
Argyroxiphium sandwicense ssp. *macrocephalum*	C1	C1	C1		
Asplenium fragile var. *insulare*	C1*	C1*	C1		
Bidens micrantha ssp. *kalealaha*	C1	C1	C1		
Bonamia menziesii	C1	C1	C1		
Brighamia rockii	C1	C1	C1		
Cenchrus agrimonioides					
Centaurium sebaeoides			C1		
Clermontia lindseyana	C1	C1	C1		
Clermontia oblongifolia ssp. *mauiensis*			C1		
Clermontia peleana	3C	3C	C1		
Clermontia samuelii					
Colubrina oppositifolia	C1	C1	C1		
Ctenitis squamigera	C1*	C1*	C1*		
Cyanea copelandii ssp. *haleakalaensis*					C
Cyanea glabra					C
Cyanea grimesiana spp. *grimesiana*	C1	C1		C2	
Cyanea hamatiflora spp. *hamatiflora*					C
Cyanea lobata	C1	C1	C1		
Cyanea mceldowneyi	C1	C1	C1		
Cyrtandra munroi	C2	C2	C1		
Delissea undulata	C1	C1*	C1*	C2*	
Diellia erecta	C1	C1	C1		
Diplazium molokaiense	C1*	C1*	C1		
Dubautia plantaginea spp. *humilis*			C2	C2	C
Flueggea neowawraea	C1	C1	C1		
Geranium arboreum	C1	C1	C1		
Geranium multiflorum	C1	C1	C1		
Gouania vitifolia	C1*	C1*	C1*		
Hedyotis coriacea	C1	C1	C1		
Hedyotis mannii	C1	C1	C1		
Hesperomannia arborescens	C1	C1	C1		
Hesperomannia arbuscula	C1	C1	C1		
Hibiscus brackenridgei	C1	C1	C1		
Ischaemum byrone	C1	C1	C1		
Isodendrion pyrifolium	C1*	C1*	3A		
Kanaloa kahoolawensis					C
Lipochaeta kamolensis	C1	C1	C1		
Lysimachia lydgatei			C1		
Mariscus pennatiformis		C1	C1		
Melicope adscendens			3A		
Melicope balloui	C1	C1	C1*		
Melicope knudsenii	C1*	C1*	C1		
Melicope mucronulata	C1	C1	C1		
Melicope ovalis	C1	C1*	C1*		
Neraudia sericea	3A	3A	C1		
Nototrichium humile	C1	C1	3C		
Peucedanum sandwicense	C2	C2	C2		
Phlegmariurus mannii	C1	C1	C1		
Phyllostegia mannii			C1		

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE.—Continued

Species	FEDERAL REGISTER notice of review				
	1980	1985	1990	1993	1996
Phyllostegia mollis	C1	C1	C1		
Phyllostegia parvilfora	C1	C1	C1		
Plantago princeps	C2	C2	C1		
Platanthera holochila	C1	C1	C1	C2	
Pteris lidgatei	C1	C1	C1		
Remya mauiensis	C1	C1			
Sanicula purpurea			C1		
Schiedea haleakalensis		C1	C1		
Schiedea hookeri				C2	
Schiedea nuttallii				C2	
Sesbania tomentosa	C1*	C1*	C1		
Solanum incompletum	C1*	C1*	C1		
Spermolepis hawaiiensis			C1		
Tetramolopium arenarium	C1*	C1*	3A		
Tetramolopium capillare	C1*	C1*	C1*		
Tetramolopium remyi	C1	C1	C1		
Vigna o-wahuensis	C1	C1	C1		
Zanthoxylum hawaiiense	C1	C1	C1		

Key:
C: Candidates: Species for which we have in file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened.
C1: Taxa for which the Service has on file enough substantial information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.
C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.
C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.
3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.
3C: Taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat.
FEDERAL REGISTER Notice of Review—1980: 45 FR 82479, 1985: 50 FR 39525, 1990: 55 FR 6183, 1993: 58 FR 51144, 1996: 61 FR 7596

TABLE 4(b).—SUMMARY OF LISTING ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE

Species	Federal status	Proposed rule		Final Rule		Proposed critical habitat	
		Date	**Federal Register**	Date	**Federal Register**	Date	**Federal Register**
Acaena exigua	E	05/24/91	56 FR 23842	05/15/92	57 FR 20787	12/18/00	65 FR 79192
Adenophorus periens	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/29/00	65 FR 66808, 65 FR 83157
Alectryon macrococcus	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	11/07/00, 12/18/00, 12/29/00	65 FR 66808, 65 FR 79192, 65 FR 83157
Argyroxiphium sandwicense ssp. *macrocephalum*.	T	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Asplenium fragile var. *insulare*	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025		
Bidens micrantha ssp. *kalealaha*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Bonamia menziesii	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/27/00	65 FR 66808, 65 FR 79192, 65 FR 82086
Brighamia rockii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83157
Cenchrus agrimonioides	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00	65 FR 79192
Centaurium sebaeoides	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	11/07/00, 12/18/00, 12/27/00, 12/29/00	65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83157
Clermontia lindseyana	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/18/00	65 FR 79192
Clermontia oblongifolia ssp. *mauiensis*.	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00, 12/27/00	65 FR 79192, 65 FR 82086
Clermontia peleana	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305		
Clermontia samuelii	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/18/00	65 FR 79192
Colubrina oppositifolia	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/18/00	65 FR 79192
Ctenitis squamigera	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00, 12/27/00, 12/29/00	65 FR 79192, 65 FR 79192, 65 FR 83157
Cyanea copelandii ssp. *haleakalaensis*.	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/18/00	65 FR 79192
Cyanea glabra	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/18/00	65 FR 79192
Cyanea grimesiana spp. *grimesiana*	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00, 12/29/00, 12/27/00	65 FR 79192, 65 FR 83157, 65 FR 82086

TABLE 4(b).—SUMMARY OF LISTING ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species	Federal status	Proposed rule		Final Rule		Proposed critical habitat	
		Date	**Federal Register**	Date	**Federal Register**	Date	**Federal Register**
Cyanea hamatiflora spp. *hamatiflora*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/18/00	65 FR 79192
Cyanea lobata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Cyanea mceldowneyi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Cyrtandra munroi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00, 12/27/00	65 FR 79192, 65 FR 82086
Delissea undulata	E	06/27/94	59 FR 32946	10/10/96	61 FR 53124	11/07/00	65 FR 66808
Diellia erecta	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00, 12/29/00	65 FR 79192, 65 FR 83157
Diplazium molokaiense	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00	65 FR 66808
Dubautia plantaginea spp. *humilis*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/18/00	65 FR 79192
Flueggea neowawraea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00	65 FR 66808, 65 FR 79192
Geranium arboreum	E	01/23/91	56 FR 2490	05/13/92	57 FR 20589	12/18/00	65 FR 79192
Geranium multiflorum	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Gouania vitifolia	E	12/14/92	57 FR 39066	06/27/94	59 FR 32932		
Hedyotis coriacea	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Hedyotis mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/18/00, 12/27/00, 12/29/00	65 FR 79192, 65 FR 82086, 65 FR 83157
Hesperomannia arborescens	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482	12/18/00, 12/29/00	65 FR 79192, 65 FR 83157
Hesperomannia arbuscula	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	12/18/00	65 FR 79192
Hibiscus brackenridgei	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00, 12/27/00	65 FR 79192, 65 FR 82086
Ischaemum byrone	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/18/00, 12/29/00	65 FR 79192, 65 FR 83157
Isodendrion pyrifolium	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305		
Kanaloa kahoolawensis	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/18/00	65 FR 79192
Lipochaeta kamolensis	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Lysimachia lydgatei	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Mariscus pennatiformis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192
Melicope adscendens	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346	12/18/00	65 FR 79192
Melicope balloui	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346	12/18/00	65 FR 79192
Melicope knudsenii	E	10/30/91	56 FR 5562	02/25/94	59 FR 09304	11/07/00, 12/18/00	65 FR 66808, 65 FR 79192
Melicope mucronulata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00, 12/29/00	65 FR 79192, 65 FR 83157
Melicope ovalis	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346	12/18/00	65 FR 79192
Neraudia sericea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00, 12/29/00	65 FR 79192, 65 FR 83157
Nototrichium humile	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089	NA	NA
Peucedanum sandwicense	T	10/30/91	56 FR 5562	02/25/94	59 FR 09304	11/07/00, 12/18/00, 12/29/00	65 FR 66808, 65 FR 79192, 65 FR 83157
Phlegmariurus mannii	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Phyllostegia mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83157
Phyllostegia mollis	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	12/18/00	65 FR 79192
Phyllostegia parvilfora	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108		
Plantago princeps	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/29/00	65 FR 66808, 65 FR 79192, 65 FR 83157
Platanthera holochila	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00, 12/18/00, 12/29/00	65 FR 66808, 65 FR 79192, 65 FR 83157
Pteris lidgatei	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00	65 FR 79192
Remya mauiensis	E	10/02/89	54 FR 40447	01/14/91	56 FR 1450	12/18/00	65 FR 79192
Sanicula purpurea	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00	65 FR 79192
Schiedea haleakalensis	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Schiedea hookeri	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108		
Schiedea nuttallii	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00, 12/29/00	65 FR 66808,
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00,	65 FR 66808, 65 FR 79192,
Solanum incompletum	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333		
Spermolepis hawaiiensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/27/00	65 FR 66808, 65 FR 79192, 65 FR 82086,
Tetramolopium arenarium	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305		
Tetramolopium capillare	E	03/25/93	58 FR 16164	09/30/94	59 FR 49860	12/18/00	65 FR 79192

TABLE 4(b).—SUMMARY OF LISTING ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species	Federal status	Proposed rule		Final Rule		Proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
Tetramolopium remyi	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686		
Vigna o-wahuensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00, 12/27/00, 12/29/00	65 FR 79192, 65 FR 82086, 65 FR 83157
Zanthoxylum hawaiiense	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	11/07/00, 12/18/00, 12/29/00	65 FR 66808, 65 FR 79192, 66 FR 83157

Key: E= Endangered T= Threatened

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was prudent for six of these plants (*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis, and Kanaloa kahoolawensis*) and not prudent for the other 64 plants because it would not benefit the plant or would increase the degree of threat to the species.

The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii, directed us to review the prudency determinations for 245 listed plant species in Hawaii, including 64 of the 70 species reported from Maui and Kahoolawe. Among other things, the court held that, in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a ''uniform protection plan'' prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public, State, and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public, State, and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002. *Conservation Council for Hawaii* v. *Babbitt,* 24 F. Supp. 2d 1074 (D. Haw. 1998).

At the time we listed *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis* (64 FR 48307) we determined that designation of critical habitat was prudent and that we would develop critical habitat designations for these six taxa, along with four others, at the same time we developed designations for the 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt,* Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed that it was reasonable for us to integrate these ten Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, but ordered us to publish proposed critical habitat designations for the 10 Maui Nui species with the first 100 plants from the group of 245 by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, nonprofit organizations, the State Division of Forestry and Wildlife (DOFAW), county governments, and Federal agencies (U.S. Department of Defense-Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, discourage cooperative projects, polarize

relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On December 29, 1999, we mailed letters to more than 130 landowners on the islands of Maui and Kahoolawe requesting any information considered germane to the management of any of the 70 plants on his/her property, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the species that may be on his/her property, and a handout containing general information on critical habitat. We received 20 written responses to our landowner mailing with varying types of information on their current land management activities. These responses included information on the following: the presence of fences or locked gates to restrict public access; access to the respondent's property by hunters or whether hunting is allowed on the property; ongoing weeding and rat control programs; and the propagation and/or planting of native plants. Some respondents stated that the plants of concern were not on her/his property. Only a few respondents expressed support for the designation of critical habitat. We held two open houses on the island of Maui, at the Lahaina Civic Center and the Wailuku Community Center on January 11 and 12, 2000, respectively, to meet one-on-one with local landowners and other interested members of the public. A total of 30 people attended the two open houses. In addition, we met with Maui County Division of Forestry and Wildlife staff to discuss their management activities on Maui.

On December 18, 2000, we published the second of the court-ordered prudency determinations and proposed critical habitat designations or non-designations for Maui and Kahoolawe plants (65 FR 79192). The prudency determinations and proposed critical habitat designations for Kauai and Niihau plants were published on November 7, 2000 (65 FR 66808), for Lanai plants on December 27, 2000 (65 FR 82086), and for Molokai plants on December 29, 2000 (65 FR 83157). All of these proposed rules had been sent to the **Federal Register** by or on November 30, 2000, as required by the court orders. In those proposals, we determined that critical habitat was prudent and proposed designation of critical habitat for 61 species (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Delissea undulata, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Schiedea nuttallii, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) that are reported from Maui and Kahoolawe as well as on Kauai, Niihau, Lanai, and Molokai. Critical habitat is proposed for 59 of these species on Maui and/or Kahoolawe at this time. Critical habitat is not proposed for *Adenophorus periens* and *Schiedea nuttallii* on Maui and Kahoolawe because we are have not identified habitat essential to their conservation on these islands.

In the December 18, 2000, proposal we determined that it was prudent to designate approximately 13,574 ha (33,614 ac) of lands on the island of Maui and approximately 207 ha (512 ac) of lands on the island of Kahoolawe as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which closed on February 16, 2001. On February 22, 2001, we published a notice (66 FR 11131) announcing the reopening of the comment period until April 2, 2001, on the proposal to designate critical habitat for 50 plants from Maui and Kahoolawe and a notice of a public hearing. On March 20, 2001, we held a public hearing at the Renaissance Wailea Beach Resort, Maui.

On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. On January 28, 2002, we determined that designation of critical habitat was prudent for *Solanum incompletum* (67 FR 3940), a species reported from Maui as well as Kauai, Molokai, and Lanai. Designation of critical habitat is not proposed for this species on Maui because we have not identified habitat essential to its conservation on this island. Publication of this revised proposal for plants from Maui and Kahoolawe is consistent with the court-ordered stipulation.

Summary of Comments and Recommendations

In the December 18, 2000, proposed rule (65 FR 79192), we requested all interested parties to submit comments on the specifics of the proposal, including information, policy, and proposed critical habitat boundaries as provided in the proposed rule. The first comment period closed on February 16, 2001. We reopened the comment period from February 22, 2001, to April 2, 2001 (66 FR 11131), to accept comments on the proposed designations and to hold a public hearing on March 20, 2001, in Wailea, Maui.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers: the *Honolulu Advertiser* on December 28, 2000, and the *Maui News* on January 2, 2000. We received one request for a public hearing. We announced the date and time of the public hearing in letters mailed to all interested parties, appropriate State and Federal agencies, county governments, and elected officials, and in notices published in the

Honolulu Advertiser and in the *Maui News* newspapers on March 1, 2001. A transcript of the hearing held in Wailea, Maui on March 20, 2001, is available for inspection (see **ADDRESSES** section).

We requested three botanists who have familiarity with Maui and Kahoolawe plants to peer review the proposed critical habitat designations. All three peer reviewers submitted comments on the proposed critical habitat designations. Two of the peer reviewers supported the designation of critical habitat for the Maui and Kahoolawe plants while the third peer reviewer says we did a very ambitious and credible attempt but does not support or oppose the designation. Two of the peer reviewers did not support the methodology we used to identify critical habitat, i.e. identifying only occupied habitat for these species. The third reviewer thought that focusing on known locations was appropriate to meet the court orders. Two of the reviewers did not agree with the exclusion of areas from critical habitat designation due to on-going land management. One peer reviewer opined that recovery of the plants would also entail the establishment of new populations in addition to the currently existing populations. All three peer reviewers also provided updated biological information, critical review, and editorial comments.

We received a total of 5 oral comments, 18 written comments, and 6 comments both in written and oral form during the two comment periods. These included responses from two Federal agencies, seven State offices, and 22 private organizations or individuals. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Maui and Kahoolawe plants. Of the 29 comments we received, 7 supported designation, 9 were opposed to it, and 13 provided information or declined to oppose or support the designation. Similar comments were grouped into eight general issues relating specifically to the proposed critical habitat designations. These are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment:* The designation of critical habitat in unoccupied habitat is particularly important, since this may be the only mechanism available to ensure that Federal actions do not eliminate the habitat needed for the survival and recovery of extremely endangered species.

Our Response: We agree. Our recovery plans for these species (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001) identify the need to expand existing populations and reestablish wild populations within historic range. We have revised the December 18, 2000, proposal to designate critical habitat for 50 plants from Maui and Kahoolawe to incorporate new information and address comments and new information received during the comment periods, including information on areas of potentially suitable unoccupied habitat for 61 plants from Maui and Kahoolawe.

(2) *Comment:* The data cited in the critical habitat proposal documenting the habitat losses and threats is questionable. We do not agree with the threats to the species as described in the proposed rule.

Our Response: In the December 18, 2000, proposal to designate critical habitat for 50 plants from Maui and Kahoolawe, we provided information on the status of and threats to the Maui and Kahoolawe plants. The threats to these species, and the species status, were documented in the listing rules for the Maui and Kahoolawe plants (56 FR 1450, 56 FR 47686, 56 FR 55770, 57 FR 20589, 57 FR 20772, 57 FR 20787, 57 FR 46325, 59 FR 9304, 59 FR 10305, 59 FR 14482, 59 FR 32932, 59 FR 49025, 59 FR 49860, 59 FR 56333, 59 FR 63436, 61 FR 53089, 61 FR 53108, 61 FR 53124, and 64 FR 48307), and in the recovery plans for these species (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001), and in the supporting documentation in the files at the Pacific Islands Office (See ADDRESSES section).

(3a) *Comment:* The proposal provides very limited information on the criteria and data used to determine the areas proposed as critical habitat. (3b) *Comment:* For example, failure to utilize recent collections at the herbaria of the B.P. Bishop Museum and the National Tropical Botanical Garden may result in incomplete knowledge of current known distributions and subsequently inadequate analysis for critical habitat designations. (3c) *Comment:* In situations where few species locations are currently known, pre-1970 locations may be used to identify suitable habitat for the species.

Our Response: When developing the December 18, 2000, proposal to designate critical habitat for 50 plants from Maui and Kahoolawe, we used the best scientific and commercial data available at the time, including but not limited to, information from the known locations, site-specific species information from the HINHP database, which includes information from collections housed at the herbarium of B.P. Bishop Museum and the National Tropical Botanical Garden, and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; the final listing rules for these species; information received at the two informational open houses held on Maui at the Lahaina Civic Center and the Wailuku Community Center on January 11 and 12, 2000, respectively; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the islands of Maui and Kahoolawe; discussions with botanical experts; and recommendations from the Hawaii Pacific Plants Recovery Coordinating Committee (HPPRCC)(Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; HPPRCC 1998; HINHP Database 2000, CPC *in litt.* 1999).

We have revised the proposed designations to incorporate new information and address comments and new information received during the comment periods. This additional information includes Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, land ownership); completed recovery plans; information received during the public comment periods and the public hearing, including information on recent plant collections housed at the B.P. Bishop Museum herbarium and the National Tropical Botanical Garden; and site-specific information from historical (pre-1970) collections (H. Oppenheimer, pers. comm., 2001; F. Duvall, pers. comm., 2001; M. Buck, *in litt.* 2001; 66 FR 11131).

(4a) *Comment:* We received comments that the proposed critical habitat designations were not specific enough, and were overly broad, and therefore, failed to comply with Congressional intent to restrict critical habitat to those areas ''essential to the conservation of the species.'' (4b) *Comment:* The designation was not inclusive enough and failed to include areas that Maui and Kahoolawe plants have used and are necessary for recovery of the species.

Our Response: We used the best scientific information available to develop the December 18, 2000, proposal to designate critical habitat for 50 Maui and Kahoolawe plants. This information is detailed above in our response to Comment (3). Based on the information described above, we believe

we have identified those areas essential to the conservation of the Maui and Kahoolawe plant species at issue in this proposed rule.

(5) *Comment:* Some commenters were concerned that developed infrastructure (i.e., roads, buildings, etc.) on their property is within proposed critical habitat boundaries, even though it does not contain any habitat for listed plants.

Our Response: In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of these species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, railroads, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, lawns, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of the proposed regulation. Therefore, unless a Federal action related to such features or structures indirectly affected nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat.

(6a) *Comment:* The presence of non-native plants makes habitat unsuitable and inappropriate for designation as critical habitat. (6b) *Comment:* Expansion of plant populations in highly degraded ecosystems may be biologically impossible due to the lack of the habitat components needed for survival.

Our Response: The presence of non-native plant competitors does not preclude designation of an area as critical habitat, if the area contains the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. We used the best available information, including expert scientific opinion, to identify the physical and biological features (type of plant community, associated species, and locale information such as rocky cliffs, talus slopes, stream banks) essential to the conservation of each species, and to identify potentially suitable habitat within the known historic range of each species. Of the area identified as potentially suitable habitat for a species, only those areas within the least disturbed suitable habitat were proposed as critical habitat for the species. In addition, habitat restoration projects are underway in some of the areas proposed as critical habitat for one or more species, such as at Ulupalakua Ranch on the island of Maui. At this location, non-native plants are being removed and replaced with native species, some of which are endangered or threatened.

We invite comments from the public that provide information on potentially suitable habitat within the known historic range of each species and whether lands within the proposed critical habitat provide for the conservation of one or more of the species.

(7) *Comment:* The Service should propose critical habitat on Maui and Kahoolawe for 14 plants historically, but not currently, found there.

Our Response: Fourteen species (*Adenophorous periens, Brighamia rockii, Clermontia peleana, Delissea undulata, Gouania vitifolia, Isodendrion pyrifolium, Nototrichium humile, Phyllostegia mannii, Phyllostegia parvilfora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum, Tetramolopium arenarium,* and *Tetramolopium remyi*) are known only from historical records on the islands of Maui or Kahoolawe. Critical habitat is proposed for six of these species (*Brighamia rockii, Gouania vitifolia, Isodendrion pyrifolium, Nototrichium humile, Phyllostegia mannii,* and *Tetramolopium remyi*) for which we have identified the physical and biological features that are considered essential to their conservation on the island of Maui. We also will consider proposing designation of critical habitat for these six species within their historical range on other Hawaiian islands. Critical habitat is not proposed for eight species (*Adenophorous periens, Clermontia peleana, Delissea undulata, Phyllostegia parviflora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum,* or *Tetramolopium arenarium*) which no longer occur on the islands of Maui or Kahoolawe, and for which we did not identify habitat essential to their conservation on these islands. All areas proposed as critical habitat are within the historical range of one or more of the 61 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of one or more of the species.

Critical habitat is proposed for *Asplenium fragile* var. *insulare,* which has been recently rediscovered on Maui. Critical habitat is proposed at this time for *Asplenium fragile* var. *insulare* on Maui based on new information and information received during the comment periods on the December 18, 2000, proposal.

Issue 2: Site-specific Biological Comments

(8a) *Comment:* Even though species are presumed to be extinct, given the frequency with which Hawaiian species are rediscovered, it is inappropriate not to designate critical habitat for any species addressed in this proposal. (8b) *Comment:* Critical habitat should be designated for *Acaena exigua* because habitats have not been adequately surveyed and this species may still be extant in the wild.

Our Response: We have revised the December 18, 2000, proposal to designate critical habitat for 61 plants from Maui and Kahoolawe to incorporate new information, and/or address comments and new information received during the comment periods.

Fourteen species (*Adenophorous periens, Brighamia rockii, Clermontia peleana, Delissea undulata, Gouania vitifolia, Isodendrion pyrifolium, Nototrichium humile, Phyllostegia mannii, Phyllostegia parvilfora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum, Tetramolopium remyi,* and *Tetramolopium arenarium*) are known only from historical records on the islands of Maui or Kahoolawe. Critical habitat is proposed for six of these species (*Brighamia rockii, Gouania vitifolia, Isodendrion pyrifolium, Nototrichium humile, Phyllostegia mannii,* and *Tetramolopium remyi*) for which we have identified the physical and biological features that are considered essential to their conservation on the island of Maui. Critical habitat is not proposed for eight species (*Adenophorous periens, Clermontia peleana, Delissea undulata, Phyllostegia parvilfora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum,* or *Tetramolopium arenarium*) which no longer occur on the islands of Maui or Kahoolawe and for which we have not identified habitat essential to their conservation on these islands.

No change is made here to the prudency determination for *Acaena exigua,* a species known only from Mt. Waialeale on Kauai and Puu Kukui on Maui, published in the December 18, 2000, proposal (65 FR 79192). *Acaena exigua* has not been seen on Kauai for over 100 years. This species was last

observed at Puu Kukui on Maui in 1999 and has not been observed in this area in subsequent surveys (H. Oppenheimer, pers. comm., 2001). In addition, this species is not known to be in storage or under propagation. Given these circumstances, we determined that designation of critical habitat for *Acaena exigua* was not prudent because such designation would be of no benefit to this species. If this species is rediscovered, we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. § 1532 (5) (B); 50 CFR 424.13(f)).

(9) *Comment:* One commenter requested that critical habitat designation skirt and not include any portion of the Hana or Kalaupapa Airports or any other airport.

Our Response: In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of these species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, railroads, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, lawns, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. We have revised the proposed designations published in the December 18, 2000, proposal for Maui and Kahoolawe plants to incorporate new information, and/or address comments and new information received during the comment periods. The Hana and Kalaupapa Airports were removed from the revised proposed critical habitat designations for Maui and Molokai.

(10) *Comment:* The State of Hawaii identified specific areas that they thought should not be designated as critical habitat.

Our Response: During the public comment periods for the December 18, 2000, proposal for plants from Maui and Kahoolawe, we received written comments and a map showing the DOFAW's vegetation classes and recommended critical habitat units. We have revised the December 18, 2000, proposed designations to incorporate new information, and address comments and new information received during the comment periods, including information received from DOFAW.

We evaluated DOFAW's comments on a species-by-species basis and incorporated information that was consistent with our methodology for identifying critical habitat as defined by the Act. DOFAW recommended deletion of some of the proposed critical habitat units on State lands as they do not believe these areas are suitable for the recovery of some species because they (DOFAW) would not be able to manage these areas with their limited staff and funding. Because DOFAW's basis for identifying areas for deletion was made on their ability to manage these areas, their mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act.

Issue 3: Legal Issues

(11) *Comment:* The Service failed to comply with court deadlines set forth in both *Conservation Council for Hawaii* v. *Babbitt*, 24 F. Supp. 1074 (D.Haw. 1998), and *Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 99–00283 (D.Haw Mar. 28, 2000)

Our Response: The proposed rules for plants from Kauai, Niihau, Maui, Kahoolawe, Lanai, and Molokai had been sent to the **Federal Register** by or on November 30, 2000, as required by the court orders. On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court orders for the final rules to designate critical habitat for plants from Kauai and Niihau, Maui and Kahoolawe, Lanai, and Molokai, citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. Publication of this revised proposal for plants from Maui and Kahoolawe is consistent with the court-ordered stipulation.

(12) *Comment:* Critical habitat designation is a duplicative regulatory environmental process of already-existing Federal and State environmental statutes such as the National Environmental Policy Act (NEPA) and Chapter 343 (Environmental Impact Statements), Hawaii Revised Statutes.

Our Response: Designation of critical habitat is not required by NEPA nor the Chapter 343 (Environmental Impact Statements), Hawaii Revised Statutes. We are required to designate critical habitat under section 4 of the Act. Section 7(a) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Issue 4: Section 7 Consultation Issues

(13) *Comment:* One commenter was concerned that using Federal funds to make improvements to the existing infrastructure and facilities at Waianapanapa State Park may require a section 7 consultation.

Our Response: Critical habitat designation does not affect activities on State or private lands unless some sort of Federal permit, license, or funding is involved. Therefore, unless a Federal action related to such features or structures indirectly affected nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat. The Federal agency providing the funds to make improvements to existing infrastructure and facilities at state parks would consult with us under section 7 of the Act to ensure that actions they fund are not likely to jeopardize the continued existence of any listed species or result in the destruction of adverse modification of critical habitat.

(14) *Comment:* Does section 7 apply to State and county agencies with permit authority such as the Hawaii Pollution Discharge Elimination system permit issued by the State of Hawaii and authorized by the Environmental Protection Agency, Special Management Area permits, and programs administered under the Natural Resources Conservation Service or the Coastal Zone Management Program?

Our Response: Section 7 of the Act requires each Federal agency to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species, or result in the destruction or adverse modification of critical habitat. Section 7 also requires that Federal agencies consult with us if their actions may affect a listed species. State or county agencies are not required to consult with us under section 7 of the Act if their programs are not authorized, permitted, or funded by a Federal agency.

The Environmental Protection Agency (EPA) may delegate the National Pollutant Discharge Elimination System (NPDES) permit authority to the State. Therefore, any individual permit that is issued by the State of Hawaii is not subject to section 7 consultation. Instead, procedures in the January 2001

Memorandum of Understanding between the Service and the EPA would apply. These procedures provide for us to notify EPA of any concerns we may have with individual permits, and the EPA would take corrective action if an individual permit has severe enough impacts on a listed species or designated critical habitat and the State fails to correct the problem. The Natural Resources Conservation Service (NRCS) does consult with us on projects and specific actions that they fund, authorize, or permit. The Coastal Zone Management Program (CZM Program) is administered by the National Oceanic and Atmospheric Administration (NOAA). NOAA has delegated implementation of the CZM Program in Hawaii to the State of Hawaii Department of Business, Economic Development, and Tourism (DBEDT). The individual decisions by the State's CZM Program are not subject to section 7 consultation. However, the State's CZM Program is not relieved of its responsibilities under section 9 of the Act.

(15) *Comment:* We are concerned that critical habitat designation will trigger additional compliance requirements under the State of Hawaii endangered species law.

Our Response: There is no State equivalent of critical habitat designation under the State of Hawaii's endangered species law. However, the Federal Endangered Species Act of 1973, as amended, is applicable to all States of the United States, including the State of Hawaii.

Issue 5: Mapping and Primary Constituent Elements

(16a) *Comment:* The designated areas are too large. (16b) *Comment:* The units are not large enough, and don't allow for changes that occur during known environmental processes. (16c) *Comment:* The 586-meter radius is arbitrary and may not work for all species, natural communities, and habitats. (16d) *Comment:* The highly irregular and fragmented shape of proposed units make it difficult to determine if projects are within critical habitat.

Our Response: We have revised the proposed designations published in the December 18, 2000, proposal for Maui and Kahoolawe plants to incorporate new information and address comments and new information received during the comment periods. Areas that contain habitat essential to conservation were identified and delineated on a species-by-species basis. When species units overlapped, we combined units for ease of mapping (see also Methods section). The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of 61 plant species from Maui and Kahoolawe.

(17) *Comment:* Requests were made to modify specific units in order to avoid areas where existing projects (*i.e.,* agricultural lands with irrigation infrastructure) are planned or may occur.

Our Response: In defining critical habitat boundaries in the revised proposal, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of these species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Therefore, unless a Federal action related to such features or structures indirectly affected nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat. We invite comments from the public that provide information on areas where existing and future projects are planned or may occur and how these projects may be affected by the designation of critical habitat.

(18) *Comment:* The discussion of each critical habitat unit should also indicate which species rely upon that unit for future reintroduction efforts.

Our Response: We have revised the December 18, 2000, proposal based on new information and information received during the comment periods. In this revised proposal, the description of each critical habitat unit (see *Descriptions of Critical Habitat Units*) includes information regarding species which rely upon that unit for recovery efforts, including future reintroduction efforts in currently unoccupied units.

(19) *Comment:* According to the **Federal Register**, *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Diellia erecta, Geranium arboreum, Lipochaeta kamolensis, Melicope mucronulata, Phlegmariurus mannii*, and *Phyllostegia mollis* are considered gulch dwelling species. One commenter recommended that map unit polygons be limited to the pali as part of the designation process in Units N, Nn, Oo, Qq, and Ss.

Our Response: In accordance with section 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection.

As described in the discussions for each of the 61 species for which we are proposing critical habitat, very little is known about the specific physical and biological requirements of these species. As such, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas the plant species are reported from, as described by the type of plant community, associated native plant species, locale information (*e.g.*, steep rocky cliffs, talus slopes, stream banks, gulches), and elevation. Locale information, such as gulch habitat, is only of one of the four factors used to describe primary constituent elements of each species.

In the revised proposed designation of critical habitat for plants on Maui proposed critical habitat for *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Diellia erecta, Geranium arboreum, Lipochaeta kamolensis, Melicope mucronulata, Phlegmariurus mannii*, and *Phyllostegia mollis* is included in critical habitat units which cover more than a single species (*i.e.*, multi-species units). These multi-species units are not homogenous or uniform in nature and may encompass a number of plant community types and locales, including gulches, pali, talus slopes, etc.

Issue 6: Definition of Critical Habitat

(20) *Comment:* Critical habitat is being designated in otherwise protected areas, such as State conservation lands, the island of Kahoolawe, and State parks. Managers should have the opportunity to implement management actions that would avoid the additional regulatory burden of critical habitat.

Our Response: In the December 18, 2000, proposal we examined all currently occupied sites containing one or more of the primary constituent elements considered essential to the conservation of the Maui and

Kahoolawe plant species to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; State of Hawaii, DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (*i.e.*, county, State, or Federal government holdings) and private landowner on the islands of Maui and Kahoolawe with a known occurrence of one of the plant species was contacted by mail. We reviewed all information received in response to our landowner mailing and open houses held at two locations (Lahaina and Wailuku) on the island of Maui on January 20 and 21, 2000, respectively. When clarification was required on the information provided to us, we followed up with a telephone contact. Because of the large amount of land on the island of Maui under State of Hawaii jurisdiction, we met with staff from Maui's DOFAW office to discuss their current management for the plants on their lands. And, we contacted the State's Department of Hawaiian Home Lands regarding management for the plants on lands under their jurisdiction. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

With regard to the areas newly proposed for designation in this revised proposal, we have also reviewed any management information available to us at this time. In addition, we are requesting information on management of these lands during the comment period.

Based upon review of the information available to us at this time, we have not been able to find that management on these State lands is adequate to preclude proposed designations of critical habitat. We are aware that the State of Hawaii and other private landowners are considering the development of land management plans or agreements that may promote the conservation of endangered and threatened plant species on the islands of Maui and Kahoolawe. We support these efforts, and we view such plans as important in helping meet species recovery goals, and ultimately can result in delisting of the species. We intend to work closely with any interested landowner or land manager in the development of conservation planning efforts for these, and other, endangered and threatened plants. If new information indicates any of these areas should not be included in the critical habitat designations because they no longer meet the definition of critical habitat, we may revise the proposed critical habitat designations in this proposal to exclude these areas. We agree that implementation of management actions for the conservation of these species should proceed; however, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available.

(21) *Comment:* Since critical habitat threats are being addressed, funding is available, and management plans are in place, the State Department of Hawaiian Homelands (DHHL) requests exclusion from designation in Units N, O, Oo, Qq, and Ww.

Our Response: In the December 18, 2000, proposal we examined all currently occupied sites containing one or more of the primary constituent elements considered essential to the conservation of the Maui and Kahoolawe plant species to determine if additional special management considerations or protection are required above those currently provided. As described above (see *Our Response* to *Comment* 20) we reviewed all available management information on these plants at these sites and all information received in response to our landowner mailing and two open houses. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

With regard to the areas proposed for designation by this revised proposal, we have also reviewed any management information available to us at this time. In addition, we are requesting information on management of these lands during the comment period.

Based upon review of the information available to us at this time, we have not been able to find that management on these State DHHL lands is adequate to preclude proposed designations of critical habitat. We are aware that the State of Hawaii and other private landowners are considering the development of land management plans or agreements that may promote the conservation of endangered and threatened plant species on the islands of Maui and Kahoolawe. We support these efforts, and we view such plans as important in helping meet species recovery goals, and ultimately can result in delisting of the species. We intend to work closely with any interested landowner or land manager in the development of conservation planning efforts for these, and other, endangered and threatened plants. If new information indicates any of these areas should not be included in the critical habitat designations because they no longer meet the definition of critical habitat, we may revise the proposed critical habitat designations in this proposal to exclude these areas.

(22) *Comment:* Additional layers of legal protection, in the case of Kahoolawe, are unnecessary. Hawaii State law has established Kahoolawe as a permanent natural and cultural reserve with habitat restoration as a key stated purpose (H.R.S. Chapter 6–K, H.A.R. Chapter 13–260, and Kahoolawe Archaeological District, listed March 18, 1981). Existing plans for Kahoolawe include a number of agreements, protocols, and management plans to guide protection and restoration of threatened and endangered species and native plant communities. Clean up of Kahoolawe by the Navy will continue through 2003, and could be detrimentally impacted by designation. Therefore, in consideration of the above, please exempt Kahoolawe from designation.

Our Response: In June 1998, the State of Hawaii Kahoolawe Island Reserve Commission developed an environmental restoration plan for Kahoolawe (Social Science Research Institute, University of Hawaii 1998). The plan, however, does not address specific management actions to protect and conserve endangered plant species, specifically *Kanaloa kahoolawensis, Hibiscus brackenridgei, Sesbania tomentosa*, and *Vigna o-wahuensis*, four species historically reported from Kahoolawe. While the island is isolated and remote, and access is restricted due to the presence of unexploded ordnance hazards, this action alone is not sufficient to indicate that additional special management is not required for the listed plant species, and areas on the island are included within the revised proposed critical habitat units for *Kanaloa kahoolawensis, Hibiscus brackenridgei, Sesbania tomentosa*, and *Vigna o-wahuensis.*

We invite comments from the public that provide information on how clean-up of Kahoolawe by the Navy could be detrimentally impacted by designation and information on management that promotes the conservation of endangered and threatened plants on Kahoolawe. If new information indicates any of the proposed areas should not be included in the critical habitat designations because they no

longer meet the definition of critical habitat (see *Our Response* to *Comment* 19), we may revise the proposed critical habitat designations in this proposal to exclude these areas.

(23) *Comment:* We urge the Service not to exclude managed areas, such as Waikamoi and Kapunakea Preserves, Puu Kukui Watershed Management Area, the upper area of Hanawi Natural Area Reserve, and Haleakala National Park, since doing so would violate the ESA.

Our Response: We have determined that the private lands within Waikamoi Preserve and Kapunakea Preserve do not meet the definition of critical habitat in the Act (§ 3(5)(A)), and we are not proposing designation of these lands as critical habitat in the revised proposal. Because the preserves and the continuing management plans being implemented for these plants and their habitats within the preserves provide a conservation benefit to the species and are permanently protected and managed, these lands meet the three criteria (described above in *Our Response* to *Comment* 19) for determining that an area is not in need of special management. However, should the status of either of these preserves change, for example by non-renewal of a partnership agreement or termination of Natural Area Partnership (NAP) funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time. 50 CFR 424.12(g).

In the December 18, 2000, proposal we determined that lands within the Puu Kukui Watershed Management Area on Maui were adequately managed for the conservation of the listed species that occur on those lands and were not in need of special management considerations or protection. Therefore, we determined that these lands did not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. However, during the comment periods on the December 18, 2000, proposal we received information from the Watershed Supervisor that funding for the conservation and management of the listed plant species on lands within Puu Kukui Watershed Management Area was not adequate nor assured. In the revised proposal we have determined that lands within Puu Kukui Watershed Management Area are in need of special management considerations or protection and thus meet the definition of critical habitat in the Act. Therefore, lands within Puu Kukui Watershed Management Area are included within the proposed designation of critical habitat on Maui for one or more species.

We have determined that the State land within the upper Hanawi Natural Area Reserve (NAR) does not meet the definition of critical habitat in the Act (§ 3(5)(A)), and we are not proposing designation of this land as critical habitat in the revised proposal. Because these plants and their habitats within the upper areas of Hanawi NAR (above 1,525 m (5,000 ft)) are permanently protected and managed and because the continued successful management of this area is assured, this area meets the three criteria (described above in *Our Response* to *Comment* 22) for determining that an area is not in need of special management or protection. Should the status of this reserve change, for example by revocation or modification of the NAR, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time. 50 CFR 424.12(g).

In the December 18, 2000, proposal we determined that lands within Haleakala National Park (Park) were adequately managed for the conservation of the listed species that occur on those lands and were not in need of special management considerations or protection. Therefore, we determined that these lands did not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. However, during the comment periods on the December 18, 2000, proposal we received information from the Park Superintendent that funding for the conservation and management of the listed plant species on lands within Haleakala National Park was not adequate nor assured. In the revised proposal we have determined that lands within the Park are in need of special management considerations or protection and thus meet the definition of critical habitat in the Act. Therefore, lands within the Park are included within the proposed designation of critical habitat on Maui for one or more species.

(24) *Comment:* All areas essential to the recovery of the species, regardless of management, should be designated as critical habitat.

Our Response: Pursuant to § 3(5)(A) of the Endangered Species Act the term ''critical habitat'' for a threatened and endangered species means—(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(25) *Comment:* Designation of critical habitat will provide additional benefit to managed lands when unoccupied habitat occurs on these lands, and when these lands are threatened by Federal actions.

Our Response: The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. The designation of unoccupied habitat may provide an additional benefit to the species by triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question. In the revised proposal we have proposed critical habitat in areas which are essential for the conservation of the species within its historical range though the species may not occur there currently. The proposed critical habitat includes lands under State, private, or Federal ownership or administration. A few of the species are reported from Federal lands or lands that are administered by a Federal agency (*e.g., Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis*, and *Schiedea haleakalensis* within Haleakala National Park) while most of the species are reported exclusively from non-federal lands with currently no known or limited Federal activities. However, there could be Federal actions affecting these lands in the future.

(26a) *Comment:* Designation of Haleakala National Park would further protect threatened and endangered plants from Federal actions inside the Park. (26b) *Comment:* Designating critical habitat would prevent Federal actions taking place outside managed areas from impacting habitat found within managed areas, such as the impacts of the proposed Kahului Airport expansion on Haleakala National Park.

Our Response: In the December 18, 2000, proposal we determined that lands within the Park were adequately managed for the conservation of the listed species that occur on those lands and were not in need of special

management considerations or protection. Therefore, we determined that these lands did not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. However, during the comment periods on the December 18, 2000, proposal we received information from the Park Superintendent that funding for the conservation and management of the listed plant species on lands within Haleakala National Park was not adequate nor assured. Therefore, we have determined that lands within Haleakala National Park are in need of special management considerations or protection and thus meet the definition of critical habitat in the Act.

The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. Federal agencies must consult with the Service to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the survival of a listed species or result in the destruction or adverse modification of critical habitat. By consulting with us, an agency can usually minimize or avoid any potential conflicts with listed species and their critical habitat, and the proposed project may be undertaken.

In the formal consultation for the Kahului Airport expansion project we concurred that the airport improvement project, which included a mandatory state of the art alien species interdiction facility, was not likely to jeopardize listed species nor adversely affect designated critical habitat for *Gouania hillebrandii* on the island of Maui. According to the local FAA office, the expansion project has been canceled mainly because of concerns of the local community, including the hotel industry, regarding the type of growth and development that characterizes Honolulu. There is no indication that the project has been canceled due to endangered species or critical habitat issues.

(27) *Comment:* The Service should not exclude from critical habitat any areas subject to conservation measures on non-Federal lands (*e.g.* Safe Harbor Agreements, Habitat Conservation Plans, etc.).

Our Response: Currently, there are no Habitat Conservation Plans (HCPs) or Safe Harbor Agreements (SHAs) that include any of the plant species at issue in this proposal as covered species, so no such areas have been excluded from this proposal.

Issue 7: Effects of Designation

(28a) *Comment:* Designation of critical habitat will result in restrictions on subsistence hunting and State hunting programs funded under the Federal Aid in Wildlife Restoration Program (Pittman-Robertson program). (28b) *Comment:* Hunting and recreational opportunities need to be considered when designating critical habitat. (28c) *Comment:* The designation of critical habitat will result in restrictions on subsistence hunting and access.

Our Response: The designation of critical habitat imposes no regulatory restrictions on actions occurring on State or other non-Federal lands, unless the action is undertaken, funded, or authorized by a Federal agency. Recreational, commercial, and subsistence activities, including hunting, on non-Federal lands are not regulated or restricted by this critical habitat designation. We believe that game bird and mammal hunting in Hawaii is an important recreational and cultural activity, and we support the continuation of this tradition. The designation of critical habitat would not impose restrictions on State hunting regulations except to the extent federal funding is involved. However, Federal agencies are required 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 us and includes funds distributed by the Service to the State through the Federal Aid in Wildlife Restoration Program (Pittman-Robertson Program). Under the Act, activities funded by us or other Federal agencies cannot result in jeopardy to listed species, and they cannot adversely modify or destroy critical habitat. It is well documented that game mammals affect listed plant and animal species. In such areas, we believe it is important to develop and implement sound land management programs that provide both for the conservation of listed species and for continued game hunting. We are committed to working closely with the State and other interested parties to ensure that game management programs that receive Federal funding are implemented consistent with this need.

(29) *Comment:* The designation of critical habitat will disrupt air service at Hana Airport and have detrimental effects on its residents.

Our Response: Hana Airport is not included in the proposed critical habitat designation in the revised proposal as it does not contain one or more of the primary constituent elements for the species at issue and thus is not essential for their conservation.

(30) *Comment:* Critical habitat could be the first step toward making the area a national park or refuge.

Our Response: Critical habitat designation does not in any way create a wilderness area, preserve, national park, or wildlife refuge, nor does it close an area to human access or use. Its regulatory implications apply only to activities sponsored at least in part by Federal agencies. Land uses such as logging, grazing, and recreation that would not be affected if they do no involve Federal permitting or funding. Critical habitat designations do not constitute land management plans.

(31a) *Comment:* The designation of critical habitat constitutes an encumbrance, results in ''downzoning'' of the property, and will allow lawsuits by environmental groups. Therefore, critical habitat will have a negative economic impact and cause a decrease in land values, and is a tactic often used as a prelude to ''taking'.

Our Response: The majority of this land (77 percent) and all of the land on Kahoolawe is within the State Conservation District where State land-use controls already severely limited development and most activities. Approximately 23 percent of this land is within the State Agricultural District where only activities such as crops, livestock, grazing, and accessory structures and farmhouses are allowed. While the potential exists for a decrease in property values for privately owned agricultural land suitable for eventual development if a perception develops that a critical habitat designation will restrict future land use, we believe this potential decrease in value is purely speculative and to our knowledge has never occurred in Hawaii or the continental U.S.

Because current zoning limits land use activities within the proposed critical habitat areas and only activities with a Federal involvement that will destroy or adversely modify critical habitat will be affected and in such cases we must identify reasonable and prudent alternatives, we don't believe this is a prelude to a ''taking.'' In addition, we will conduct an economic analysis and in the final rule, we may exclude areas from critical habitat if the impact of designation outweighs the benefit of designation.

We expect that this situation will rarely be reached because the Act provides mechanisms, through section 7 consultation, to resolve apparent conflicts between proposed Federal actions, including Federal funding or permitting of actions on private land,

and the requirement that destruction or adverse modification of critical habitat be avoided. Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives, which by definition must be economically feasible and within the scope of authority of the Federal agency involved in consultation.

Issue 8: Economic Issues

(32) *Comment:* We should have been directly contacted for our opinions on the economic impacts of critical habitat designation.

Our Response: We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the draft economic analysis and proposed rule at that time. We will mail letters to landowners and other interested parties and publish a notice in the *Maui News* newspaper announcing the availability of and seeking public comment on the draft economic analysis and proposed rule. We encourage anyone who has information or opinions concerning the economic impacts of this proposal to provide them to us.

(33) *Comment:* The Service failed to properly consider the economic (e.g., costs associated with section 7 consultation, project delays, etc.) and other impacts (special management protections on private lands) of designating particular areas as critical habitat.

Our Response: We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the draft economic analysis and proposed rule at that time (see response to *Comment 23*, above).

Summary of Changes From the Previous Proposal

We originally determined that designation of critical habitat was prudent for 37 plants from the islands of Maui and Kahoolawe on December 18, 2000. In a previous proposal, published on November 7, 2000, we determined that designation of critical habitat was prudent for 11 plants that are reported from Maui and Kahoolawe as well as from Kauai and Niihau. In addition, at the time we listed *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis*, and *Kanaloa kahoolawensis*, on September 3, 1999, we determined that designation of critical habitat was prudent for these six taxa from Maui and Kahoolawe. No change is made to these 54 prudency determinations in this revised proposal and they are hereby incorporated by reference (64 FR 48307; 65 FR 66808; 65 FR 79192).

In the December 18, 2000, proposal, we determined that critical habitat was not prudent for *Acaena exigua*, a species endemic to Maui, because it had not been seen recently in the wild, and no viable genetic material of this species was known to exist. No change is made here to the December 18, 2000, prudency determination for this species and it is hereby incorporated by reference (65 FR 79192).

In the December 18, 2000, proposal we proposed designation of critical habitat for 50 plants from the islands of Maui and Kahoolawe. These species are: *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Vigna o-wahuensis, and Zanthoxylum hawaiiense.* In this proposal, we have revised the proposed designations for these 50 plants based on new information received during the comment periods. In addition, we incorporate new information, and address comments and new information received during the comment periods on the December 18, 2000, proposal.

In the December 18, 2000, proposal, we did not propose critical habitat for four species (*Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis*, and *Schiedea haleakalensis*) found only in Waikamoi Preserve and/or Haleakala National Park. We determined that these lands did not meet the definition of critical habitat in the Act. However, during the comment periods on the December 18, 2000, proposal, we received information from the Park Superintendent that funding for the conservation and management of the listed plant species on lands within Haleakala National Park was not adequate nor assured. Therefore, we have determined that lands within Haleakala National Park are in need of special management considerations or protection and thus meet the definition of critical habitat in the Act, and we have proposed designation of critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis*, and *Schiedea haleakalensis* within Haleakala National Park.

In the December 18, 2000, proposal, we did not propose designation of critical habitat for 14 species that no longer occur on Maui and Kahoolawe but are reported from one or more other islands. We determined that critical habitat was prudent for eight of these species (*Adenophorus periens, Brighamia rockii, Delissea undulata, Isodendrion pyrifolium, Phyllostegia mannii, Schiedea nuttallii, Solanum incompletum*, and *Tetramolopium remyi*) in other proposed rules published on November 7, 2000 (Kauai), December 27, 2000 (Lanai), December 29, 2000 (Molokai), and January 28, 2002 (Kauai revised proposal). No change is made to these prudency determinations for these eight species in this proposal and they are hereby incorporated by reference (65 FR 79192; 65 FR 82086; 65 FR 83158; and 67 FR 3940). In this proposal, we propose designation of critical habitat for *Brighamia rockii, Isodendrion pyrifolium, Phyllostegia mannii*, and *Tetramolopium remyi* on the island of Maui, based on new information and information received during the comment periods on the December 18, 2000, proposal. Critical habitat is not proposed for *Adenophorus periens, Delissea undulata, Schiedea nuttallii*, and *Solanum incompletum* on the

islands of Maui and Kahoolawe because we did not identify habitat essential to their conservation on these islands.

In this proposal, we determine that critical habitat is prudent for *Asplenium fragile* var. *insulare*, a species recently rediscovered on Maui and for which a prudency determination has not been made previously. Critical habitat is proposed at this time for *Asplenium fragile* var. *insulare* on Maui based on new information and information received during the comment periods on the December 18, 2000, proposal.

In this proposal, we determine that critical habitat is prudent for six other species (*Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri*, and *Tetramolopium arenarium*) for which prudency determinations have not been made previously, and that no longer occur on Maui but are reported from one or more other islands. These six plants were listed as endangered species under the Endangered Species Act of 1973, as amended (Act) between 1994 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. In this proposal, we determine that designation of critical habitat is prudent for these six species because we believe that such designation would be beneficial to these species. Critical habitat is proposed at this time for *Gouania vitifolia* and *Nototrichium humile*, on Maui based on new information and information received during the comment periods on the December 18, 2000, proposal. Critical habitat is not proposed for *Clermontia peleana, Phyllostegia parviflora, Schiedea hookeri*, and *Tetramolopium arenarium* on the island of Maui because we did not identify habitat essential to their conservation on this island.

In this proposal, we propose designation of critical habitat for 61 species: *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis*, and *Zanthoxylum hawaiiense* on the islands of Maui and Kahoolawe, based on new information and information received during the comment period on the December 18, 2000, proposal. Critical habitat is not proposed for 8 species: *Adenophorus periens, Clermontia peleana, Delissea undulata, Phyllostegia parviflora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum*, and *Tetramolopium arenarium* on the islands of Maui or Kahoolawe because we did not identify habitat essential to their conservation on these islands. Critical habitat is not proposed for *Acaena exigua*, for which we determined, on December 18, 2000, that critical habitat designation is not prudent because this species has not been seen recently in the wild, and no viable genetic material of this species is known. No change is made to that determination here.

Based on a review of new biological information and public comments received, we have revised our December 18, 2000, proposal to incorporate the following changes in addition to those described above: changes in our approach to delineate proposed critical habitat (see *Criteria Used to Identify Critical Habitat*); adjustment and refinement of previously identified critical habitat units to more accurately follow the natural topographic features and to avoid inessential landscape features (agricultural crops, urban or rural development) without primary constituent elements; and, inclusion of new areas within the proposed critical habitat units that are essential for the conservation of one or more of the 61 plant species, including portions of Federal land within Haleakala National Park.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified to help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must

first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Section 4 requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Redeterminations

We originally determined that designation of critical habitat was prudent for 37 plants from the islands of Maui and Kahoolawe on December 18, 2000. These species are: *Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Cenchrus agriminoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Lipochaeta kamolensis, Lysmachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Phlegmariurus mannii, Phyllostegia mollis, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Tetramolopium capillare,* and *Vigna o-wahuensis*. In a previous proposal, published on November 7, 2000, we determined that designation of critical habitat was prudent for 11 plants (*Alectryon macrococcus, Bonamia menziesii, Centaurium sebaeoides, Flueggea neowawrae, Melicope knudsenii, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Sesbania tomentosa, Spermolepis hawaiiensis, Zanthoxlum hawaiiense*) that are reported from Maui and Kahoolawe as well as from Kauai and Niihau. In addition, at the time we listed *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis*, on September 3, 1999, we determined that designation of critical habitat was prudent for these six taxa from Maui and Kahoolawe. No change is made to these 54 prudency determinations in this revised proposal and they are hereby incorporated by reference (64 FR 48307; 65 FR 66808; 65 FR 79192).

No change is made here to the prudency determination for *Acaena exigua*, a species known only from Mt. Waialeale on Kauai and Puu Kukui on Maui, published in the December 18, 2000, proposal and hereby incorporated by reference (65 FR 79192). *Acaena exigua* has not been seen on Kauai for over 100 years. This species was last observed at Puu Kukui on Maui in 1999 and has not been observed in this area in subsequent surveys (H. Oppenheimer, pers. comm., 2001). In addition, this species is not known to be in storage or under propagation. Given these circumstances, we determined that designation of critical habitat for *Acaena exigua* was not prudent because such designation would be of no benefit to this species. If this species is rediscovered, we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532 (5) (B); 50 CFR 424.13(f)).

In the December 18, 2000, proposal we did not determine prudency nor propose designation of critical habitat for 14 species that we believed no longer occurred on Maui and Kahoolawe but were reported from one or more other islands. We determined that critical habitat was prudent for eight of these species (*Adenophorus periens, Brighamia rockii, Delissea undulata, Isodendrion pyrifolium, Phyllostegia mannii, Schiedea nuttallii, Solanum incompletum,* and *Tetramolopium remyi*) in other proposed rules published on November 7, 2000 (Kauai), December 27, 2000 (Lanai), December 29, 2000 (Molokai), and January 28, 2002 (Kauai revised proposal). No change is made to these prudency determinations for these eight species in this proposal and they are hereby incorporated by reference (65 FR 66808, 65 FR 82086, 65 FR 83158, and 67 FR 3940). In this proposal, we propose designation of critical habitat for *Brighamia rockii, Isodendrion pyrifolium, Phyllostegia mannii,* and *Tetramolopium remyi* on the island of Maui, based on new information and information received during the

comment periods on the December 18, 2000, proposal. Critical habitat is not proposed for *Adenophorus periens, Delissea undulata, Schiedea nuttallii,* and *Solanum incompletum* on the islands of Maui and Kahoolawe because we did not identify habitat essential to their conservation on these islands.

To determine whether critical habitat would be prudent for *Asplenium fragile* var. *insulare,* a species recently rediscovered on Maui and for which a new prudency determination has not yet been made, we analyzed the potential threats and benefits for this species in accordance with the court orders. This plant was listed as an endangered species under the Act in 1994. At the time *Asplenium fragile* var. *insulare* was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We examined the evidence available for this species and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of this species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Asplenium fragile* var. *insulare* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that this species is currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of *Asplenium fragile* var. *insulare*, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. *Asplenium fragile* var. *insulare* is reported from private, State, and Federal lands on Maui and Hawaii (Federal lands include Haleakala National Park on Maui, and Hawaii Volcanoes National Park and the U.S. Army's Pohakuloa Training Area on the island of Hawaii). While a critical habitat designation for habitat currently occupied by *Asplenium fragile* var. *insulare* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultations would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of this species and dissemination of information regarding its essential habitat requirements. Therefore, we propose that designation of critical habitat is prudent for *Asplenium fragile* var. *insulare*.

To determine whether critical habitat would be prudent for six other species (*Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium*) for which prudency determinations have not been made previously, and that no longer occur on Maui but are reported from one or more other islands, we analyzed the potential threats and benefits for these species in accordance with the court's order. These six plants were listed as endangered species under the Act between 1994 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species or would not benefit the plant. We examined the evidence now available for these six species and have not, as this time, found specific evidence of taking, vandalism, collection, or trade of these species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of *Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium,* there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. Three of these species, *Nototrichium humile, Schiedea hookeri,* and *Tetramolopium arenarium,* are reported from Federal lands or lands that are administered by a Federal agency on other islands (*Nototrichium humile* and *Schiedea hookeri* are reported from the U.S. Army's Makua Military Reservation and Schofield Barracks Military Reservation, and the U.S. Navy's Lualualei Naval Magazine on the island of Oahu; *Tetramolopium arenarium* is reported from the U.S. Army's Pohakuloa Training Area on the island of Hawaii) where actions are subject to section 7 consultation. Although *Gouania vitifolia* and *Phyllostegia parviflora* are located exclusively on non-Federal lands with limited Federal activities on the islands of Hawaii and/or Oahu, there could be Federal actions affecting these lands in the future. *Clermontia peleana* was observed in the wild as recently as 1998 on the island of Hawaii on Federal (Hakalau National Wildlife Refuge) and State lands. This species was not relocated in surveys conducted in 1999; however, viable genetic material is in propagation at the State's Volcano Rare Plant Facility on the island of Hawaii, and recovery objectives for this species include propagation and outplanting of propagated individuals within its historic range (Service 1996a). While a critical habitat designation for habitat currently occupied by *Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultations would be triggered only if critical habitat were designated. Critical habitat

may also trigger section 7 consultations for *Clermontia peleana* that would not otherwise occur. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements. Therefore, we propose that designation of critical habitat is prudent for *Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium.*

B. Methods

As required by the Act (section 4(b)(2)) and regulations at 50 CFR 424.12, we used the best scientific data available to determine areas that are essential to conserve *Adenophorus periens, Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia peleana, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Delissea undulata, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Schiedea hookeri, Schiedea nuttallii, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense.* This information included the known locations; site-specific species information from the HINHP database and our own rare plant database; species information from the CPC's rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide GIS coverages (*e.g.* vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 69 species; the December 18, 2000, proposal; information received during the public comment periods and the public hearing; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the islands of Maui and Kahoolawe; discussions with botanical experts; and recommendations from the HPPRCC (see also the discussion below) (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; HPPRCC 1998; HINHP Database 2000, CPC *in litt.* 1999; 65 FR 79192; R. Hobdy *et al., in litt.* 2001; J. Lau, *in litt.* 2001).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999).

The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research finding may also lead to additional refinements of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plant species and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data has been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species and species of concern) while we have only delineated areas that are essential for the conservation of the 61 listed species at issue. As a result, the proposed critical habitat designations in this proposed rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

In the December 18, 2000, proposal, we determined that the designation of critical habitat was prudent for 37 plant species known currently from the islands of Maui or Kahoolawe and in that proposal we identified the physical and biological features that are considered essential to the conservation of the 37 species on the islands of Maui or Kahoolawe (65 FR 79192). In a previous proposal, published on November 7, 2000, we determined that designation of critical habitat was prudent for 11 plants *(Alectryon macrococcus, Bonamia menziesii, Centaurium sebaeoides, Flueggea neowawrae, Melicope knudsenii, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Sesbania tomentosa, Spermolepis hawaiiensis, Zanthoxlum hawaiiense)* that are reported from Maui and Kahoolawe as well as from Kauai and Niihau. In the December 18, 2000, proposal, we identified the physical and biological features that are considered essential to the conservation of these 11 species on the islands of Maui or Kahoolawe (65 FR 79192). In addition, at the time we listed *Clermontia samuelii, Cyanea copelandii* ssp.

haleakalaensis, Cyanea glabra, Cyanea hamatiflora ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis,* on September 3, 1999, we determined that designation of critical habitat was prudent for these six taxa from Maui and Kahoolawe. In the December 18, 2000, proposal, we identified the physical and biological features that are considered essential to the conservation of these six species on the islands of Maui or Kahoolawe (65 FR 79192). Based on new information and information received regarding the physical and biological features that are considered essential to the conservation of these 54 species during the comment periods on the December 18, 2000, proposal, we have revised the physical and biological features that are considered essential to the conservation of these 54 plant species on the islands of Maui and Kahoolawe.

In other proposals published on December 27, 2000, December 29, 2000, or on January 28, 2002, we determined that the designation of critical habitat was prudent for eight species *(Adenophorus periens, Brighamia rockii, Delissea undulata, Isodendrion pyrifolium, Phyllostegia mannii, Schiedea nuttallii, Solanum incompletum, and Tetramolopium remyi)* that no longer occur on Maui and Kahoolawe but are reported from one or more other islands. Based on new information and information received during the comment periods on the December 18, 2000, proposal regarding the physical and biological features (*i.e.* locale information, elevation, vegetation, and associated species) that are considered essential to the conservation of four of these eight species, we have identified the physical and biological features that are considered essential to the conservation of *Brighamia rockii, Isodendrion pyrifolium, Phyllostegia mannii,* and *Tetramolopium remyi* on the island of Maui. We are unable to identify these features for *Adenophorus periens, Delissea undulata, Schiedea nuttallii,* and *Solanum incompletum* on the island of Maui because information on these features for these species on Maui is not available at this time. Therefore, we were not able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of *Adenophorus periens, Delissea undulata, Schiedea nuttallii,* and *Solanum incompletum* on the island of Maui. However, proposed critical habitat designations for *Adenophorus periens, Delissea undulata,* and *Schiedea nuttallii* were included in proposals published on November 7, 2000, or December 29, 2000 (65 FR 66808; 65 FR 83158). In addition, we will consider proposing designation of critical habitat for *Adenophorus periens, Delissea undulata, Schiedea nuttallii,* and *Solanum incompletum* within the historic range for each species on other Hawaiian Islands.

In this proposal, we determine that the designation of critical habitat is prudent for *Asplenium fragile* var. *insulare,* a species recently rediscovered on Maui and for which a prudency determination has not been made previously. Based on new information received on the rediscovered population in Kalialinui regarding the physical and biological features (such as locale information, vegetation type, elevational range, and associated species) that are considered essential to the conservation of *Asplenium fragile* var. *insulare* we have identified the physical and biological features that are considered essential to the conservation of *Asplenium fragile* var. *insulare* on the island of Maui.

In this proposal, we determine that the designation of critical habitat is prudent for six species *(Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium)* for which prudency determinations have not been made previously, and that no longer occur on Maui but are reported from one or more other islands. Based on new information and information received regarding the physical and biological features that are considered essential to the conservation of *Gouania vitifolia* and *Nototrichium humile* during the comment periods on the December 18, 2000, proposal, we have identified the physical and biological features that are considered essential to the conservation of these two species on the island of Maui. These features include locale information, elevational range, vegetation type, and associated species for both *Gouania vitifolia* and *Nototrichium humile.* Information on the locale, elevational range, vegetation type, and associated species for *Clermontia peleana, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* is not available at this time and thus we are unable to identify these features for *Clermontia peleana, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* on the island of Maui. Therefore, we were not able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of *Clermontia peleana, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* on the island of Maui. However, we will consider proposing designation of critical habitat for *Clermontia peleana, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* within the historic range for each species on other Hawaiian Islands.

All areas proposed as critical habitat are within the historical range of one or more of the 61 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of one or more of the species.

As described in the discussions for each of the 61 species for which we are proposing critical habitat, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community, associated native plant species, locale information (*e.g.,* steep rocky cliffs, talus slopes, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicates specific microclimate conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale provides information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the *Supplementary Information: Discussion of the Plant Taxa* section above, constitute the primary constituent elements for these species on the islands of Maui and Kahoolawe.

D. Criteria Used to Identify Critical Habitat

In the December 18, 2000, proposal we defined the primary constituent elements based on the general habitat features of the areas in which the plants currently occur such as the type of plant community the plants are growing in, their physical location (e.g., steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we proposed to designate as critical habitat provided some or all of the habitat components essential for the conservation of the 61

plant species. Specific details regarding the delineation of the proposed critical habitat units were given in the December 18, 2000, proposal (65 FR 79192). In that proposal, we did not include potentially suitable unoccupied habitat that is important to the recovery of the 61 species due to our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species) and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species.

However, following publication of the December 18, 2000 (65 FR 79192), proposal we received new information regarding the physical and biological features, such as locale information, elevational range, vegetation type, and associated species that are considered essential for the conservation of many of these 61 species and information on potentially suitable habitat within the historical range for many of these species. Based on a review of this new biological information and public comments received following publication of the other three proposals to designate critical habitat for Hawaiian plants on Kauai and Niihau (65 FR 66808), Lanai (65 FR 82086), and Molokai (65 FR 83158), we have reevaluated the manner in which we delineated proposed critical habitat. In addition, we met with members of the HPPRCC and State, Federal, and private entities to discuss criteria and methods to delineate critical habitat units for these Hawaiian plants.

While the lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.,* population viability analysis (NRC 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995), at this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, we used available information, including expert scientific opinion, to identify potentially suitable habitat within the known historic range of each species.

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these 61 species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes the following components: (1) stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species' biology and ecology (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature individuals per population for long-lived perennial species, 300 individuals per population for short-lived perennial species, and 500 mature individuals per population for annual species. There are some specific exceptions to this general recovery goal of 8 to 10 populations for species that are believed to historically have occurred as one large, scattered population (*e.g., Argyroxiphium sandwicense* ssp. *macrocephalum* (Service 1997)), and the proposed critical habitat designations reflect this exception for this species. To be considered recovered, each population of a species endemic to the islands of Maui or Kahoolawe should occur on the island to which it is endemic, and likewise the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated, influenced by the same small-scale events (such as landslides), and containing 100, 300, or 500 individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual.

By adopting these specific recovery objectives enumerated here, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes, or tsunamis, that could destroy a large percentage of the species at any one time may be reduced (Menges 1990; Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2000; Menges 1990; Murphy *et al.* 1900; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life-history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

The long-term objectives, as reviewed by Pavlik (1996), require from 50 to 2,500 individuals per population, based largely on research and theoretical modeling on endangered animals, since much less research has been done on endangered plants. Many aspects of a species life history are typically considered to determine guidelines for species interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed duration, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of these characteristics that can be uniformly applied to all Hawaiian plant species is longevity (*i.e.,* long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature individuals per population for long-lived perennial species, 300 individuals per population for short-lived perennial

species, and 500 individuals per population for annual species.

For *Argyroxiphium sandwicense* ssp. *macrocephalum,* the recovery goal is one population of greater than 50,000 individuals. This is based on the best scientific judgment of Hawaiian botanical experts, including HPPRCC members, who developed the recovery plan for this species, that this species probably occurred historically as one single population (Service 1997). The large number of total individuals is based on the more detailed knowledge available on the life history of this species, including the fact that it is a monocarpic species (only flowering once before dying), requires 15 to 50 years to mature, and must be cross-pollinated from a genetically different plant to produce viable seeds (Loope and Medeiros 1994, Carr *et al.* 1986). All of these characteristics indicate the need for more individuals in order to maintain a genetically diverse, viable population (Pavlik 1996).

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. However, as explained above, the recovery goal for *Argyroxiphium sandwicense* ssp. *macrocephalum* is one population, rather than 8 to 10 populations, of greater than 50,000 individuals. Although absent the detailed information inherent to the types of PVA models described above (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species—(1) creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the whole listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2000; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1996). This basic conservation principle of redundancy applies to Hawaiian plant species. By maintaining 8 to 10 viable populations in the several proposed critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and conservation. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of non-native plants and animals. Establishing and conserving 8 to10 viable plant populations on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as hurricanes which occurred in 1982 and 1992 on Kauai, fires, and alien plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential to give the species a reasonable likelihood of long-term survival and recovery, based on currently available information.

In summary, the long-term survival and recovery requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species except *Argyroxiphium sandwicense* ssp. *macrocephalum* as explained above. Some of this habitat is currently not known to be occupied by these species. To recover the species, it will be necessary to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (e.g., hurricanes, fire, and non-native species introductions) (Pimm *et al.* 1998; Stacey and Taper 1992; Mangel and Tier 1994).

In this proposal, we have defined the primary constituent elements based on the general habitat features of the areas from which the plants are reported, from such as the type of plant community the plants are reported from, the associated native plant species, the physical location (*e.g.,* steep rocky cliffs, talus slopes, streambanks), and elevation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 61 plant species.

Changes in our approach to delineate proposed critical habitat units were incorporated in the following manner:

1. We focused on designing units representative of the known current and historical geographic and elevational range of each species;

2. Proposed critical habitat units would allow for expansion of existing wild populations and reestablishment of wild populations within historic range, as recommended by the recovery plans for each species; and

3. Critical habitat boundaries were delineated in such a way that areas with overlapping occupied or suitable unoccupied habitat could be depicted clearly (multi-species units).

We began by creating rough units for each species by screen digitizing polygons (map units) using ArcView (ESRI), a computer GIS program. The polygons were created by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

The resulting shape files (delineating historic range and potential, suitable habitat) were then evaluated. Elevation ranges were further refined, and land areas identified as not suitable for a particular species (*i.e.*, not containing the primary constituent elements) were avoided. The resulting shape files for each species then were considered to define all suitable habitat on the island, including occupied and unoccupied habitat.

These shape files of suitable habitat were further evaluated. Several factors were then used to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for conservation would be available within the critical habitat units identified as containing the appropriate primary constituent elements for each species. For multi-island species multiple populations of each taxon were identified on islands where they now occur or occurred historically. Because of the need to propose critical habitat on an island by island basis for multi-island species we evaluated the historical distribution of each multi-island species throughout Hawaii, to the best of our ability. We expect to refine proposed areas for these multi-island species once all the proposed rules for the Hawaiian Islands are published. This refinement will be

based on an evaluation on what is essential to the species on these islands throughout its historical distribution. Of the areas identified as potentially suitable habitat, only those areas within the least-disturbed suitable habitat and that were determined were proposed as critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,281 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; M.H. Schierup and F.B. Christiansen 1996).

Using the above criteria, we delineated the proposed critical habitat for each species. When species units overlapped, we combined units for ease of mapping. Such critical habitat units encompass a number of plant communities. Using satellite imagery and parcel data, we then eliminated areas that did not contain the appropriate vegetation, associated native plant species, or elevations such as cultivated agriculture fields, housing developments, or other areas that are unlikely to contribute to the conservation of one or more of the 61 plant species. Geographic features (ridge lines, valleys, streams, coastlines, etc.) or man-made features (roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries. We also used watershed delineations to dissect very large proposed critical habitat units in order to simplify the unit mapping and their descriptions.

Within the critical habitat boundaries, section 7 consultation is necessary and adverse modification could occur if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of the 61 species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

In summary, for most of these species we utilized the approved recovery plan guidance to identify appropriately sized land units containing suitable occupied and unoccupied habitat. Based on the best available information, we believe these areas constitute the habitat necessary to provide for the conservation of these 61 species.

E. Managed Lands

Currently occupied and historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 61 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (*i.e.*, county, State, or Federal government holdings) and private landowner on the islands of Maui and Kahoolawe with a known occurrence of one of the 61 species was contacted by mail. We reviewed all information received in response to our landowner mailing and open houses held at two locations (the Lahaina Civic Center and the Wailuku Community Center) on the island of Maui on January 11 and 12, 2000, respectively. When clarification was required on the information provided to us, we followed up with a telephone contact. Because of the large amount of land on the island of Maui under State of Hawaii jurisdiction, we met with staff from the DOFAW office in Maui to discuss their current management for the plants on their lands. We also contacted the State's DHHL regarding management for the plants on lands under their jurisdiction (any species of aquatic life, wildlife, or plant that is federally listed as endangered or threatened is State listed as well). In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require ''special management considerations or protections.'' Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and (3) provides assurances the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive non-native plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Smith 1985; Howarth 1985; Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Vitousek 1992; Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Loope 1998).

Current threats to these species include non-native grass and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including goats, deer, and

pigs); direct and indirect effects of non-native plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and non-native insect pollinators for food, and predation of native insect pollinators by non-native hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be stifled by fruit- and flower-eating pests such as non-native arthropods, mollusks, and rats, and photosynthesis and water transport affected by non-native insects, pathogens, and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include non-native plant invasions altering wildfire regimes, feral ungulates vectoring weeds and disturbing vegetation and soils, thereby facilitating dispersal and establishment of non-native plants, and numerous non-native insects feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Cuddihy and Stone 1990; Mack 1992; Scott *et al.* 1986; Howarth 1985, Smith 1985; D'Antonio and Vitousek 1992, Tunison *et al.* 1992; Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Bruegmann *et al.* 2001).

(2) The recommendations from the HPPRCC in their 1998 report to us (''Habitat Essential to the Recovery of Hawaiian Plants''). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of non-native species threats, wildfire, and land use changes.

(3) The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in our recovery plans for these 61 species (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001), in the 1998 HPPRCC report to the Service (HPPRCC 1998), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1990; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) non-native plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plant species; (7) propagation, reintroduction, or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants; feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, or augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access.

As shown in Table 3, the proposed critical habitat designations for 61 species of plants are found on Federal, State, and private lands on the islands of Maui and Kahoolawe. In response to our public notices; letters to landowners; open houses; meetings; the December 18, 2000, proposal; public comment periods; and the March 20, 2001, public hearing along with information in our files, we received varying amounts and various types of information on the conservation management actions occurring on these lands. Some landowners reported that they are not conducting conservation management actions on their lands while others provided information on various activities such as fencing, weeding, ungulate control, hunting, control of human access, scientific research, fire control, and propagation and planting of native plants.

Federal Lands

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) a current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

One species, *Sesbania tomentosa,* occurs on Kanaio Training Area (Hawaii Army National Guard) lands on the island of Maui, and we believe this land is essential for the conservation of this species. In 1998, funds were provided for protective fencing and monitoring of *Sesbania tomentosa* on this land. Since then, however, these management activities for *Sesbania tomentosa* have been curtailed due to a lack of funding (Lt. Col. Richard Young, Hawaii Army National Guard, *in litt.* 2000). Because appropriate conservation management strategies has not been adequately funded or effectively implemented for *Sesbania tomentosa* on this land, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. However, if an INRMP or other endangered species management plan that addresses the maintenance and improvement of the essential elements for *Sesbania tomentosa,* and provides for its long-term conservation and assurances that the conservation

management strategies will be effective and implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude these military lands under section 4(b)(2) of the Act if benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species. Therefore, this area has been included within the proposed critical habitat units.

Contractors for the U.S. Navy are clearing the State-owned island of Kahoolawe of military ordinance utilizing Congressional funding that expires in 2003. The Navy has consulted with the Service under section 7 of the Act to ensure protection of threatened and endangered species during the clearance activities. In June 1998, the State of Hawaii Kahoolawe Island Reserve Commission developed an environmental restoration plan for Kahoolawe (Social Science Research Institute, University of Hawaii 1998). The plan, however, does not address specific management actions to protect and conserve endangered plant species. While the island is isolated and remote, and access is restricted due to the presence of unexploded ordnance hazards, this action alone is not sufficient to indicate that additional special management is not required for the listed plant species, and areas on the island are included within the proposed critical habitat units for *Kanaloa kahoolawensis, Hibiscus brackenridgei, Sesbania tomentosa,* and *Vigna o-wahuensis.*

Protective fencing and monitoring of the endangered plant Sesbania tomentosa on the leased U.S. military lands (Hawaii Army National Guard) at Kanaio Training Area, Maui, were initially funded in 1998. Since then, however, these management activities for *Sesbania tomentosa* have been curtailed due to a lack of funding (Lt. Col. Richard Young, Hawaii Army National Guard, *in litt.* 2000). Therefore, this area has been included within the proposed critical habitat units.

Twelve species (*Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Geranium arboreum, Geranium multiflorum, Melicope balloui, Melicope ovalis, Plantago princeps,* and *Schiedea haleakalaensis*) are reported from U.S. National Park lands at Haleakala National Park, Maui (GDSI 2000; HINHP 2000). In the December 18, 2000, proposal we determined that lands within the Park were adequately managed for the conservation of the listed species that occur on those lands and were not in need of special management considerations or protection. Therefore, we determined that these lands did not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. However, during the comment periods on the December 18, 2000, proposal we received information from the Park Superintendent that funding for the conservation and management of the listed plant species on lands within Haleakala National Park may not be adequate nor sufficiently certain every year to support a determination that these lands do not meet the definition of critical habitat. Thus, lands within the Haleakala National Park are included in this proposal.

State of Hawaii Lands

Two plant species, *Geranium multiflorum* and *Clermontia samuelii* ssp. *hanaensis*, are reported from the upper areas of Hanawi Natural Area Reserve (HNAR) (GDSI 2000; HINHP Database 2000). The HNAR was established in 1986, and comprises 3,035 ha (7,500 ac) of diverse native ecosystems and endangered forest bird habitats. Natural Area Reserves are managed by the Department of Land and Natural Resources (DLNR), except that any use must be specifically approved by the Natural Area Reserve System Commission. Natural Area Reserves are held in trust by the State and may not be alienated except upon a finding by the DLNR of an imperative and unavoidable necessity. DLNR must provide public notice and conduct public hearings before revoking or modifying an executive order that sets aside lands for the reserve system (Haw. Rev. Stat. §§ 195–1—195–11). The primary goals of the HNAR are to: (1) Protect the upper areas of the reserve by fencing smaller manageable units to restrict pig movements; (2) prevent degradation of native forest by reducing feral ungulate damage; and (3) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants.

Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing of smaller manageable units, and staff hunting. Currently, the upper 809 ha (2,000 ac) has been fenced and pigs removed. Fences are constructed along the western boundaries of the HNAR, along the 1,585 m (5,200 ft) contour to the east up to the Haleakala National Park boundary on State land. The Haleakala National Park fence serves as the upper fence boundary for HNAR. Additionally, fences have been constructed to separate three distinct management units: Puu Alaea Unit, Poouli Unit, and Kuhiwai/Waieleele Unit. Since the removal of pigs in these upper forest units of the HNAR, vegetation monitoring has been implemented to determine recovery of native plant species. Currently, a fence is being constructed along the 1,100 m (3,600 ft) contour of the HNAR which will comprise the ''middle forest unit'' (B. Evanson, pers. comm., 1999).

The non-native plant control program within HNAR focuses on habitat-modifying non-native plants (weeds). A weed priority list has been compiled for HNAR, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or through a combination of both. Monitoring transects help locate developing populations of other priority weed species and, if necessary, removal of these populations is conducted (DLNR 1989).

Because these plants and their habitats within the upper areas of Hanawi NAR (above 1,525 m (5,000 ft)) are permanently protected and managed by State law and because the continued successful management of this area is assured by State funding, this area is not in need of special management considerations or protection. Therefore, we have determined that the State land within the upper areas of Hanawi NAR does not meet the definition of critical habitat in the Act, and we are not proposing designation of this area as critical habitat. Should the status of this reserve change, for example by revocation or modification of the NAR, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time. 50 CFR 424.12(g).

Private Lands

Ten species (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Ctenitis squamigera, Cyanea lobata, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum*, and *Platanthera holochila*) are reported from The Nature Conservancy's Waikamoi and Kapunakea Preserves which are located on the northeast slopes of Haleakala and in the West Maui mountains, respectively (The Nature Conservancy of Hawaii (TNCH) 1997, 1998; GDSI 2000; HINHP Database 2000). Both preserves were established by grants of perpetual

conservation easements from the private landowners to TNCH and are included in the State's Natural Area Partnership (NAP) program, which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 1997, 1998).

Under the NAP program, the State of Hawaii provides matching funds on a two-for-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the 6-year partnership agreement between the State and the managing entity is automatically renewed each year so that there are always 6 years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every 6 years. By April 1 of any year, the managing partner may notify the State that it does not intend to renew the agreement; however, in such case the partnership agreement remains in effect for the balance of the existing 6-year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if State funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the Department of Land and Natural Resources (DLNR) and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat. §§ 195–1—195–11; Hawaii Administrative Rules § 13–210.

Management programs within the preserves are documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plants and their habitats within the preserves and in adjacent areas (TNCH 1997, 1998, 1999). These management measures address factors which led to the listing of the 12 species including control of non-native species of ungulates, rodents, and weeds. In addition, habitat restoration and monitoring are also included in these plans.

The primary management goals for both Kapunakea and Waikamoi Preserves are to (1) prevent degradation of native forest by reducing feral ungulate damage; (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants; (3) increase the understanding of threats posed by small mammals and reduce their negative impact, where possible; (4) prevent extinction of rare species in the preserve; (5) track the biological and physical resources in the preserves and to evaluate changes in these resources over time; (6) identify new threats to the preserves before they become established pests; and (7) build public understanding and support for the preservation of natural areas, and to enlist volunteer assistance for preserve management (TNCH 1997, 1998).

The goal of the ungulate program is to bring pig populations to zero as rapidly as possible. Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing (fences placed in proximity to natural barriers such as cliffs), annual monitoring of ungulate presence transects, and trained staff and volunteer hunting. Since axis deer may also pose a threat to the preserves, TNCH is a member of the Maui Axis Deer Group (MADG) and staff meet regularly with other MADG members to seek solutions. In Waikamoi Preserve, the management actions also include working with community hunters in conjunction with the East Maui Watershed Partnership (EMWP). In Kapunakea Preserve, a system of transects extend the length of the preserve to monitor resource threats, including ungulate presence. By monitoring ungulate activity within the preserve, the staff is able to assess the success of the hunting program. If increased hunting pressure does not reduce feral ungulate activity in the preserves, the preserve staff work with the hunting group to identify and implement alternative methods (TNCH 1997, 1998).

The non-native plant control program within both preserves focuses on controlling habitat-modifying non-native plants (weeds) in intact native communities and preventing the introduction of additional alien plants. Based on the degree of threat to native ecosystems, a weed priority list has been compiled for the preserves, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or through a combination of both. Preventative measures (prevention protocol) are required by all (volunteers, riders, and hiking participants) who enter the preserves. This protocol includes such things as brushing footgear before entering the preserves to remove seeds of non-native plants. Weeds are monitored along transects annually, weed priority maps are maintained, staff participate as members of the Melastome Action Committee and the Maui Invasive Species Committee (MISC), and cooperate with the Division of Conservation and Resources Enforcement (DOCARE) in marijuana control, as needed.

The effects of non-native invertebrates and small mammals on native Hawaiian ecosystems is poorly understood. Initial control measures such as anti-coagulant diphacinone bait stations are being used to control rats in areas of suspected impact; however, valid conclusions from data gathered have not been drawn. Adaptive management will be applied when new information becomes available (TNCH 1997, 1998).

Natural resource monitoring and research address the need to track the biological and physical resources of the preserves and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserves to document long term ecological changes, and rare plant species are monitored to assess population status. Cuttings of endangered plants are taken to the University of Hawaii's tissue culture lab at Lyon Arboretum for propagation. In addition, the preserve staff provides logistical support to scientists and others who are conducting research within the preserves.

Kapunakea Preserve is adjacent to two areas that are also managed to protect natural resources: Puu Kukui Watershed Management Area (WMA) and the Honokowai section of the State West Maui NAR. The Conservancy currently acts as a consultant to Maui Land and Pineapple Co., managers of Puu Kukui WMA, and has a Master Cooperative Agreement with the State DOFAW. These agreements are used to coordinate management and sharing of staff and equipment, and expertise to maximize management efficiency.

Waikamoi Preserve is adjacent to three other large areas that are also managed to protect natural resources: Haleakala National Park, the State's Koolau Forest Reserve, and the State Hanawi NAR. An agreement between the Division of Land and Natural Resources (DLNR), East Maui Irrigation Co., Keola Hana Maui Inc., Haleakala Ranch Company, County of Maui, The Nature Conservancy, and Haleakala

National Park implementing a joint management plan (East Maui Watershed Partnership Plan) for the entire East Maui Watershed. Management efforts at Waikamoi will, as much as possible, complement the objectives of the plan. The partnership agreement will be used to coordinate management and sharing of staff and equipment, and expertise to maximize management efficiency (TNCH 1998).

Because the preserves and the continuing management plans being implemented for these plants and their habitats within the preserves provided a conservation benefit to the species and are permanently protected and managed, these lands meet the three criteria for determining that an area is not in need of special management. Therefore, we have determined that the private lands within Waikamoi Preserve and Kapunakea Preserve do not meet the definition of critical habitat in the Act, and we are not proposing designation of these lands as critical habitat. Should the status of any of these reserves change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time (50 CFR 424.12(g)).

Eight species (*Ctenitis squamigera, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Cyrtandra munroi, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila*, and *Sanicula purpurea*) are reported from the Maui Pineapple Company's Puu Kukui Watershed Management Area (Puu Kukui WMA), located in the West Maui mountains (GDSI 2000; HINHP Database 2000; Maui Land and Pineapple Co., Ltd. undated). In the December 18, 2000, proposal we determined that lands within the Puu Kukui Watershed Management Area were adequately managed for the conservation of the listed species that occur on those lands and were not in need of special management considerations or protection. Therefore, we determined that these lands did not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. However, during the comment periods on the December 18, 2000, proposal we received information from the Watershed Supervisor that funding for the conservation and management of the listed plant species on lands within Puu Kukui Watershed Management Area was not adequate nor assured. Therefore, we have determined that lands within Puu Kukui Watershed Management Area are in need of special management considerations or protection and thus meet the definition of critical habitat in the Act.

In summary, we believe that the habitat within Waikamoi and Kapunakea Preserves, and the upper area (above 1,525 m (5,000 ft)) of Hanawí Natural Area Reserve, are being adequately managed for the conservation of the listed species that occur within these areas and are not in need of special management considerations or protection. Therefore, we have determined that these lands do not meet the definition of critical habitat in the Act, and we are not proposing designation of these lands as critical habitat. However, we are specifically soliciting comments on the appropriateness of this approach.

As described above, we are aware that other private landowners and the State of Hawaii are considering the development of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the islands of Maui and Kahoolawe. We support these efforts and provide technical assistance whenever possible. We are soliciting comments on whether future development and approval of conservation measures (*e.g.*, Conservation Agreements, Safe Harbor Agreements) should trigger revision of designated critical habitat to exclude such lands, and if so, by what mechanism.

The proposed critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of the 61 plant species, and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We put forward this proposal acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from the public hearing will provide us with additional information to use in our decision making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat by landownership or jurisdiction are shown in Table 5.

Proposed critical habitat includes habitat for 61 species under private, State, and Federal jurisdiction (owned and leased lands), with Federal lands including lands managed by the National Park Service and the Department of Defense. Lands proposed as critical habitat have been divided into 13 units (Maui A through Maui M) on the island of Maui, and two units on the island of Kahoolawe (Kahoolawe A through B). A brief description of each unit is presented below.

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII.[1]

Unit name	State/local	Private	Federal	Total
Maui A	1,298 ha (3,208 ac)	2,586 ha (6,390 ac)		3,884 ha (9,598 ac)
Maui B1	1,177 ha (2,909 ac)	3,197 ha (7,899 ac)		4,374 ha (10,808 ac) [1]
Maui B2	4 ha (9 ac)	358 ha (884 ac)		362 ha (893 ac)
Maui C1		23 ha (56 ac)		23 ha (56 ac)
Maui C2		10 ha (24 ac)		10 ha (24 ac)
Maui C3	78 ha (192 ac)	85 ha (209 ac)		162 ha [1] (400 ac) [1]
Maui C4	88 ha (216 ac)	74 ha (184 ac)		162 ha (400 ac)
Maui D1	3,191 ha (7,885 ac)	3,759 ha (9,289 ac)		6,950 ha (17,175 ac) [1]
Maui D2		212 ha (523 ac)		212 ha (523 ac)
Maui E	830 ha (2,051 ac)	559 ha (1,380 ac)		1,389 ha (3,432 ac) [1]
Maui F	144 ha (357 ac)			144 ha (357 ac)
Maui G1	<1 ha (<1 ac)	4 ha (10 ac)		4 ha 1 (10 ac) [1]
Maui G2	1 ha (2 ac)			1 ha (2 ac)

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII.[1]—Continued

Unit name	State/local	Private	Federal	Total
Maui G3	7 ha (16 ac)			7 ha (16 ac)
Maui G4	5 ha (13 ac)	16 ha (37 ac)		22 ha [1] (53 ac) [1]
Maui G5	16 ha (41 ac)	15 ha (37 ac)		31 ha (77 ac) [1]
Maui G6	11 ha (27 ac)			11 ha (27 ac) [1]
Maui H	10,254 ha (25,340 ac)	3,586 ha (8,862 ac)	259 ha (641 ac)	14,101 ha [1] (34,843 ac)
Maui I1	678 ha (1,678 ac)	621 ha (1,534 ac)	563 ha (1,391 ac)	1,862 ha (4,601 ac)
Maui I2	177 ha (437 ac)	503 ha (1,243 ac)		680 ha (1,680 ac)
Maui I3	282 ha (697 ac)	170 ha (420 ac)		452 ha (1,117 ac)
Maui I4	98 ha (239 ac)	399 ha (986 ac)		497 ha (1,227 ac) [1]
Maui J		8 ha (21 ac)	5,782 ha (14,287 ac)	5,790 ha (14,308 ac)
Maui K	3,375 ha (8,339 ac)		2,089 ha (5,163 ac)	5,464 ha (13,502 ac)
Maui L	1,562 ha (3,860 ac)	2,927 ha (7,234 ac)	122 ha (302 ac)	4,612 ha [1] (11,396 ac)
Maui M	2 ha (6 ac)			2 ha (6 ac)
Maui Total	23,278 ha (57,522 ac)	19,112 ha (47,225 ac)	8,815 ha (21,784 ac)	51,208 ha [1] (126,531 ac) [1]
Kahoolawe A	713 ha (1,762 ac)			713 ha (1,762 ac)
Kahoolawe B	<1 ha (1 ac)			<1 ha (1 ac)
Grand Total	23,991 ha (59,285 ac)	19,112 ha (47,225 ac)	8,815 ha (21,784 ac)	51,921 ha [1] (128,294 ac)

[1] Area differences due to digital mapping discrepancies between TMK data (GDSI 2000) and USGS coastline, or difference due to rounding.

Descriptions of Critical Habitat Units

Maui A

The proposed unit Maui A provides occupied habitat for 7 species: *Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Cyrtandra munroi, Remya mauiensis,* and *Sanicula purpurea.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Colubrina oppositifolia,* or 300 mature individuals per population for *Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea lobata, Cyrtandra munroi, Remya mauiensis,* and *Sanicula purpurea* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for 9 species: *Alectryon macrococcus, Cyanea glabra, Gouania vitifolia, Hedyotis mannii, Hesperomannia arbuscula, Phlegmariurus mannii, Platanthera holochila, Plantago princeps,* and *Pteris lidgatei.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Alectryon macrococcus* and *Hesperomannia arbuscula,* or 300 mature individuals per population for *Cyanea glabra, Hedyotis mannii, Phlegmariurus mannii, Platanthera holochila, Plantago princeps,* and *Pteris lydgatei* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui A).

The unit contains a total of 3,884 ha (9,598 ac) on State and privately owned lands. It is bounded on the north by Honolua watershed and on the south by Kahoma watershed and includes portions of Honokahua, Honokohau, Honokowai, Iao, Kahana, Kauaula, Wahikuli watersheds. It contains all of the Honokowai Section West Maui Natural Area Reserve and portions of the West Maui Forest Reserve, Puu Kukui Watershed Management and Panaewa Section West Maui Natural Area Reserve and surrounds the Kapunakea Preserve. The natural features of this unit include Amalu Stream, Kapaloa Stream, Kaulalewelewe (summit), Kekaalaau (summit), Puu Kaeo, Puu Makina, and Violet Lake.

Key for tables Maui A–M and Kahoolawe A–B.

1. This unit is needed to meet the recovery plan objectives of 8 to 10 viable populations (self perpetuating and sustaining for at least 5 years) with 100 to 500 mature, reproducing individuals per species throughout its historical range as specified in the recovery plans.

2. Island endemic.

3. Multi-island species with current locations on other islands.

4. Multi-island species with no current locations on other islands.

5. Current locations do not necessarily represent viable populations with the required number of mature individuals.

6. Several current locations may be affected by one naturally occurring, catastrophic event.

7. Species with variable habitat requirements, usually over wide areas. Wide ranging species require more space per individual over more land area to provide needed primary constituent elements to maintain healthy population size.

8. Not all currently occupied habitat was determined to be essential to the recovery of the species.

9. Life history, long-lived perennial—100 mature, reproducing individuals per population.

10. Life history, short-lived perennial—300 mature, reproducing individuals per population.

11. Life history, annual—500 mature, reproducing individuals per population.

12. Narrow endemic, the species probably never naturally occurred in more than a single or a few populations.

13. Species has extremely restricted, specific habitat requirements.

14. Hybridization is possible so distinct populations of related species should not overlap, requiring more land area.

‡Species that are wide ranging require more land than species with more discrete ranges. Not all suitable habitat is designated, only those areas essential for the conservation of the species.

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Table for Maui A

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction.	7. Species with variable habitats.	8. Not all occupied habitat needed	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Alectryon macrococcus	X*	X	X		X	X		X	X					X	*Species is wide ranging.‡
Clermontia oblongifolia ssp. mauiensis	X		X		X	X				X			X*		Sides of ridges and ridge tops in Metrosideros polymorpha dominated montane forest.
Colubrina oppositifolia	X*		X		X	X	X		X						*Species is wide ranging.‡
Ctenitis squamigera	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Cyanea glabra	X	X			X	X				X			X*		* Soil and rock stream banks in wet lowland forest.

Cyanea lobata	X			X	X	X		X		X			X*		*Steep stream banks in deep shade in wet forest.
Cyrtandra munroi	X		X		X	X		X		X			X*		*Moist to wet, moderately steep talus slopes.
Gouania vitifolia	X*		X**		X		X			X					*Species is wide ranging.‡ **Historic on Maui.
Hedyotis mannii	X		X		X	X				X			X*		*Basalt cliffs along stream banks in Metrosideros polymorpha-Dicranopteris linearis montane wet forest.
Hesperomannia arbuscula	X*		X		X	X	X	X	X						*Species is wide ranging.‡
Phlegmariurus mannii	X*			X	X	X	X**	X		X			X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Plantago princeps	X		X		X	X				X			X*		*Basalt cliffs that are windblown with little vegetation.
Platanthera holochila	X		X		X	X	X	X		X					

Pteris lidgatei	X*		X		X	X				X			X**		*Species is wide ranging.‡ **Steep stream banks in wet Metrosideros polymorpha-Dicranopteris linearis montane forest.
Remya mauiensis	X	X			X	X				X			X*		*Steep, north or northeast-facing slopes in mixed mesophytic forests or Metrosideros polymorpha montane wet forests.
Sanicula purpurea	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Open Metrosideros polymorpha mixed montane bogs.

Maui B

The proposed unit Maui B (units B1 and B2) provides occupied habitat for 7 species: *Cyanea lobata, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila, Plantago princeps, Pteris lydgatei,* and *Sanicula purpurea.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Hesperomannia arborescens,* or 300 mature individuals per population *Cyanea lobata, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila, Plantago princeps, Pteris lydgatei,* and *Sanicula purpurea* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for 4 species: *Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyrtandra munroi,* and *Diplazium molokaiense.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations and 300 mature individuals per population for *Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyrtandra munroi,* and *Diplazium molokaiense* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui B).

This unit cluster contains a total of 4,736 ha (11,701 ac) on State and privately owned lands. It is bounded on the west by Honokohau watershed and on the east by Waiehu watershed and contains portions of the Anakaluahine, Honanana, Honokowai, Kahakuloa, Kahana, Makamakaole, Poelua, Waihee, and Waipili watersheds. It contains portions of the Puu Kukui Watershed Management reserve, West Maui Forest Reserve, and Kahakuloa Section West Maui Natural Area Reserve. The natural features include: unit B1, Mauna Alani, Eke Crater, Keahialoa (summit), Keahikauo (summit), Lanilili (summit), Mananole Stream, and Kane, Puu o Kaupo; and unit B2, Anakaluahine Gulch and a small portion of Honkohau Stream.

Table for Maui B

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Clermontia oblongifolia ssp. mauiensis	X		X		X	X				X			X*		*Sides of ridges and ridge tops in Met pol dominated montane forest.
Ctenitis squamigera	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Cyanea lobata	X			X	X	X		X		X			X*		*Steep stream banks in deep shade in wet forest.
Cyrtandra munroi	X		X		X	X		X		X			X*		*Moist to wet, moderately steep talus slopes.

Diplazium molokaiense	X*			X	X	X		X		X			X**		*Species is wide ranging.‡ **Near water courses often in proximity to waterfalls in lowland or montane mesic. forests.
Hesperomannia arborescens	X*		X		X	X	X	X	X						*Species is wide ranging.‡
Phlegmariurus mannii	X*			X	X	X	X**	X		X			X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Plantago princeps	X		X		X	X		X		X			X*		*Basalt cliffs that are windblown with little vegetation.
Platanthera holochila	X		X		X	X	X	X		X					
Pteris lidgatei	X*		X		X	X				X			X**		*Species is wide ranging.‡ *Steep stream banks in wet Metrosideros polymorpha-Dicranopteris linearis montane forest.
Sanicula purpurea	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Open Metrosideros polymorpha mixed montane bogs.

Maui C

The proposed unit Maui C (units C1 through C4) provides occupied habitat for two species: *Centaurium sebaeoides* and *Sesbania tomentosa.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Sesbania tomentosa,* or 500 mature individuals per population for *Centaurium sebaeoides* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for one species. *Brighamia rockii.* Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Maui and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 100 mature individuals per population, throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui C).

This unit cluster contains a total of 357 ha (880 ac) on State, county, and privately owned lands. It is bounded by the coast line and in the west by Honolua watershed and in the east by Waihee watershed and contains portions of Anakaluahine, Honanana, Honokohau, Kahakuloa, Makamakaole, Poelua, Waiolai, and Waipili watersheds. The geographic features include: unit C1, Keonehelelee (beach) and Pohakupule Gulch; unit C2, Punaha Gulch; unit C3, Anakaluahine Gulch, Honanana Gulch, Kanounou Point, Keawalua (beach), Mokolea Point, Nakalele Point, Owaluhi Gulch, Papanahoa Gulch, Poelua Gulch, and Waikeakua Gulch; and unit C4, Hakuhee Point, Kaemi (cape), Kahakuloa Head, Kupaa Gulch, Makalina Ravine, Puu Kahulianapa, Puu Koae, Puu Makawana, Wailena Gulch, Waiokila Gulch, Waiolai Gulch, and Waipili Gulch.

Table for Maui C

Species	1. 8–10 pop. guidelines	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction	7. Species with variable habitats.	8. Not all occupied habitat needed	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements	14. Hybridization is possible.	Notes
Brighamia rockii	X		X*						X				X**		*Historic on Maui **Rock crevices on steep sea cliffs, often within the spray zone.
Centaurium sebaeoides	X*		X		X	X					X		X**		*Species is wide ranging.‡ **Volcanic or clay soils or on cliffs in windward coastal areas with native associates.
Sesbania tomentosa	X*		X		X	X	X	X		X					*Species is wide ranging.‡

Maui D

The proposed unit Maui D (units D1 and D2) provides occupied habitat for 18 species: *Ctenitis squamigera, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Diellia erecta, Dubautia plantaginea* ssp. *humilis, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arbuscula, Hibiscus brackenridgei, Lysimachia lydgatei, Neraudia sericea, Phlegmariurus mannii, Platanthera holochila, Pteris lydgatei, Remya mauiensis, Spermolepis hawaiiensis,* and *Tetramolopium capillare.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Hesperomannia arbuscula,* or 300 mature individuals per population for *Ctenitis squamigera, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Diellia erecta, Dubautia plantaginea* ssp. *humilis, Hedyotis coriacea, Hedyotis mannii, Hibiscus brackenridgei, Lysimachia lydgatei, Neraudia sericea, Phlegmariurus mannii, Platanthera holochila, Pteris lydgatei, Remya mauiensis,* and *Tetramolopium capillare,* or 500 mature individuals per population for *Spermolepis hawaiiensis* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for 10 species: *Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Cyrtandra munroi, Diplazium molokaiense, Gouania vitifolia, Isodendrion pyrifolium, Peucedanum sandwicense, Plantago princeps, Sanicula purpurea,* and *Tetramolopium remyi.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Colubrina oppositifolia,* or 300 mature individuals for *Clermontia oblongifolia* ssp. *mauiensis, Cyrtandra munroi, Plantago princeps,* and *Sanicula purpurea* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui D).

The unit cluster contains a total of 7,162 ha (17,698 ac) on State and privately owned lands. It contains portions of the Iao, Kahoma, Kauaula, Launiupoko, Olowalu, Papalaua, Pohakea, Ukumehame, Waiehu, Waihee, and Waikapu watersheds. This unit also contains the Lihau Section West Maui NAR and the Manawainui Plant Sanctuary and portions of the Panaewa Section West Maui Natural Area Reserve and the West Maui Forest Reserve. The natural features of this unit include: unit D1, Halepohaku (summit), Helu (summit), Hokuula (summit), Kahoolewa Ridge, Kapilau Ridge, Koai (summit), Lihau (summit), Luakoi (summit), Luakoi Ridge, Nakalaloa Stream, The Needle (summit), Paupau (summit), Poohahoahoa Stream, Puu Hipa, Puu Kukui, Puu Lio, and Ulaula (summit); and unit D2, Kaonohua Gulch, Kaunoahua Ridge, and Paleaahu Gulch.

Table for Maui D

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Cenchrus agrimonioides	X*		X		X	X	X			X					*Species is wide ranging.‡
Clermontia oblongifolia ssp. mauiensis	X		X		X	X				X			X*		*Sides of ridges and ridge tops in Met pol dominated montane forest.
Colubrina oppositifolia	X*		X		X	X	X		X						*Species is wide ranging.‡
Ctenitis squamigera	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Cyanea glabra	X	X			X	X				X			X*		* Soil and rock stream banks in wet lowland forest.

Cyanea grimesiana ssp. grimesiana	X*		X		X					X			X**		*Species is wide ranging.‡ **Rocky or steep slopes of stream banks in wet forest gulch bottoms.
Cyanea lobata	X			X	X	X		X		X			X*		*Steep stream banks in deep shade in wet forest.
Cyrtandra munroi	X		X		X	X		X		X			X*		*Moist to wet, moderately steep talus slopes.
Diellia erecta	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Steep slopes or gulch sides in deep shade.
Diplazium molokaiense	X*			X	X	X		X		X			X**		*Species is wide ranging.‡ **Near water courses often in proximity to waterfalls in lowland or montane mesic. forests.
Dubautia plantaginea ssp. humilis	X	X			X	X				X			X*		*Wet, barren, steep, rocky, wind-blown cliffs.
Gouania vitifolia	X*		X**		X		X			X					*Species is wide ranging.‡ **Historic on Maui
Hedyotis coriacea	X		X		X	X				X			X*		*Steep, rocky, slopes.
Hedyotis mannii	X		X		X	X				X			X*		*Basalt cliffs along stream banks in Metrosideros polymorpha-Dicranopteris linearis montane wet forest.

Hesperomannia arbuscula	X*		X		X	X	X	X	X						*Species is wide ranging.‡
Hibiscus brackenridgei	X*		X		X	X	X			X		X			*Species is wide ranging.‡
Isodendrion pyrifolium	X		X*				X			X					*Historic on Maui
Lysimachia lydgatei	X	X			X	X	X	X		X					
Neraudia sericea	X		X		X	X	X			X					
Peucedanum sandwicense	X		X		X	X				X			X*		*Cliffs.
Phlegmariurus mannii	X*			X	X	X	X**	X		X			X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Plantago princeps	X		X		X	X		X		X			X*		*Basalt cliffs that are windblown with little vegetation.
Platanthera holochila	X		X		X	X	X	X		X					

Pteris lidgatei	X*		X		X	X				X			X**		*Species is wide ranging.‡ **Steep stream banks in wet Metrosideros polymorpha-Dicranopteris linearis montane forest.
Remya mauiensis	X	X			X	X				X			X*		*Steep, north or northeast-facing slopes in mixed mesophytic forests or Metrosideros polymorpha montane wet forests.
Sanicula purpurea	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Open Metrosideros polymorpha mixed montane bogs.
Spermolepis hawaiiensis	X*		X		X	X	X				X				*Species is wide ranging.‡
Tetramolopium capillare	X	X			X	X				X			X*		*Rocky substrates in Heteropogon contortus lowland dry forest.
Tetramolopium remyi	X		X		X	X		X		X			X*		*Dry, exposed ridges or flats.

Maui E

The proposed unit Maui E provides occupied habitat for two species: *Bonamia menziesii* and *Hibiscus brackenridgei*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Bonamia menziesii* and *Hibiscus brackenridgei* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Maui E).

The unit contains a total of 1,398 ha (3,432 ac) on State and privately owned lands. It is contained in the north in the Hapapa watershed and in the south by the Wailea watershed. The natural features include Kekuawahaulaula (summit) and Nawawaeoalika (summit).

Table for Maui E

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Bonamia menziesii	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Hibiscus brackenridgei	X		X		X	X	X			X					

Maui F

The proposed unit Maui F provides occupied habitat for one species, *Vigna o-wahuensis.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Vigna o-wahuensis* throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D, and in the table for Maui F).

The unit contains a total of 144 ha (357 ac) on State owned land. It is in the Kanaio watershed and has no named natural features but it is on the shore between Kamanamana Cape in the west and Pohakueaea Point in the east.

Table for Maui F

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Vigna o-wahuensis	X*		X		X	X	X			X					*Species is wide ranging.‡

Maui G

The proposed unit Maui G (units G1 through G6) provides occupied habitat for one species: *Ischaemum byrone.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of the species. This unit also provides unoccupied habitat for three species: *Brighamia rockii, Mariscus pennatiformis,* and *Peucedanum sandwicense.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Brighamia rockii, Mariscus pennatiformis,* and *Peucedanum sandwicense,* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui G).

This unit cluster contains a total of 76 ha (185 ac) on State and privately owned lands. It is bounded on the west by Wahinepee watershed and on the east by Honomaele watershed and contains portions of the East Wailuaiki, Haipuaena, Hanawi, Kapaula, Kopiliula, Ohia, Paakea, Punalau, Puohokamoa, Waiaaka, Waiohue, and Waiokamilo watersheds. Unit G6 contains a portion of the Waianapanapa State Park. The natural features of this unit cluster include: unit G1, Wahinepee Stream; unit G2, is all of Keopuka Rock, an offshore islet; unit G3, Haipuaena Stream and Moiki Point; unit G4, Manahoa Rock, Paepaemoana Point, Pauwalu Point, Waiokamilo Stream, and Waiokilo; unit G5, Hanawi Stream, Kapaula Gulch, Paakea Gulch, and Papiha Point; unit G6, Keawaiki Cape and Pukaulua Point.

Table for Maui G

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Brighamia rockii	X		X*						X				X**		*Historic on Maui **Rock crevices on steep sea cliffs, often within the spray zone.
Ischaemum byrone	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **In close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland.
Mariscus pennatiformis	X		X		X	X				X			X*		*Cliffs with brown soil and talus within reach of ocean spray.
Peucedanum sandwicense	X		X		X	X				X			X*		*Cliffs.

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Maui H

The proposed unit Maui H provides occupied habitat for 15 species: *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Flueggea neowawraea, Geranium arboreum, Lipochaeta kamolensis, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, Neraudia sericea, Phlegmariurus mannii, Sesbania tomentosa, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Alectryon macrococcus, Flueggea neowawraea, Geranium arboreum, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, and Zanthoxylum hawaiiense,* or 300 individuals per population for *Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Lipochaeta kamolensis, Neraudia sericea, Phlegmariurus mannii,* and *Sesbania tomentosa,* or 500 individuals per population for *Spermolepis hawaiiensis* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for 10 species: *Argyroxiphium sandwicense* ssp. *macrocephalum, Clermontia lindseyana, Colubrina oppositifolia, Diellia erecta, Diplazium molokaiense, Geranium multiflorum, Nototrichium humile, Phyllostegia mollis, Plantago princeps* and *Schiedea haleakalensis.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for *Clermontia lindseyana, Colubrina oppositifolia, Diellia erecta, Diplazium molokaiense, Geranium multiflorum, Nototrichium humile, Phyllostegia mollis, Plantago princeps* and *Schiedea haleakalensis* and 100 mature individuals per population for *Colubrina oppositifolia* and *Geranium multiflorum,* or 300 mature individuals for *Clermontia lindseyana, Diellia erecta, Diplazium molokaiense, Nototrichium humile, Phyllostegia mollis, Plantago princeps* and *Schiedea haleakalensis,* or greater than 50,000 individuals of *Argyroxiphium sandwicense* ssp. *macrocephalum,* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Maui H).

The unit contains a total of 14,101 ha (34,843 ac) on Federal, State, and privately owned lands. It is bounded on the west by Kanaio watershed and on the east by Nuu watershed and contains portions of the Hapapa, Kaupo, Kipapa, Manawainui Gulch, Pahihi, Piinaau, Poopoo, Waiakoa, Wailea, Waiopai watersheds. This unit contains all of the Kanaio Natural Area Reserve and portions of the Haleakala National Park, Kahikinui Forest Reserve, and Kula Forest Reserve. The natural features include Hokukano (summit), Kahua (summit), Kamole Gulch, Keonehunehune (summit), Kolekole (summit), Lualailua Hills, Magnetic Peak, Manukani (summit), Nawini (summit), Pimoe (summit), Pohakea (summit), Polipoli (summit), Pukai Gulch, Puu Kao, Puu Ouli, Puu Pane, Red Hill, Uma (summit), and Wailaulau Gulch.

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Table for Maui H

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Alectryon macrococcus	X*		X		X	X		X	X					X	*Species is wide ranging.‡

Argyroxiphium sandwicense ssp. macrocephalum	X*	X				X			X**				X***	X	*Species is wide ranging, only 1 population.‡ **>50,000 needed for recovery according to recovery plan, due to extreme longevity, monocarpic life history, and self-incompatibility. ** Lava flows with almost no soil development and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones subject to frequent formation of ice at night and extreme heating during cloudless days with an annual precipitation of approximately 75 to 250 cm (29.6 to 98.4 in).
Bidens micrantha ssp. kalealaha	X			X		X				X			X*		*Blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy montane shrubland.
Bonamia menziesii	X*		X		X	X	X	X		X					*Species is wide ranging.‡(may have been a couple of meta-populations on each island).
Cenchrus agrimonioides	X*		X		X	X	X			X					*Species is wide ranging.‡

Clermontia lindseyana	X		X		X	X	X			X					
Colubrina oppositifolia	X*		X		X	X	X		X						*Species is wide ranging.‡
Diellia erecta	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Steep slopes or gulch sides in deep shade.
Diplazium molokaiense	X*			X	X	X		X		X			X**		*Species is wide ranging.‡ **Near water courses often in proximity to waterfalls in lowland or montane mesic. forests.
Flueggea neowawraea	X*		X		X	X	X	X	X						*Species is wide ranging.‡
Geranium arboreum	X	X			X	X		X	X				X*		*Steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams.
Geranium multiflorum	X*	X			X	X	X	X	X						*Species is wide ranging.‡
Lipochaeta kamolensis	X*	X			X	X	X			X		X			*Species is wide ranging.‡
Melicope adscendens	X*	X			X	X		X	X			X	X*		*Species is wide ranging.‡ **Aa lava.
Melicope knudsenii	X		X		X	X	X	X	X						
Melicope mucronulata	X*		X		X	X	X		X						*Not enough suitable habitat exists for 8 to 10 populations at this time.
Neraudia sericea	X		X		X	X	X			X					

Nototrichium humile	X		X*							X			X**		*Historic on Maui. **Old cinder cones.
Phlegmariurus mannii	X*			X**	X	X	X**	X		X			X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Phyllostegia mollis	X		X		X	X	X			X					
Plantago princeps	X		X		X	X		X		X			X*		*Basalt cliffs that are windblown with little vegetation.
Schiedea haleakalensis	X*	X			X	X		X		X		X	X**		*Species is wide ranging.‡ **Rock cracks on sheer cliffs adjacent to barren lava and subalpine shrublands and grasslands with cinder, weathered volcanic ash, or bare lava substrate with little or no soil development and periodic freezing temperatures.
Sesbania tomentosa	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Spermolepis hawaiiensis	X*		X		X	X	X				X				*Species is wide ranging.‡
Zanthoxylum hawaiiense	X*		X		X	X	X		X						*Species is wide ranging.‡

Maui I

The proposed unit Maui I (I1 through I4) provides occupied habitat for three species: *Diellia erecta, Diplazium molokaiense,* and *Geranium arboreum*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Geranium arboreum,* or 300 mature individuals per population for *Diellia erecta,* and *Diplazium molokaiense* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for eight species: *Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Phlegmariurus mannii, Phyllostegia mollis, Plantago princeps.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for *Asplenium fragile* var. *insulare, Bidens micrantha ssp. kalealaha, Clermontia lindseyana, Geranium multiflorum, Phlegmariurus mannii, Phyllostegia mollis, and Plantago princeps* and 100 mature individuals per population for *Geranium multiflorum,* or 300 mature individuals per population for *Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Clermontia lindseyana, Phlegmariurus mannii, Phyllostegia mollis,* and *Plantago princeps,* or greater than 50,000 individuals of *Argyroxiphium sandwicense* ssp. *macrocephalum,* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui I).

The unit cluster contains a total of 1,629 ha (4,024 ac) on Federal, State and privately owned lands. It is in portions of the Hapapa, Honomanu, Kalialinui, Kanaio, Kipapa, Manawainui Gulch, Piinaau, Wahinepee, Waiakoa, and Wailea watersheds. This unit contains portions of Haleakala National Park, Haleakala Ranch, Kahikinui Forest Reserve, Kula Forest Reserve, and Waikamoi Preserve. The natural features include Kalepeamoa (summit), Kanahau (summit), Puu Makua, and Waihou Spring.

Table for Maui I

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Argyroxiphium sandwicense ssp. macrocephalum	X*	X				X			X**				X***	X	*Species is wide ranging, only 1 population.‡ **>100,000 needed for recovery according to recovery plan, due to extreme longevity, monocarpic life history, and self-incompatibility. ** *Lava flows with almost no soil development and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones subject to frequent formation of ice at night and extreme heating during cloudless

															days with an annual precipitation of approximately 75 to 250 cm (29.6 to 98.4 in).
Asplenium fragile var. insulare	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Streamside hollows and grottos in gulches.
Bidens micrantha ssp. kalealaha	X*			X		X				X			X**		*Species is wide ranging.‡ **Blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy montane shrubland.
Clermontia lindseyana	X		X		X	X	X			X					
Diellia erecta	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Steep slopes or gulch sides in deep shade.
Diplazium molokaiense	X*			X	X	X		X		X			X**		*Species is wide ranging.‡ **Near water courses often in proximity to waterfalls in lowland or montane mesic. forests.
Geranium arboreum	X	X			X	X		X	X				X*		*Steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams.
Geranium multiflorum	X*	X			X	X	X	X	X						*Species is wide ranging.‡

Phlegmariurus mannii	X*			X	X	X	X**	X		X	·		X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Phyllostegia mollis	X		X		X	X	X			X					
Plantago princeps	X		X		X	X		X		X			X*		*Basalt cliffs that are windblown with little vegetation.

Maui J

The Proposed unit Maui J provides occupied habitat for five species: *Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Geranium multiflorum, Plantago princeps, and Schiedea haleakalensis.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations for *Bidens micrantha* ssp. *kalealaha, Geranium multiflorum, Plantago princeps,* and *Schiedea haleakalensis* and 100 mature individuals per population for *Geranium multiflorum,* or 300 mature individuals per population for *Bidens micrantha* ssp. *kalealaha, Plantago princeps,* and *Schiedea haleakalensis,* or greater than 50,000 individuals of *Argyroxiphium sandwicense* ssp. *macrocephalum* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for three species: *Asplenium fragile* var. *insulare, Clermontia samuelii,* and *Platanthera holochila.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 300 mature individuals per population, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui J).

The unit contains a total of 5,790 ha (14,308 ac) on Federal and privately owned lands. It is in the East Wailuaiki, Hanawi, Heleleikeoha, Honomanu, Kaupo, Kopiliula, Koukouai, Kuhiwa, Manawainui, Manawainui Gulch, Nuu, Oheo, Pahihi, Piinaau, West Wailuaiki, Wailuanui, and Waiopai watersheds. This unit contains a portion of Haleakala National Park. The natural features in this unit include Wai Anapanapa (lake), Halalii (summit), Haleakala (summit), Haleakala Crater, Hanakauhi (summit), Haupaakea Peak, Mauna Hina, Honokahua (summit), Ka Moa o Pele (summit), Kalahaku Pali, Kalapawili Ridge, Kalua Awa (summit), Kaluaiki (crater), Kaluanui (crater), Kaluu o ka Oo (crater), Kamaolii (summit), Keoneheehee (ridge), Kilohana (summit), Koolau Gap, Kuiki (summit), Kumuiilahi (summit), Laie Cave, Laie Puu, Lauulu (summit), Leleiwi Pali, Namana o ke Akua (summit), Oili Puu, Pakaoao (White Hill), Pohaku Palaha (summit), Puu Kauaua, Puu Kumu, Puu Maile, Puu Mamane, Puu Naue, Puu Nole, Puu o Maui, and Puu o Pele.

Table for Maui J

Species	1. 8–10 pop. guidelines	2. Island endemic.	3. Multi-island/current other	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction	7. Species with variable habitats.	8. Not all occupied habitat needed	9. Long-lived perennial–100/pop.	10. Short-lived	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements	14. Hybridization is possible.	Notes
Argyroxiphium sandwicense ssp. macrocephalum	X*	X				X			X**				X** *	X	*Species is wide ranging, only 1 population.‡ ** >100,000 needed for recovery according to recovery plan, due to extreme longevity, monocarpic life history, and self-incompatibility. *** Lava flows with almost no soil development and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones subject to frequent formation of ice at night and extreme heating during cloudless days with an annual precipitation of approximately 75 to 250 cm

															(29.6 to 98.4 in).
Asplenium fragile var. insulare	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Streamside hollows and grottos in gulches.
Bidens micrantha ssp. kalealaha	X*			X		X				X			X*		*Species is wide ranging.‡ **Blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy montane shrubland.
Clermontia samuelii	X*	X			X	X	X			X					*Not enough suitable habitat exists for 8 to 10 populations at this time.
Geranium multiflorum	X*	X			X	X	X	X	X						*Species is wide ranging.‡
Plantago princeps	X		X		X	X		X		X			X*		*Basalt cliffs that are windblown with little vegetation.
Platanthera holochila	X		X		X	X	X	X		X					
Schiedea haleakalensis	X*	X			X	X		X		X		X	X**		*Species is wide ranging.‡ **Rock cracks on sheer cliffs adjacent to barren lava and subalpine shrublands and grasslands with cinder, weathered volcanic ash, or bare lava substrate with little or no soil development and periodic freezing temperatures.

BILLING CODE 4310–55–C

Maui K

The proposed unit Maui K provides occupied habitat for seven species: *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Melicope balloui, Melicope ovalis, Phlegmariurus mannii,* and *Plantago princeps.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Melicope balloui,* and *Melicope ovalis,* or 300 mature individuals per population for *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Phlegmariurus mannii,* and *Plantago princeps* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for four species: *Alectryon macrococcus, Cyanea glabra, Geranium multiflorum,* and *Platanthera holochila.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Alectryon macrococcus* and *Geranium multiflorum,* or 300 mature individuals per population for *Cyanea glabra* and *Platanthera holochila,* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui K).

The unit contains a total of 5,464 ha (13,502 ac) on Federal, State, and privately owned lands. It is bounded on the Alelele, Hahalawe, Heleleikeoha, Honolewa, Honomaele, Kaapahu, Kahawaihapapa, Kakiweka, Kalena, Kalepa, Kapia, Kawaipapa, Kawakoe, Keaaiki, Koukouai, Lelekea, Manawainui, Nuanuaaloa, Oheo, Opelu, Waieli, Waihole, Wailua, Waiohonu, and Waioni watersheds. It contains portions of Haleakala National Park, Hana Forest Reserve, Hanawi Natural Area Reserve, Kipahulu Forest Reserve, and Koolau Forest Reserve. The natural features include Kaumakani (summit), Kipahulu Valley, Puu Ahulili, and Puu Kue.

BILLING CODE 4310–55–P

Table for Maui K

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Alectryon macrococcus	X*		X		X	X		X	X					X	*Species is wide ranging.‡
Clermontia samuelii	X*	X			X	X	X			X					*Not enough suitable habitat exists for 8 to 10 populations at this time.
Cyanea copelandii ssp. haleakalaensis	X*	X			X			X		X			X**		*Not enough suitable habitat exists for 8 to 10 populations at this time. **Stream banks and wet talus slopes.
Cyanea glabra	X	X			X	X				X			X*		* Soil and rock stream banks in wet lowland forest.
Cyanea hamatiflora ssp. hamatiflora	X	X			X	X	X	X		X					

Geranium multiflorum	X*	X			X	X	X	X	X						*Species is wide ranging.‡
Melicope balloui	X*	X			X		X		X						*Not enough suitable habitat exists for 8 to 10 populations at this time.
Melicope ovalis	X*	X			X	X			X			X	X**		*Species is wide ranging.‡ **Montane wet forests along streams.
Phlegmariurus mannii	X*			X	X	X	X**	X		X			X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Plantago princeps	X		X		X	X		X		X			X*		*Basalt cliffs that are windblown with little vegetation.
Platanthera holochila	X		X		X	X	X	X		X					

BILLING CODE 4310–55–C

Maui L

The proposed unit Maui L provides occupied habitat for seven species: *Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea mceldowneyi, Geranium multiflorum, Melicope balloui, Phlegmariurus mannii,* and *Zanthoxylum hawaiiense.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Geranium multiflorum, Melicope balloui,* and *Zanthoxylum hawaiiense,* or 300 mature individuals per population for *Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea mceldowneyi, Phlegmariurus mannii,* and *Platanthera holochila,* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for nine species: *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Clermontia samuelii, Cyanea glabra, Diplazium molokaiense, Phyllostegia mannii, Phyllostegia mollis,* and *Platanthera holochila.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for *Alectryon macrococcus, Asplenium fragile* var. *insulare, Clermontia samuelii, Cyanea glabra, Diplazium molokaiense, Phyllostegia mannii, Phyllostegia mollis,* and *Platanthera holochila* and 100 mature individuals per population for *Alectryon macrococcus,* or 300 mature individuals per population for *Asplenium fragile* var. *insulare, Clermontia samuelii, Cyanea glabra, Diplazium molokaiense, Phyllostegia mannii, Phyllostegia mollis,* and *Platanthera holochila,* or greater than 50,000 individuals of *Argyroxiphium sandwicense* ssp. *macrocephalum,* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui L).

The unit contains a total of 4,612 ha (11,396 ac) on Federal, State, and privately owned lands. It is in portions of the East Wailuaiki, Haipuaena, Hanawi, Heleleikeoha, Honomanu, Hoolawa, Kaaiea, Kailua, Kakipi, Kaupo, Kopiliula, Kuhiwa, Maliko, Nailiilihaele, Oheo, Piinaau, Puohokamoa, West Wailuaiki, Wahinepee, Wailuanui, and Waiokamilo watersheds. This unit contains portions of Haleakala National Park, Koolau Forest Reserve, and Makawao Forest Reserve. The natural features include East Wiluaiki Stream, Honomanu Stream, Kano Stream, Opana Gulch, Puu Alaea, Waikamoi Stream, Waiohiwi Gulch, and West Wailuanui Stream.

Table for Maui L

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Alectryon macrococcus	X*		X		X	X		X	X					X	*Species is wide ranging.‡
Asplenium fragile var. insulare	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Streamside hollows and grottos in gulches.

Argyroxiphium sandwicense ssp. macrocephalum	X*	X				X			X**				X**	X	*Species is wide ranging, only 1 population.‡ ** >100,000 needed for recovery according to recovery plan, due to extreme longevity, monocarpic life history, and self-incompatibility. *** Lava flows with almost no soil development and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones subject to frequent formation of ice at night and extreme heating during cloudless days with an annual precipitation of approximately 75 to 250 cm (29.6 to 98.4 in).
Clermontia samuelii	X*	X			X	X	X			X					*Not enough suitable habitat exists for 8 to 10 populations at this time.
Cyanea copelandii ssp. haleakalaensis	X*	X			X			X		X			X**		*Not enough suitable habitat exists for 8 to 10 populations at this time. **Stream banks and wet talus slopes.
Cyanea glabra	X	X			X	X				X			X*		* Soil and rock stream banks in wet lowland forest.

Cyanea hamatiflora ssp. hamatiflora	X	X			X	X	X	X		X					
Cyanea mceldowneyi	X*	X			X	X	X	X		X					*Not enough suitable habitat exists for 8 to 10 populations at this time.
Diplazium molokaiense	X*			X	X	X		X		X			X**		*Species is wide ranging.‡ **Near water courses often in proximity to waterfalls in lowland or montane mesic. forests.
Geranium multiflorum	X*	X			X	X	X	X	X						*Species is wide ranging.‡
Melicope balloui	X*	X			X		X		X						*Not enough suitable habitat exists for 8 to 10 populations at this time.
Phlegmariurus mannii	X*			X	X	X	X**	X		X			X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Phyllostegia mannii	X		X*				X			X					*Historic on Maui.
Phyllostegia mollis	X		X		X	X	X			X					
Platanthera holochila	X		X		X	X	X	X		X					
Zanthoxylum hawaiiense	X*		X		X	X	X		X						*Species is wide ranging.‡

BILLING CODE 4310–55–C

Maui M

The proposed unit Maui M provides occupied habitat for *Spermolepis hawaiiense.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 500 mature individuals per population for *Spermolepis hawaiiense* throughout its known historical range considered by the recovery plans to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D, and in the table for Maui M).

The unit contains a total of 2 ha (6 ac) on State owned land. It is in the Kauaula watershed and has no named natural features but lies east of Lahaina luna High School and north-east of Piilani Ditch.

BILLING CODE 4310–55–P

Table for Maui M

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Spermolepis hawaiiensis	X*		X		X	X	X				X				*Species is wide ranging.‡

Kahoolawe A

The proposed unit Kahoolawe A provides occupied habitat for *Vigna o-wahuensis.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 500 mature individuals per population for *Vigna o-wahuensis* throughout its known historical range considered by the recovery plans to be necessary for the conservation of this species. This unit provides unoccupied habitat for three species: *Hibiscus brackenridgei, Kanaloa kahoolawensis, and Sesbania tomentosa.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 100 mature individuals per population for *Hibiscus brackenridgei* and *Kanaloa kahoolawensis*, or 300 mature individuals per population for *Sesbania tomentosa* throughout their known historical range considered by the recovery plans to be necessary for the conservation of these species (see the discussion of conservation requirements in Section D, and in the table for Kahoolawe A).

The unit contains a total of 713 ha (1,762 ac) on State owned land. It is in portions of the Ahupuiki Gulch, Aleale, Heiau, Lae O Kaka, Kalama, Kanaloa Gulch, Kaukamoku Gulch, Kaulana, Lae o Kealaikahiki, Kealialuna, Lua, Kohe O Hala, Lae o Kuakaiwa, Lae o Kuikui, Makaalae, Papakanui Gulch, and Tank Ahupu Gulch.

Table for Kahoolawe A

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Hibiscus brackenridgei	X		X*				X			X					*Historic on Kahoolawe.
Sesbania tomentosa	X*		X		X	X	X			X					*Species is wide ranging.‡
Vigna o-wahuensis	X*		X		X	X	X			X					*Species is wide ranging.‡

Kahoolawe B

The proposed unit Kahoolawe B provides occupied habitat for two species, *Kanaloa kahoolawensis* and *Sesbania tomentosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Kanaloa kahoolawensis*, or 300 mature individuals per population for *Sesbania tomentosa* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Kahoolawe B).

The unit contains a total of .5 ha (1 ac) on State owned land on Puu Koae Island.

Table for Kahoolawe B

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction.	7. Species with variable habitats.	8. Not all occupied habitat needed	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Kanaloa kahoolawensis	X*	X			X	X			X				X**		*Species is wide ranging.‡ **Steep rocky talus slopes.

BILLING CODE 4310–55–C

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect critical habitat of one or more of the 61 plant species will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), or a section 10(a)(1)(B) permit from us, or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA)), permits from the Department of Housing and Urban Development, activities funded by the EPA, Department of Energy, or any other Federal agency; regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communication Commission will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock or horses that degrades watershed values;

(3) Rural residential construction that include concrete pads for foundations and the installation of septic systems where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;

(6) Introducing or encouraging the spread of non-native plant species into critical habitat units; and

(7) Importation of non-native species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the listed species and the primary constituent elements of their habitat.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Relationship to Habitat Conservation Plans

Currently, there are no HCPs that include any of the plant species discussed in this proposal as covered species. In the event that future HCPs covering any of the discussed plant species are developed within the boundaries of designated critical habitat, we will work with applicants to encourage them to provide for protection and management of habitat areas essential to the conservation of the species. This could be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular areas by these plant species.

Economic and Other Relevant Impacts

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of

specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat in light of this new proposal and in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.,* 248 F.3d 1277 (10th Cir. 2001) prior to a final determination. The economic analysis will include detailed information on the baseline costs and benefits attributable to listing these 61 plant species, where such estimates are available. This information on the baseline will allow a fuller appreciation of the economic impacts associated with listing and with critical habitat designation. When completed, we will announce the availability of the revised draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the revised draft economic analysis and reopen the comment period on the proposed rule at that time.

We will utilize the final economic analysis, and take into consideration all comments and information regarding economic or other impacts submitted during the public comment period and the public hearing, to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

We invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this revised proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

We are soliciting comment in this revised proposed rule on whether current land management plans or practices applied within areas proposed as critical habitat adequately address the threat to these listed species.

We are aware that the State of Hawaii and some private landowners are considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the islands of Maui and Kahoolawe. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat provide for the conservation of the species by adequately addressing the threats. We are also soliciting comments on whether future development and approval of conservation measures (*e.g.*, HCPs, Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including those species for which prudency determinations have been published in previous proposed rules and which have been incorporated by reference;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532(5));

(3) Specific information on the amount, distribution, and quality of habitat for the 61 species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities or families;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values,'' and reductions in administrative costs);

(7) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat; and

(8) The effects of critical habitat designation on military lands, and how it would affect military activities, particularly military activities at the Kanaio Training Area on the island of Maui; whether there will be a significant impact on military readiness or national security if we designate critical habitat on this facility, and whether this facility should be excluded from the designation under section 4(b)(2) of the Act.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES** section).

The comment period closes on June 3, 2002. Written comments should be submitted to the Service Office listed in the **ADDRESSES** section. We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. For additional information on public hearings see the **ADDRESSES** section.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this revised proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Please send any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

Taxonomic Changes

At the time we listed *Clermontia peleana, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Delissea undulata, Mariscus pennatiformis, Phyllostegia parviflora,* and *Phyllostegia mollis,* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the*

Flowering Plants of Hawaii. For *Phlegmariurus mannii* we used the ''Revised Checklist of Hawaiian Pteridophytes'' (Wagner and Wagner 1994). Subsequent to the final listing, we became aware of new taxonomic treatments of these species. Due to the court-ordered deadlines, we are required to publish this proposal to designate critical habitat on Maui and Kahoolawe before we can prepare and publish a notice of taxonomic changes for these eight species. We propose to publish a taxonomic change notice to these eight species after we have published the final critical habitat designations on Maui and Kahoolawe. At that time we will evaluate the critical habitat designations on Maui and Kahoolawe for these eight species in light of any changes that may result from taxonomic changes in each species' current and historical range and primary constituent elements.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing an economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas identified as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comment.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local governments or communities. Therefore, at this time, we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required. We will revisit this if the economic analysis indicates greater impacts than currently anticipated.

The dates for which the 61 plant species were listed as threatened or endangered can be found in Table 4(b). Consequently, and as needed, we will conduct formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of these species. Under the Act, critical habitat may not be adversely modified by a Federal agency action. Critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 6).

TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 61 PLANTS FROM THE ISLANDS OF MAUI AND KAHOOLAWE

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation
Federal Activities Potentially Affected [2].	Activities the Federal Government (*e.g.,* Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of the Interior) carries out or that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (*e.g.,* overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, fragmentation of habitat) .	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy in habitat for these plants by mechanical, chemical, or other means (*e.g.,* overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, fragmentation of habitat) .	These same activities carried out designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based on our experience with these species and their needs, we conclude that most Federal or federally-authorized actions that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act in areas occupied by the species because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. Accordingly, we do not expect the designation of currently occupied areas as critical habitat to have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding.

The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation (that is, in areas currently unoccupied by the these listed species) may have impacts that are not attributable to the species listing on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons who do not have a Federal nexus with their actions are not restricted by the designation of critical habitat.

(b) We do not expect this rule to create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the 61 plant species since their listing between 1991 and 1999. For the reasons discussed above, the prohibition against adverse modification of critical habitat would be expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. However, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the

potential for impacts on other Federal agencies' activities, we will continue to review this proposed action for any inconsistencies with other Federal agencies' actions.

(c) We do not expect this proposed rule, if made final, to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation will have any incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan program. We will evaluate any impact of designating areas where section 7 consultation would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on a substantial number of small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant economic impact on a substantial number of small entities. However, should our economic analysis provide a contrary indication, we will revisit this determination at that time. The following discussion explains our rationale.

According to the Small Business Association, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*. If these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species is present, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species (all of the proposed critical habitat areas are occupied by at least one species), and the duty to avoid adverse modification of critical habitat likely would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. However, there will be little additional impact on State and local governments and their activities because all of the proposed critical habitat areas are occupied by at least one species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since these 61 plant species were listed (between 1991 and 1999), on the island of Maui we have conducted only one formal consultation, and 14 informal consultations, in addition to consultations on Federal grants to State wildlife programs, which do not affect small entity. Three informal consultations were conducted with the U.S. Air Force, for the Maui Space Surveillance Site, who requested we review their final draft ''Environmental Assessment,'' ''Integrated Natural Resources Management Plan for the Maui Space Surveillance Complex,'' and the effects of the construction of the surveillance site on listed and proposed endangered and threatened species. One of the 61 species, *Argyroxiphium sandwicense* ssp. *macrocephalum*, was reported from the project area. Three informal consultations were conducted with Haleakala National Park, regarding a collecting permit for two of the 61 species, *Geranium arboreum* and *Geranium multiflorum*; review of the ''Environmental Assessment for Replacement of the Summit Comfort Station and Utilities Systems;'' and review of a park highway resurfacing project. One of the 61 species, *Argyroxiphium sandwicense* ssp. *macrocephalum*, was reported from the comfort station project area and in close proximity to the highway resurfacing project area. One informal consultation was conducted with the Service's Ecological Services Program, for the effects of fencing and replanting on listed endangered and threatened species within the Auwahi Partnership Project area. Four of the 61 species, *Bidens micrantha* ssp. *kalealaha, Geranium arboreum, Clermontia lindseyana*, and *Zanthoxylum hawaiiense*, were reported from the project area. One informal consultation was conducted with the Service's Ecological Services Program, for the effects of fencing and hunting on listed endangered and threatened species within the Kahikinui Partnership Project area. Four of the 61 species, *Bidens micrantha* ssp. *kalealaha, Clermontia lindseyana, Diellia erecta,* and *Diplazium molokaiense*, were reported from the project area. One informal

consultation was conducted with the Service's Ecological Services Program, for the effects of fencing and outplanting on listed endangered and threatened species within the Puu Makua Partnership Project area. Two of the 61 species, *Bidens micrantha* ssp. *kalealaha* and *Geranium arboreum* were reported from the project area. One informal consultation was conducted with the Service, for the effects of ungulate exclusion on listed endangered and threatened species within the Puu Kukui Partnership Project area. Two of the 61 species, *Cyanea mucronulata,* and *Ctenitis squamigera*, were reported from the project area. One informal consultation was conducted with the Department of Defense, for review of the effects of the Kanaio National Guard Training Area on listed endangered and threatened species and review of ''Natural Resources Management Plan: Kanaio Guard Training Area.'' One of the 61 species, *Sesbania tomentosa*, was reported from the training area. Two informal consultations were conducted with the Department of Transportation, for review of the effects of the proposed Kihei-Upcountry Highway on listed endangered and threatened species. Two of the 61 species, *Hibiscus brackenridgei* and *Bonamia menziesii,* were reported from the vicinity of the project area. One informal consultations was conducted with the U.S. Department of Agriculture, for review of the effect of feral pig removal on listed endangered and threatened species within Waikamoi and Kapunakea Preserves. Twelve of the 61 species, *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Bonamia menziesii, Colubrina oppositifolia, Ctenitis squamigera, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Melicope balloui, Plantago princeps, Platanthera holochila,* and *Sanicula purpurea,* are known to occur within the preserves. One formal consultation was conducted with the Federal Aviation Administration (FAA), for the review of the ''Final Environmental Impact Statement, Kahului Airport Improvements''. While only one of the 61 species, *Nothocestrum breviflorum*, was reported in the vicinity of the project area, the effects of the Airport Improvement Project were evaluated for all listed species and the designated critical habitat for *Gouania hillebrandii* on the island of Maui.

None of these consultations affected or concerned small entities. In all 14 informal consultations, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species. For the formal consultation, we determined that the airport improvement project, which included a mandatory state-of-the-art alien species interdiction facility, was not likely to jeopardize listed species nor adversely affect designated critical habitat for *Gouania hillebrandii* on the island of Maui. In addition, only the FAA's proposed airport improvement project is ongoing. The FAA is not a small entity. Therefore, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Maui.

There has been one informal consultation on the island of Kahoolawe. The consultation was conducted on behalf of the Department of the Navy, for the effects of ordinance cleanup on listed endangered and threatened species. Three of the 61 species, *Kanaloa kahoolawensis, Sesbania tomentosa,* and *Vigna o-wahuensis,* were reported from the project area. The Department of the Navy is not a small entity, therefore this consultation did not affect or concern small entities. In this case, we concurred with the agency's determination that the project as proposed was not likely to adversely affect listed species. Although this project is ongoing, it does not affect nor concern small entities, so the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Kahoolawe.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, that would otherwise not be required. We are aware of relatively few activities in the proposed critical habitat areas for these 61 plants that have Federal involvement would require consultation or reinitiation of already-completed consultations for ongoing projects. As mentioned above, we have only conducted 15 informal consultations and 1 formal consultation under section 7 involving any of the species. As a result, we cannot, at this time, easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

On Maui, approximately 17 percent of the proposed designations are on Federal lands, 45 percent are on State lands, and 37 percent are on private lands. Nearly all of the land within the critical habitat units is unsuitable for development, land uses, and activities. This is due to their remote locations, lack of access, and rugged terrain. The majority of this land (77 percent) and all of the land on Kahoolawe is within the State Conservation District where State land-use controls severely limit development and most activities. Approximately 23 percent of this land is within the State Agricultural District where only activities such as crops, livestock, grazing, and accessory structures and farmhouses are allowed. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. Activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these proposed designations consist of improvements in State parks and communications and tracking facilities; ranching; road improvements; recreational use such as hiking, camping, picnicking, game hunting, and fishing; botanical gardens; and, crop farming. With the exception of communications and tracking facilities improvements by the Federal Aviation Administration or the Federal Communications Commission, these activities are unlikely to have Federal involvement. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps, and watershed management and restoration projects sponsored by NRCS. However the NRCS restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are rare, and would likely affect only a small percentage of the small entities within these proposed critical habitat designations. We are not aware of any commercial activities on the Federal lands included in these proposed critical habitat designations. Therefore, we conclude that this proposed designation of critical habitat on the island of Maui would not affect a substantial number of small entities.

The entire island of Kahoolawe is under State ownership and within the State Conservation District. The current and projected land uses on Kahoolawe are land restoration and ordinance removal (DAHI 2001). For these reasons we conclude that the proposed rule would not affect a substantial number of small entities on the island of Kahoolawe.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a limited consultation history for these 61 species from Maui and Kahoolawe, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of these species and the threats they face, especially as described in the final listing rules and in this proposed critical habitat designation, as well as our experience with similar listed plants in Hawaii. In addition, all of these species are protected under the State of Hawaii's Endangered Species Act (Hawaii Revised Statutes, Chap. 195D–4). Therefore, we have also considered the kinds of actions required under the State licensing process for these species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, propagation, outplanting and augmentation of existing populations, construction of protective fencing, and periodic monitoring. These measures are not likely to result in a significant economic impact to a substantial number of small entities because any measures included as a reasonable and prudent alternative would have to be economically feasible to the individual landowner, and because as discussed above, we do not believe there will be a substantial number of small entities affected.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed

critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. Approximately 45 percent of the lands proposed as critical habitat are on State of Hawaii lands. The State of Hawaii is not a small entity. Approximately 37 percent of the lands proposed as critical habitat are on private lands. Many of these parcels are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, most of the private and State parcels within the proposed designation are currently being used for recreational and agricultural purposes and, therefore, are not likely to require any Federal authorization. In the remaining areas, section 7 application, the only trigger for regulatory impact under this rule, would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for informal consultations on federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by NRCS. These consultations would likely occur on only a subset of the total number of parcels and therefore not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the proposed designation of critical habitat for the following species: *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the economic analysis of this rule indicate otherwise, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 ***et seq.***):

a. We believe this rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

b. This rule, as proposed, will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no direct obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the 61 species from Maui and Kahoolawe in a preliminary takings implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in areas currently occupied by one or more of the 61 plant species imposes no additional restrictions to those currently in place, and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require section 7 consultation on non-Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. However, there will be little additional impact on State and local governments and their activities because all of the proposed critical habitat areas are occupied by at least one species. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 61 plant species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a)

of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) E.O. 13175 and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of these 61 plant species. Therefore, designation of critical habitat for these 61 species has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Christa Russell, Marigold Zoll, Michelle Stephens, and Gregory Koob (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entries for *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* under ''FLOWERING PLANTS'' and *Asplenium fragile* var. *insulare, Ctenitis squamigera, Diellia erecta, Diplazium molokaiense, Phlegmariurus (=Lycopodium,=Huperzia) mannii,* and *Pteris lidgatei,* under ''FERNS AND ALLIES'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

SPECIES		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Alectryon macrococcus.	Mahoe	U.S.A. (HI)	Sapindaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Argyroxiphium sandwicense ssp. *macrocephalum*.	Ahinahina	U.S.A. (HI)	Asteraceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Bidens micrantha ssp. *kalealaha*.	Kookoolau	U.S.A. (HI)	Asteraceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Bonamia menziesii	None	U.S.A. (HI)	Convolvulaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Brighamia rockii	Pua ala	U.S.A. (HI)	Campanulaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Cenchrus agrimonioides.	Kamanomano (=Sandbur, agrimony).	U.S.A. (HI)	Poaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Centaurium sebaeoides.	Awiwi	U.S.A. (HI)	Gentianaceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Clermontia lindseyana	Oha wai	U.S.A. (HI)	Campanulaceae	E	532	17.96(a)	NA

SPECIES		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Clermontia oblongifolia ssp. *mauiensis*.	Oha wai	U.S.A. (HI)	Campanulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Clermontia samuelii	Oha wai	U.S.A. (HI)	Campanulaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Colubrina oppositifolia	Kauila	U.S.A. (HI)	Rhamnaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea copelandii ssp. *haleakalaensis*.	Haha	U.S.A. (HI)	Campanulaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea glabra	Haha	U.S.A. (HI)	Campanulaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea grimesiana ssp. *grimesiana*.	Haha	U.S.A.(HI)	Campanulaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea hamatiflora ssp. *hamatiflora*.	Haha	U.S.A. (HI)	Campanulaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea lobata	Haha	U.S.A. (HI)	Campanulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea mceldowneyi	Haha	U.S.A. (HI)	Campanulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Cyrtandra munroi	Haiwale	U.S.A. (HI)	Gesneriaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Dubautia plantaginea ssp. *humilis*.	Naenae	U.S.A. (HI)	Asteraceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Flueggea neowawraea.	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Geranium arboreum	Hawaiian red-flowered geranium.	U.S.A. (HI)	Geraniaceae	E	465	17.96(a)	NA
*	*	*	*	*	*		*
Geranium multiflorum	Nohoanu	U.S.A. (HI)	Geraniaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Gouania vitifolia	None	U.S.A. (HI)	Rhamnaceae	E	541	17.96(a)	NA
*	*	*	*	*	*		*
Hedyotis coriacea	Kioele	U.S.A. (HI)	Rubiaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Hedyotis mannii	Pilo	U.S.A. (HI)	Rubiaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Hesperomannia arborescens.	None	U.S.A. (HI)	Asteraceae	E	536	17.96(a)	NA
*	*	*	*	*	*		*
Hesperomannia arbuscula.	None	U.S.A. (HI)	Asteraceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Hibiscus brackenridgei.	Mao hau hele	U.S.A. (HI)	Malvaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Ischaemum byrone	Hilo ischaemum	U.S.A. (HI)	Poaceae	E	532	17.96(a)	NA

SPECIES		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Isodendrion pyrifolium	Wahine noho kula	U.S.A. (HI)	Violaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
Kanaloa kahoolawensis.	Kohe malama malama o Kanaloa.	U.S.A. (HI)	Fabaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Lipochaeta kamolensis.	Nehe	U.S.A. (HI)	Asteraceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Lysimachia lydgatei	None	U.S.A. (HI)	Primulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Mariscus pennatiformis.	None	U.S.A. (HI)	Cyperaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Melicope adscendens	Alani	U.S.A. (HI)	Rutaceae	E	565	17.96(a)	NA
*	*	*	*	*	*		*
Melicope balloui	Alani	U.S.A. (HI)	Rutaceae	E	565	17.96(a)	NA
*	*	*	*	*	*		*
Melicope knudsenii	Alani	U.S.A. (HI)	Rutaceae	E	530	17.96(a)	NA
*	*	*	*	*	*		*
Melicope (= *Pelea*) *mucronulata*.	Alani	U.S.A. (HI)	Rutaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Melicope ovalis	Alani	U.S.A. (HI)	Rutaceae	E	565	17.96(a)	NA
*	*	*	*	*	*		*
Neraudia sericea	None	U.S.A. (HI)	Urticaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Nototrichium humile	Kului	U.S.A. (HI)	Amaranthaceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Peucedanum sandwicense.	Makou	U.S.A. (HI)	Apiaceae	E	530	17.96(a)	NA
*	*	*	*	*	*		*
Phyllostegia mannii	None	U.S.A. (HI)	Lamiaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Phyllostegia mollis	None	U.S.A. (HI)	Lamiaceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Plantago princeps	Laukahi kuahiwi	U.S.A. (HI)	Plantaginaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Platanthera holochila	None	U.S.A. (HI)	Orchidaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Remya mauiensis	Maui remya	U.S.A. (HI)	Asteraceae	E	413	17.96(a)	NA
*	*	*	*	*	*		*
Sanicula purpurea	None	U.S.A. (HI)	Apiaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Schiedea haleakalensis.	None	U.S.A. (HI)	Caryophyllaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Spermolepis hawaiiensis.	None	U.S.A. (HI)	Apiaceae	E	559	17.96(a)	NA

SPECIES		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Tetramolopium capillare.	Pamakani	U.S.A. (HI)	Asteraceae	E	555	17.96(a)	NA
*	*	*	*	*	*		*
Tetramolopium remyi	None	U.S.A. (HI)	Asteraceae	E	435	17.96(a)	NA
*	*	*	*	*	*		*
Vigna o-wahuensis	None	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Zanthoxylum hawaiiense.	Ae	U.S.A. (HI)	Rutaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
FERNS AND ALLIES							
*	*	*	*	*	*		*
Asplenium fragile var. *insulare*.	None	U.S.A. (HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Ctenitis squamigera	Pauoa	U.S.A. (HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Diellia erecta	Asplenium-leaved diellia.	U.S.A. (HI)	Aspleniaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Diplazium molokaiense.	None	U.S.A. (HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Phlegmariurus (=*Lycopodium*, =*Huperzia*) *mannii*.	Wawaeiole	U.S.A. (HI)	Lycopodiaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Pteris lidgatei	None	U.S.A. (HI)	Adiantaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*

3. In Section 17.96, as proposed to be amended at 65 FR 66865 (November 7, 2000), 65 FR 79192 (December 18, 2000), 65 FR 82086 (December 27, 2000), 65 FR 83193 (December 29, 2000), 67 FR 4072 (January 28, 2002) and 67 FR 9806 (March 4, 2002), is proposed to be further amended as follows:

a. Revise introductory text of paragraph (a)(1)(i);

b. Add paragraphs (a)(1)(i)(C); and (a)(1)(i)(D): and

c. Revise paragraph (a)(1)(ii).

The revised text reads as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

(1) * * *

(i) *Maps and critical habitat unit descriptions.* The following sections contain the legal descriptions of the critical habitat units designated for each of the Hawaiian Islands. Existing manmade features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, railroads, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, lawns, and other rural residential landscaped areas do not contain one or more of the primary constituent elements described for each species in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section and are not included in the critical habitat designation.

* * * * *

(C) *Maui.* 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 13 critical habitats units designated on the island of Maui.

(*1*) **Note:** Map 1—Index map follows:

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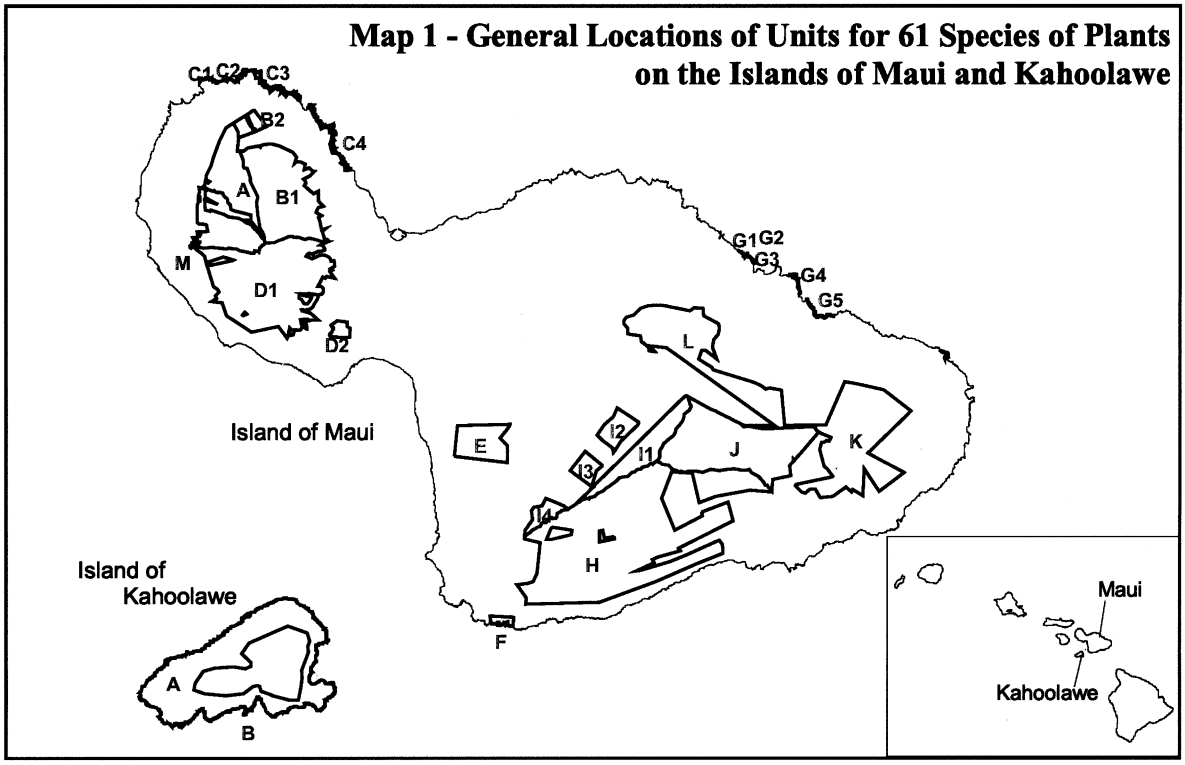
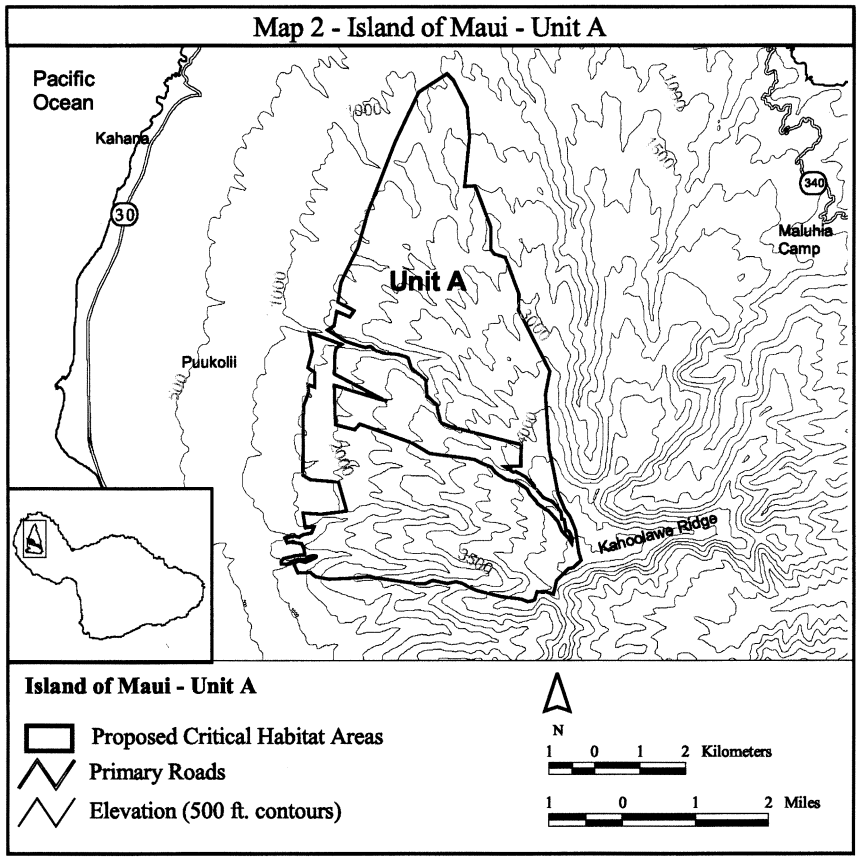


(*2*) Maui A (3,884 ha; 9,598 ac).

(*i*) Unit consists of the following 187 boundary points: 745646, 2316064; 746803, 2315452; 745637, 2315818; 745665, 2314941; 746096, 2314837; 746206, 2314955; 747360, 2314536; 747736, 2314302; 748610, 2314192; 748747, 2314163; 748895, 2314089; 749112, 2314006; 749212, 2313881; 749432, 2313730; 749677, 2313678; 749902, 2313524; 749954, 2313416; 750110, 2313242; 750118, 2313199; 750119, 2313198; 750307, 2313068; 750359, 2313038; 750360, 2313038; 750569, 2312799; 750662, 2312593; 750805, 2312435; 750878, 2312325; 750885, 2312412; 750817, 2312575; 750798, 2312594; 750748, 2312588; 750710, 2312845; 750652, 2312855; 750635, 2313002; 750564, 2313116; 750450, 2313241; 750253, 2313328; 749863, 2313784; 749654, 2313910; 749594, 2313898; 749400, 2314013; 749762, 2314025; 749764, 2314245; 749767, 2314498; 748195, 2314901; 747995, 2314988; 747953, 2315158; 747952, 2315160; 747941, 2315192; 747901, 2315370; 747687, 2315584; 747662, 2315928; 747336, 2316180; 747266, 2316401; 747236, 2316433; 747031, 2316482; 746735, 2316514; 746560, 2316570; 746447, 2316671; 746334, 2316643; 746188, 2316678; 745896, 2316785; 745484, 2317026; 745643, 2317128; 745694, 2317441; 745981, 2317323; 746078, 2317462; 745728, 2317647; 745798, 2318077; 746162, 2318852; 746391, 2319637; 746984, 2321175; 747501, 2322278; 748133, 2322670; 748262, 2322541; 748568, 2321950; 748627, 2321290; 748509, 2320188; 748746, 2320208; 749101, 2319292; 749101, 2318793; 749178, 2318693; 749408, 2318624; 749723, 2317818; 749700, 2317464; 750392, 2316121; 750302, 2315611; 750386, 2314410; 750482, 2313931; 750575, 2313421; 750722, 2313061; 750842, 2312911; 750962, 2312611; 751022, 2312131; 751082, 2311951; 750911, 2311782; 750812, 2311771; 750542, 2311501; 750482, 2311201; 750440, 2311216; 750386, 2311230; 750328, 2311242; 750279, 2311249; 750263, 2311247; 750252, 2311240; 750122, 2311261; 750063, 2311077; 749987, 2311042; 749908, 2311040; 749769, 2311083; 749324, 2311150; 748999, 2311226; 748784, 2311284; 748564, 2311384; 748472, 2311441; 748322, 2311471; 748142, 2311441; 747812, 2311501; 747662, 2311441; 747422, 2311441; 746372, 2311591; 746132, 2311561; 745532, 2311531; 745232, 2311591; 745112, 2311681; 744848, 2311671; 744757, 2311853; 744803, 2311913; 744873, 2311930; 745003, 2311908; 745103, 2311941; 745246, 2312013; 745237, 2312047; 745184, 2312054; 745082, 2312024; 744998, 2311962; 744940, 2311972; 744855, 2311959; 744843, 2311979; 744786, 2311969; 744644, 2311877; 744574, 2311856; 744542, 2311859; 744531, 2311866; 744526, 2311860; 744465, 2311866; 744468, 2311918; 744523, 2311989; 744820, 2312059; 744992, 2312075; 744984, 2312177; 744929, 2312317; 744736, 2312339; 744734, 2312365; 744653, 2312345; 744609, 2312328; 744558, 2312437; 744633, 2312480; 744722, 2312477; 744785, 2312485; 744871, 2312454; 744945, 2312517; 745143, 2312557; 745200, 2312689; 745157, 2312692; 745009, 2312661; 744946, 2312990; 745348, 2312974; 745916, 2313043; 745773, 2313571; 745745, 2313671; 745113, 2313721; 744946, 2313827; 744964, 2315341; 745081, 2315642; 745066, 2315830; 745211, 2315767; 745220, 2316095; 745062, 2316193; 745156, 2316554; 745095, 2316969; 745815, 2316715; 745688, 2316626; 745682, 2316625; 745668, 2316564; 745660, 2316498; 745662, 2316487.

(*ii*) **Note:** Map 2 follows:



BILLING CODE 4310–55–C

(*3*) Maui B1 (4,374 ha; 10,808 ac).

(*i*) Unit consists of the following 84 boundary points: 756585, 2312074; 756481, 2312051; 756356, 2312094; 756039, 2312114; 755355, 2312353; 755012, 2312431; 754622, 2312281; 754412, 2312371; 754172, 2312491; 753872, 2312521; 753812, 2312461; 753632, 2312461; 753542, 2312551; 753182, 2312581; 752556, 2312292; 752222, 2312191; 751892, 2312011; 751082, 2311951; 751022, 2312131; 750962, 2312611; 750842, 2312911; 750722, 2313061; 750575, 2313421; 750482, 2313931; 750386, 2314410; 750302, 2315611; 750392, 2316121; 749700, 2317464; 749723, 2317818; 749408, 2318624; 749178, 2318693; 749101, 2318793; 749101, 2319292; 748746, 2320208; 749105, 2320225; 749490, 2320492; 749492, 2320495; 749509, 2320507; 750442, 2320667; 750595, 2320522; 750652, 2320703; 750913, 2320748; 751322, 2320818; 751504, 2320850; 751662, 2320812; 752336, 2320652; 752694, 2320488; 753547, 2320078; 753884, 2319664; 753684, 2319160; 753794, 2319238; 753831, 2319264; 754230, 2319264; 754437, 2319134; 754628, 2319014; 754566, 2318549; 754986, 2318675; 755406, 2318356; 755428, 2318339; 755028, 2317961; 754461, 2317666; 754650, 2317540; 754692, 2317372; 754543, 2317112; 755365, 2316415; 755848, 2316599; 755848, 2316598; 755848, 2315712; 756262, 2315298; 755831, 2315154; 755624, 2314782; 755582, 2314690; 756114, 2314411; 755852, 2314267; 755926, 2313985; 756109, 2313151; 756469, 2313228; 756146, 2313006; 756382, 2312300; 756646, 2312281; 756765, 2312104; 756687, 2312072; 756684, 2312072; 756585, 2312074.

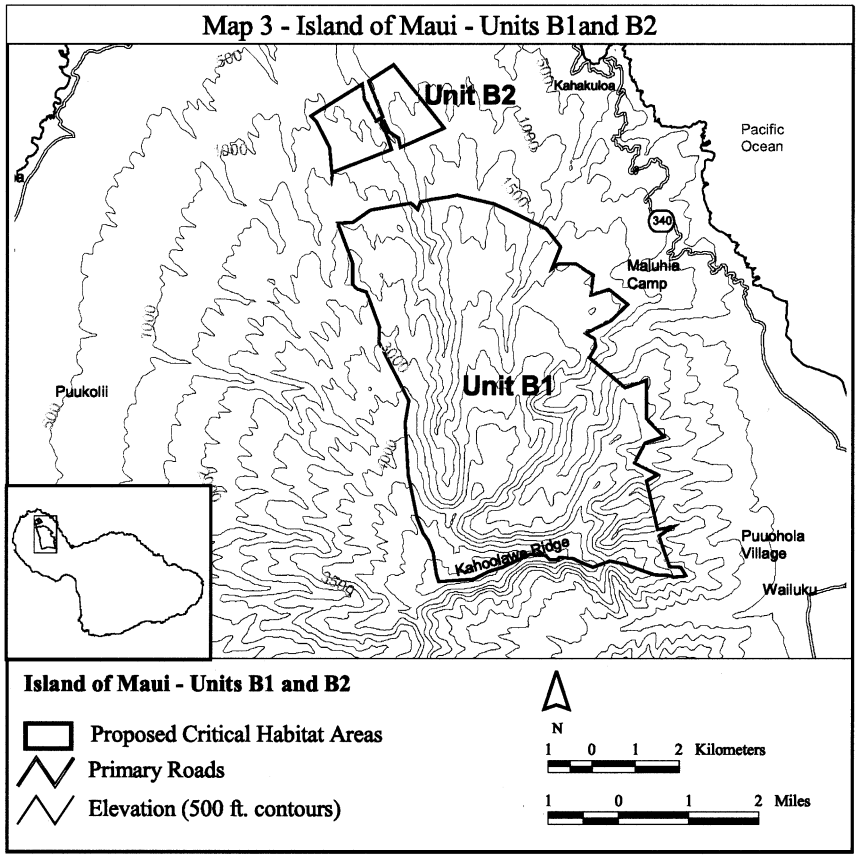
(*ii*) **Note:** See Map 3:

(*4*) Maui B2 (362 ha; 893 ac).

(*i*) Unit consists of the following 26 boundary points: 748262, 2322541; 748133, 2322670; 749321, 2323406; 749364, 2323069; 749536, 2322742; 749536, 2322742; 749537, 2322740; 749637, 2322549; 749783, 2322650; 749455, 2323474; 750016, 2323841; 750018, 2323839; 750033, 2323848; 751197, 2322401; 750188, 2321953; 750152, 2322162; 749940, 2322307; 749812, 2322559; 749759, 2322545; 749742, 2322463; 749858, 2322275; 749993, 2321907; 748635, 2321367; 748627, 2321290; 748568, 2321950; 748262, 2322541.

(*ii*) **Note:** Map 3 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(*5*) Maui C1 (23 ha; 56 ac).

(*i*) Unit consists of the following 20 boundary points: coastline; 747250, 2326499; 747257, 2326478; 747007, 2326430; 746884, 2326397; 746799, 2326342; 746739, 2326262; 746652, 2326280; 746642, 2326406; 746544, 2326446; 746341, 2326386; 746294, 2326499; 746180, 2326580; 745984, 2326637; 745796, 2326602; 745709, 2326596; 745622, 2326620; 745300, 2326566; 745260, 2326492; 745179, 2326343; 745158, 2326345; coastline.

(*ii*) **Note:** See Map 4:

(*6*) Maui C2 (10 ha; 24 ac).

(*i*) Unit consists of the following 14 boundary points: coastline; 747287, 2326549; 748409, 2326346; 748368, 2326302; 748229, 2326384; 748109, 2326548; 747979, 2326564; 747917, 2326610; 747839, 2326650; 747684, 2326547; 747619, 2326463; 747536, 2326537; 747403, 2326505; 747381, 2326532; 747287, 2326549; coastline.

(*ii*) **Note:** See Map 4:

(*7*) Maui C3 (162 ha; 400 ac).

(*i*) Unit consists of the following 96 boundary: coastline; 754099, 2324756; 754053, 2324754; 753955, 2324768; 753953, 2324779; 753930, 2324862; 753759, 2325028; 753669, 2325092; 753524, 2325277; 753446, 2325286; 753388, 2325342; 753325, 2325353; 753252, 2325321; 753085, 2325303; 753034, 2325242; 752911, 2325108; 752865, 2325227; 752886, 2325361; 752879, 2325424; 752841, 2325439; 752828, 2325443; 752732, 2325363; 752722, 2325261; 752662, 2325341; 752615, 2325470; 752535, 2325474; 752438, 2325416; 752516, 2325578; 752501, 2325617; 752373, 2325646; 752189, 2325668; 752167, 2325700; 752138, 2325733; 751990, 2325840; 751898, 2325842; 751835, 2325769; 751804, 2325709; 751734, 2325826; 751714, 2325826; 751630, 2325733; 751547, 2325578; 751562, 2325516; 751525, 2325510; 751492, 2325530; 751475, 2325549; 751455, 2325734; 751461, 2325837; 751273, 2325927; 751251, 2325921; 751203, 2325906; 751187, 2325954; 751123, 2325981; 751071, 2325948; 751040, 2325902; 751010, 2325866; 750988, 2325906; 750957, 2325952; 750990, 2326027; 750973, 2326051; 750852, 2326051; 750801, 2326107; 750821, 2326193; 750779, 2326281; 750598, 2326312; 750549, 2326248; 750486, 2326298; 750482, 2326366; 750526, 2326443; 750607, 2326484; 750622, 2326624; 750617, 2326668; 750334, 2326780; 750225, 2326707; 750174, 2326716; 750157, 2326750; 750156, 2326762; 750143, 2326932; 750116, 2326995; 749976, 2327272; 749806, 2327368; 749392, 2327324; 749324, 2327133; 749250, 2327018; 749018, 2327093; 748987, 2327015; 748913, 2327003; 748859, 2326865; 748906, 2326824; 748978, 2326817; 748990, 2326759; 748786, 2326666; 748648, 2326684; 748567, 2326639; 748572, 2326561; 748637, 2326459; 748673, 2326373; 748516, 2326423; coastline.

(*ii*) **Note:** Map 4:

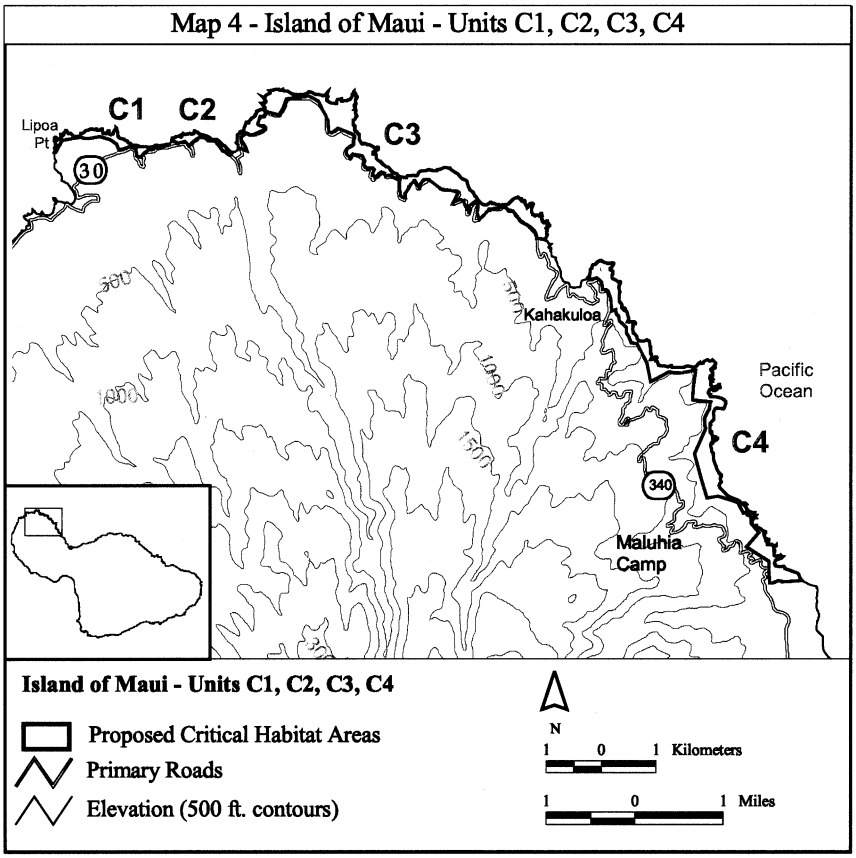
(*8*) Maui C4 (162 ha; 400 ac).

(*i*) Unit consists of the following 64 boundary points: coastline; 758803, 2318519; 758442, 2318485; 758421, 2318506; 758366, 2318516; 758267, 2318469; 758209, 2318463; 758200, 2318729; 758196, 2318869; 757790, 2319126; 758013, 2319396; 757861, 2319563; 757862, 2319690; 757794, 2319720; 757771, 2319757; 757734, 2319748; 757626, 2319942; 757267, 2320057; 757061, 2320021; 756963, 2320372; 756833, 2320832; 757033, 2321273; 757038, 2321301; 757031, 2321316; 757019, 2321449; 757019, 2321491; 757069, 2321583; 757108, 2321658; 757128, 2321761; 757132, 2321784; 757130, 2321785; 756805, 2321814; 756813, 2322040; 756862, 2322355; 756815, 2322353; 756814, 2322353; 756730, 2322336; 756575, 2322315; 756442, 2322315; 756382, 2322329; 756036, 2322156; 755962, 2322490; 755784, 2322847; 755781, 2322847; 755680, 2322859; 755664,

2322913; 755630, 2322976; 755592, 2323043; 755592, 2323144; 755551, 2323181; 755467, 2323256; 755454, 2323349; 755417, 2323374; 755396, 2323441; 755393, 2323463; 755322, 2323443; 755306, 2323674; 755295, 2323702; 755254, 2323811; 755229, 2323833; 755153, 2323833; 755144, 2323974; 755056, 2324045; 754981, 2324021; 754880, 2324041; coastline.

(*ii*) Note: Map 4 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(*9*) Maui D1 (6,950 ha; 17,175 ac).

(*i*) Unit consists of the following 180 boundary points: 754826, 2304297; 754770, 2304254; 754643, 2304333; 754542, 2304415; 754486, 2304579; 754439, 2304653; 754437, 2304765; 754349, 2304956; 754319, 2305108; 754214, 2305093; 754258, 2304902; 754278, 2304785; 754351, 2304474; 754255, 2304192; 754171, 2304150; 754065, 2304164; 753825, 2304139; 753832, 2304195; 753675, 2304217; 753611, 2303762; 753431, 2303730; 753285, 2303705; 753152, 2303682; 753304, 2304113; 753310, 2304130; 753367, 2304292; 753234, 2304365; 753213, 2304104; 753136, 2303909; 753136, 2303653; 753042, 2303454; 752244, 2304494; 749843, 2303965; 748359, 2304949; 747572, 2305437; 747183, 2306649; 746219, 2306757; 746690, 2307032; 746584, 2307222; 746574, 2307254; 746905, 2307584; 746773, 2307831; 746428, 2308069; 745859, 2309952; 745861, 2309954; 745855, 2309967; 745848, 2309987; 746252, 2310016; 748094, 2310374; 748180, 2310466; 747274, 2310703; 745970, 2310264; 745771, 2310115; 745591, 2310776; 745359, 2311057; 744982, 2311291; 744842, 2311439; 744842, 2311603; 744848, 2311671; 745112, 2311681; 745232, 2311591; 745532, 2311531; 746132, 2311561; 746372, 2311591; 747422, 2311441; 747662, 2311441; 747812, 2311501; 748142, 2311441; 748322, 2311471; 748472, 2311441; 748564, 2311384; 748784, 2311284; 748999, 2311226; 749324, 2311150; 749769, 2311083; 749908, 2311040; 749987, 2311042; 750063, 2311077; 750122, 2311261; 750252, 2311240; 750263, 2311247; 750279, 2311249; 750328, 2311242; 750386, 2311230; 750440, 2311216; 750482, 2311201; 750542, 2311501; 750812, 2311771; 750911, 2311782; 751082, 2311951; 751892, 2312011; 752222, 2312191; 752556, 2312292; 753182, 2312581; 753542, 2312551; 753632, 2312461; 753812, 2312461; 753872, 2312521; 754172, 2312491; 754412, 2312371; 754622, 2312281; 755012, 2312431; 755355, 2312353; 756039, 2312114; 756356, 2312094; 756481, 2312051; 756585, 2312074; 756684, 2312072; 756262, 2311897; 756172, 2311897; 756000, 2311819; 756067, 2311803; 756198, 2311730; 756382, 2311473; 756421, 2311340; 756092, 2311244; 755806, 2311216; 755636, 2311122; 755635, 2311122; 755459, 2311035; 755355, 2310968; 755230, 2311019; 754988, 2311042; 754820, 2310941; 754711, 2310770; 755295, 2310580; 755366, 2310585; 755661, 2310703; 755887, 2310863; 756085, 2310888; 756316, 2310888; 756497, 2310849; 756724, 2310720; 756918, 2310584; 756967, 2310340; 757238, 2310389; 757267, 2309857; 756883, 2309679; 757090, 2309531; 756824, 2309443; 756958, 2309254; 757267, 2308822; 756558, 2308999; 756439, 2308822; 756252, 2308927; 755765, 2308074; 756072, 2308080; 756194, 2308023; 756279, 2307861; 756270, 2307644; 756186, 2307440; 755931, 2307335; 755732, 2307367; 755806, 2307294; 755803, 2307043; 755624, 2306756; 755515, 2306552; 755377, 2306367; 755319, 2306243; 755163, 2306105; 755078, 2306075; 754857, 2305996; 754614, 2305982;

754412, 2306019; 754341, 2306032; 754346, 2305896; 754412, 2305877; 755139, 2305668; 755828, 2305033; 755089, 2305043; 755087, 2305045; 754979, 2305016; 754831, 2305142; 754540, 2305162; 754515, 2305057; 754621, 2304863; 754699, 2304812; 754760, 2304616; 754782, 2304447; 754796, 2304431.

(*ii*)Unit excludes three areas:

(*A*) Bounded by the following five points (6 ha, 15 ac): 748930 2305439, 749226 2305793, 749363 2305641, 749057 2305433, 748930 2305439.

(*B*) Bounded by the following 20 points (62 ha, 153 ac): 754495, 2306605; 754472, 2306625; 754334, 2306901; 754090, 2307018; 754065, 2307098; 754087, 2307266; 754141, 2307512; 754162, 2307496; 754243, 2307436; 754381, 2307316; 755039, 2307210; 755145, 2307181; 755188, 2307116; 755155, 2306981; 755028, 2306781; 754890, 2306567; 754808, 2306523; 754788, 2306512; 754588, 2306523; 754495, 2306605.

(*C*) Bounded by the following nine points (5 ha, 13 ac): 754959, 2307449; 75525, 2307432; 755657, 2307376; 755428, 2307345; 754834, 2307383; 754579, 2307430; 754778, 2307426; 754839, 2307410; 754959, 2307449.

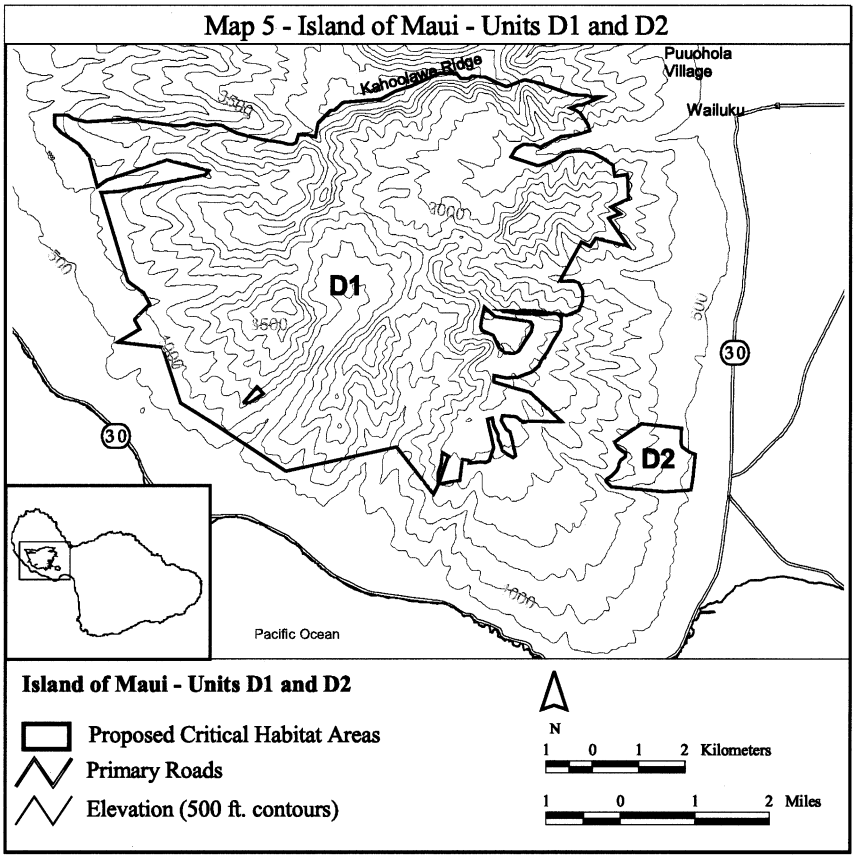
(*iii*) **Note:** See Map 5.

(*10*) Unit D2 (212 ha; 523 ac).

(*i*) unit consists of the following 22 boundary points: 756769, 2303771; 756914, 2303864; 757007, 2303958; 757058, 2304068; 757053, 2304123; 757104, 2304208; 757198, 2304267; 757206, 2304365; 757138, 2304395; 757037, 2304471; 756959, 2304605; 757541, 2304994; 758421, 2304900; 758402, 2304566; 758427, 2304491; 758605, 2304369; 758716, 2304323; 758665, 2303805; 758615, 2303558; 758067, 2303509; 756894, 2303623; 756774, 2303746.

(*ii*) **Note:** Map 5 follows:

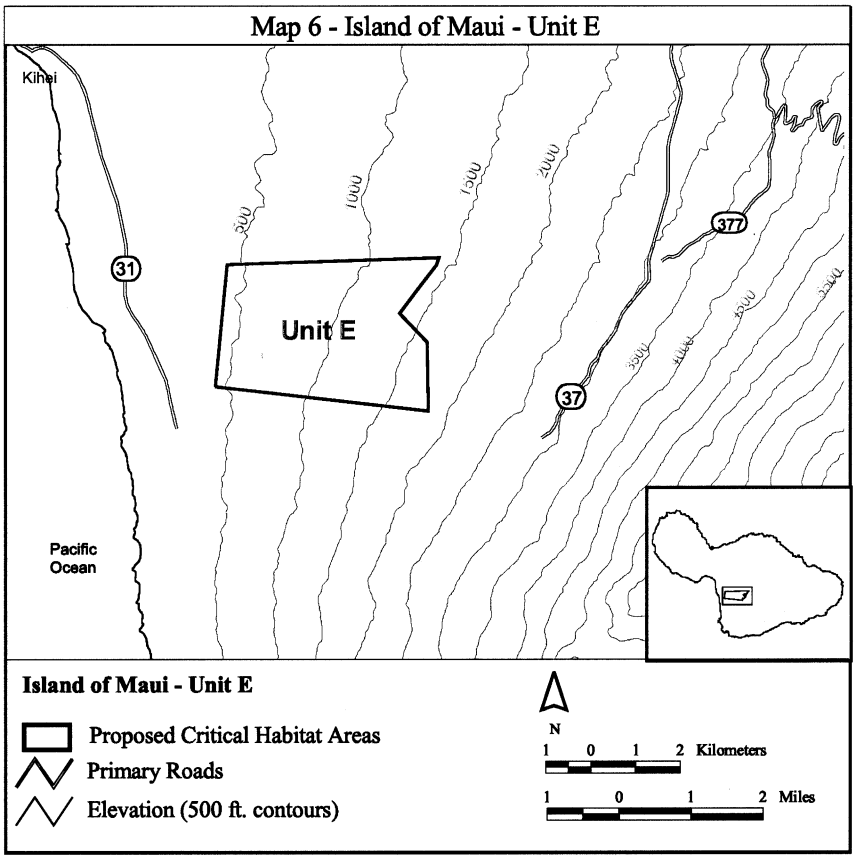
BILLING CODE 4310–55–P



(*11*) Maui E (1,389 ha; 3,432 ac).

(*i*) Unit consists of eight boundary points: 768269, 2295601; 773018, 2295761; 772962, 2295591; 772608, 2295140; 772130, 2294513; 772758, 2293858; 772784, 2292323; 768006, 2292863.

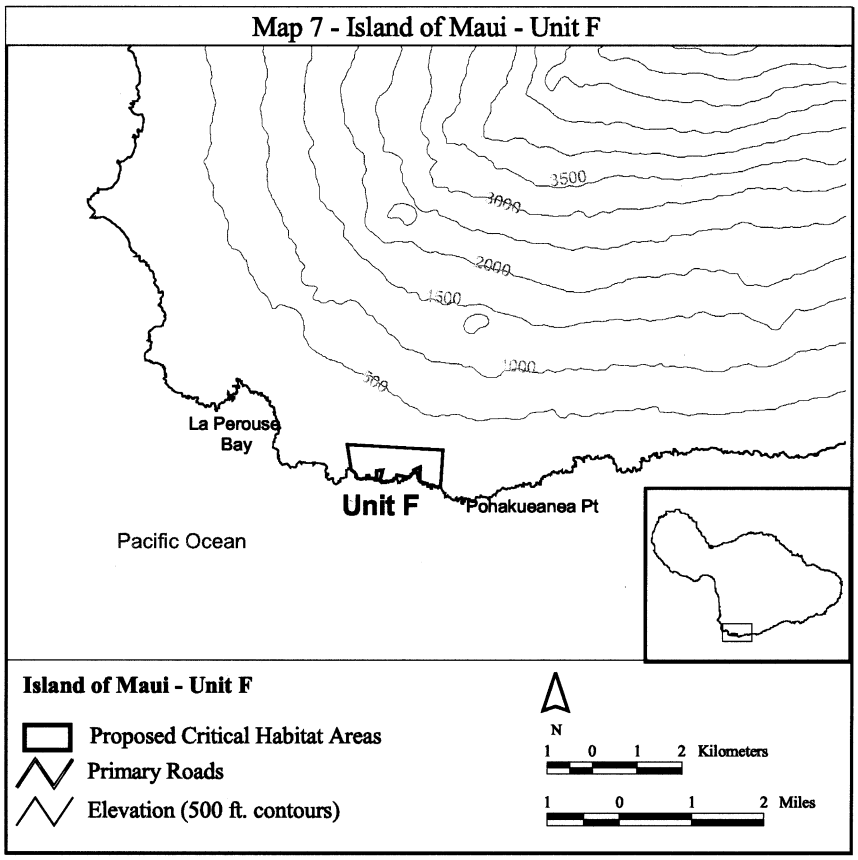
(*ii*) **Note:** Map 6 follows:



(*12*) Maui F (144 ha; 357 ac).

(*i*) Unit consists of the following 19 boundary points: coastline. 771282, 2278049; 771207, 2278581; 773349, 2278461; 773296, 2277638; 773294, 2277610; coastline. Coastline; 771941, 2277804; 772001, 2278009; 771861, 2277996; 771858, 2277785; coastline. Coastline; 772291, 2277823; 772291, 2277823; 772464, 2277817; 772464, 2277818; 772464, 2277873; 772302, 2277904; coastline. Coastline; 772830, 2277758; 772839, 2278087; 772691, 2278009; 772697, 2277944; coastline.

(*ii*) **Note:** Map 7 follows:



(*13*) Maui G1 (4 ha; 10 ac).

(*i*) Unit consists of the following 21 boundary points: coastline; 793988, 2310722; 793988, 2310722; 793988, 2310722; 793937, 2310735; 793898, 2310767; 793920, 2310825; 793940, 2310881; 793932, 2310893; 793907, 2310933; 793885, 2310962; 793833, 2311001; 793781, 2311037; 793768, 2311053; 793690, 2311134; 793635, 2311144; 793527, 2311157; 793498, 2311183; 793411, 2311267; 793362, 2311345; 793988, 2310722; 793988, 2310722; coastline.

(*ii*) **Note:** See Map 8:

(*14*) Maui G2 (.8 ha; 2 ac).

(*i*) Unit consists of the following 21 boundary points: coastline; 794253, 2311026; 794246, 2311002; 794240, 2310987; 794220, 2310955; 794200, 2310914; 794190, 2310902; 794182, 2310899; 794171, 2310899; 794168, 2310900; 794162, 2310906; 794162, 2310935; 794166, 2310959; 794169, 2310967; 794202, 2311009; 794211, 2311034; 794222, 2311052; 794246, 2311078; 794258, 2311082; 794263, 2311080; 794265, 2311076; 794265, 2311065; coastline.

(*ii*) **Note:** See Map 8:

(*15*) Maui G3 (7 ha; 16 ac).

(*i*) Unit consists of the following 22 boundary points: coastline; 794814, 2310166; 794778, 2310176; 794756, 2310192; 794756, 2310217; 794742, 2310240; 794733, 2310282; 794728, 2310324; 794711, 2310345; 794706, 2310368; 794665, 2310393; 794632, 2310428; 794625, 2310446; 794622, 2310523; 794573, 2310595; 794491, 2310645; 794326, 2310728; 794258, 2310741; 794222, 2310764; 794118, 2310718; 794053, 2310679; 794040, 2310715; 794043, 2310738; coastline.

(*ii*) **Note:** See Map 8:

(*16*) Maui G4 (22 ha; 53 ac).

(*i*) Unit consists of the following 14 boundary points: coastline; 798949, 2307406; 798949, 2307406; 798884, 2307470; 798940, 2307502; 798924, 2307613; 798829, 2307836; 798733, 2308042; 798749, 2308233; 798718, 2308487; 798631, 2308684; 798419, 2308844; 798296, 2309004; 797985, 2309037; 798021, 2309124; coastline.

(*ii*) **Note:** See Map 8:

(*17*) Maui G5 (31 ha; 77 ac).

(*i*) Unit consists of the following 27 boundary points: coastline; 801972, 2305512; 801990, 2305372; 801833, 2305382; 801626, 2305463; 801466, 2305444; 801320, 2305260; 801117, 2305232; 801018, 2305293; 800891, 2305373; 800731, 2305387; 800581, 2305284; 800472, 2305307; 800265, 2305505; 800166, 2305599; 800152, 2305712; 800147, 2305849; 800190, 2305990; 800138, 2306094; 800001, 2306188; 799879, 2306263; 799874, 2306386; 799789, 2306428; 799723, 2306527; 799657, 2306626; 799606, 2306800; 799516, 2306902; 799516, 2306902; coastline.

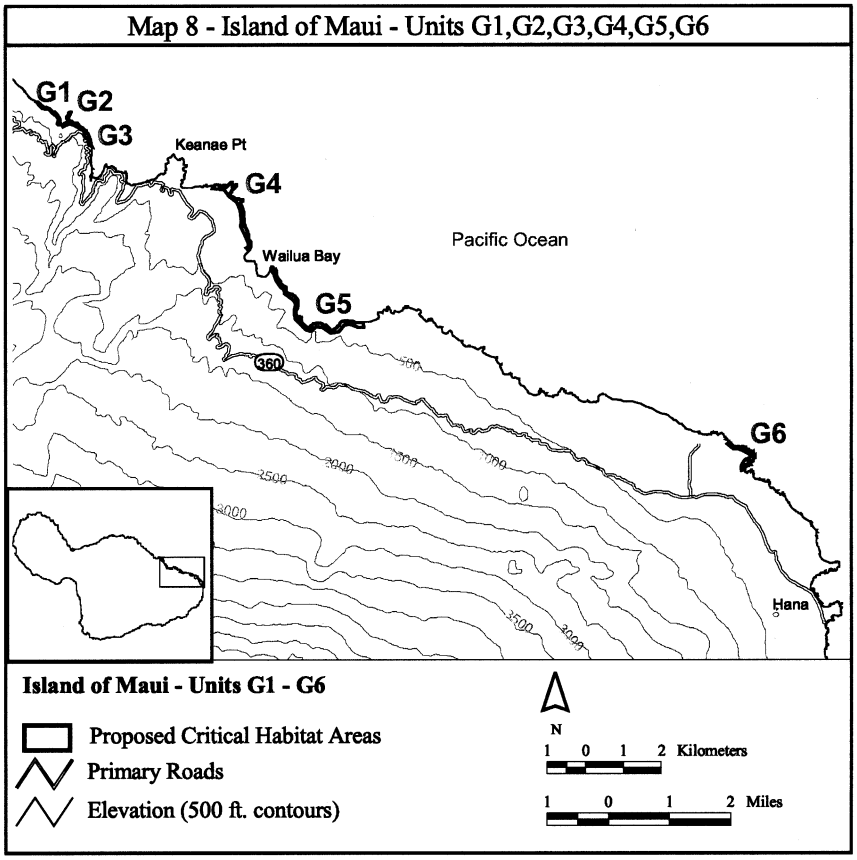
(*ii*) **Note:** See Map 8:

(*18*) Maui G6 (11 ha; 27 ac).

(*i*) Unit consists of the following 14 boundary points: coastline; 811982, 2301617; 811982, 2301617; 811936, 2301585; 811916, 2301671; 811945, 2301774; 812026, 2301885; 812133, 2301927; 812193, 2301995; 812092, 2302061; 811938, 2302135; 811849, 2302164; 811717, 2302172; 811546, 2302307; 811596, 2302341; coastline.

(*ii*) **Note:** Map 8 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(*19*) Maui H (14,101 ha; 34,843 ac).

(*i*) Unit consists of the following 133 boundary points: 792545, 2288808; 792970, 2287110; 788115, 2284625; 788254, 2284423; 786255, 2283830; 785721, 2283591; 785909, 2283329; 784364, 2282634; 784741, 2282683; 785687, 2282923; 787384, 2283423; 788910, 2284092; 791757, 2285370; 792012, 2284972; 792107, 2284459; 792107, 2284163; 789675, 2283199; 786085, 2281630; 781021, 2279811; 774426, 2279632; 774487, 2280204; 773607, 2281357; 774563, 2281463; 775099, 2281680; 775397, 2282390; 775684, 2285109; 774276, 2285496; 774305, 2285732; 774421, 2285732; 774601, 2285942; 774871, 2286062; 774961, 2286242; 775201, 2286392; 775501, 2286512; 775711, 2286572; 775801, 2286842; 775981, 2286962; 776221, 2286932; 776431, 2287082; 776611, 2287292; 776731, 2287292; 776791, 2287382; 776881, 2287322; 777091, 2287322; 777241, 2287472; 777211, 2287742; 777481, 2287862; 777661, 2288072; 778111, 2288132; 778136, 2288218; 778221, 2288151; 778986, 2288684; 779070, 2288768; 779131, 2288792; 779251, 2288792; 779401, 2288972; 779851, 2289092; 780061, 2289062; 780151, 2289182; 780576, 2289283; 780841, 2289542; 781388, 2289777; 781591, 2290022; 781861, 2290202; 782491, 2290652; 782851, 2290952; 783541, 2291072; 783871, 2291402; 784171, 2291462; 784323, 2291635; 784473, 2291725; 784623, 2291725; 784683, 2291725; 784826, 2291868; 784854, 2291851; 784917, 2291907; 784912, 2291915; 785313, 2291995; 785613, 2292265; 785823, 2292175; 785940, 2292307; 785941, 2292306; 785946, 2292314; 786063, 2292445; 786151, 2292452; 786211, 2292452; 786511, 2292242; 786631, 2292122; 787201, 2292092; 787561, 2291702; 787951, 2291582; 788131, 2291492; 788341, 2291522; 788641, 2291432; 789031, 2291522; 789720, 2291522; 790086, 2291458; 790230, 2291432; 790950, 2291672; 791730, 2291582; 792480, 2291702; 792750, 2291702; 793014, 2291770; 793450, 2291683; 793671, 2291645; 794207, 2291635; 794432, 2291674; 794523, 2291573; 794614, 2291434; 795213, 2291075; 795299, 2291051; 795400, 2290907; 795821, 2290462; 795807, 2290385; 795864, 2290318; 796008, 2290304; 796061, 2290232; 796133, 2290112; 796195, 2290069; 796310, 2290016; 796427, 2289780; 796453, 2289731; 796458, 2289724; 796453, 2289665; 794488, 2289840; 791401, 2289270; 789965, 2288718; 789343, 2291348; 787469, 2291492; 786580, 2289125; 787793, 2286254; 790244, 2287538; 790161, 2287892.

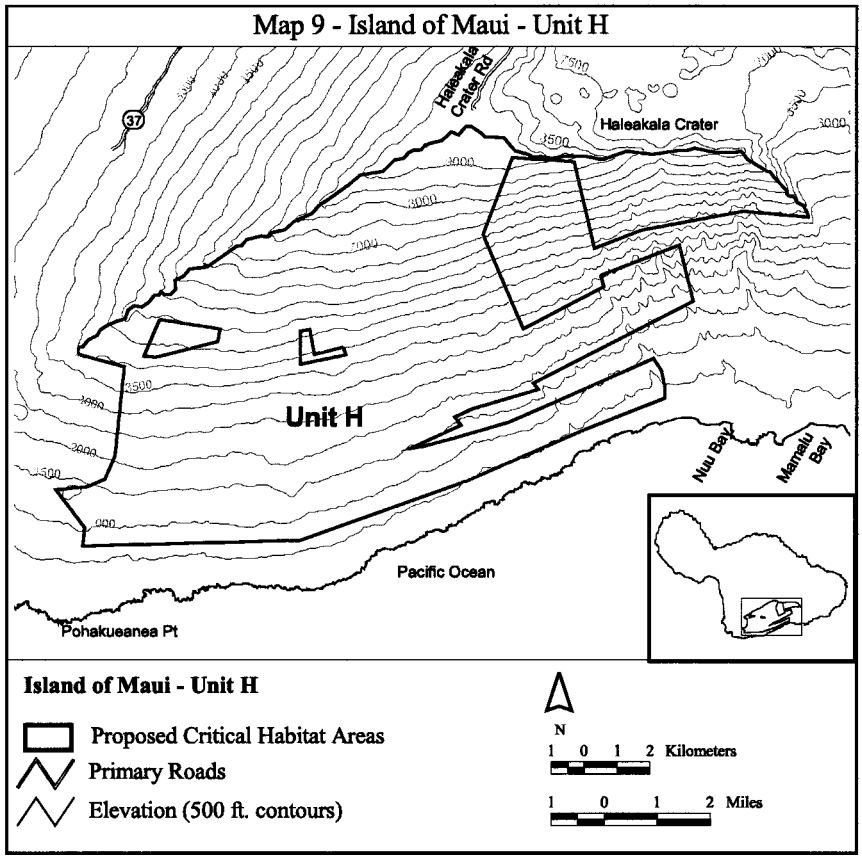
(*ii*) Unit excludes two areas:

(*A*) Bounded by the following seven points (162 ha, 400ac): 776764, 2286552; 778589, 2286255; 778519, 2285877; 776631, 2285401; 776280, 2285436; 776669, 2286345; 776764, 2286552.

(*B*) Bounded by the following 11 points (58 ha, 143 ac): 782337, 2285709; 782398, 2285481; 781035, 2285187; 781028, 2286132; 781029, 2286198; 781305, 2286239; 781412, 2285729; 781455, 2285500; 781459, 2285501; 781459, 2285501; 782337, 2285709.

(*iii*) **Note:** Map 9 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–P

(*20*) Maui I1 (1,862 ha; 4,601 ac).

(*i*) Unit consists of the following 61 boundary points: 788755, 2298314; 788934, 2298211; 788932, 2298142; 789003, 2297908; 789137, 2297528; 789205, 2297438; 789207, 2297318; 789096, 2297113; 789049, 2296968; 788869, 2296843; 788619, 2296647; 788580, 2296262; 788460, 2296022; 788165, 2295603; 787886, 2295369; 787844, 2295067; 787660, 2294754; 787231, 2294372; 786737, 2293972; 786661, 2293742; 786430, 2293387; 786421, 2292812; 786299, 2292576; 786151, 2292452; 786063, 2292445; 785946, 2292314; 785941, 2292306; 785940, 2292307; 785823, 2292175; 785613, 2292265; 785313, 2291995; 784912, 2291915; 784917, 2291907; 784854, 2291851; 784826, 2291868; 784683, 2291725; 784623, 2291725; 784473, 2291725; 784323, 2291635; 784171, 2291462; 783871, 2291402; 783541, 2291072; 782851, 2290952; 782491, 2290652; 781861, 2290202; 781591, 2290022; 781388, 2289777; 780841, 2289542; 780576, 2289283; 780151, 2289182; 780061, 2289062; 779851, 2289092; 779401, 2288972; 779251, 2288792; 779131, 2288792; 779070, 2288768; 780400, 2290082; 780380, 2290097; 788189, 2297787; 788162, 2297781.

(*ii*) **Note:** See Map 10.

(*21*) Maui I2 (680 ha; 1,680 ac).

(*i*) Unit consists of the following 11 boundary points: 784570, 2295895; 784440, 2295690; 782956, 2294207; 782421, 2293422; 782263, 2293191; 782187, 2293615; 781338, 2294254; 780818, 2294804; 781473, 2295735; 782282, 2296409; 782585, 2297193.

(*ii*) **Note:** See Map 10.

(*22*) Maui I3 (452 ha; 1,117 ac).

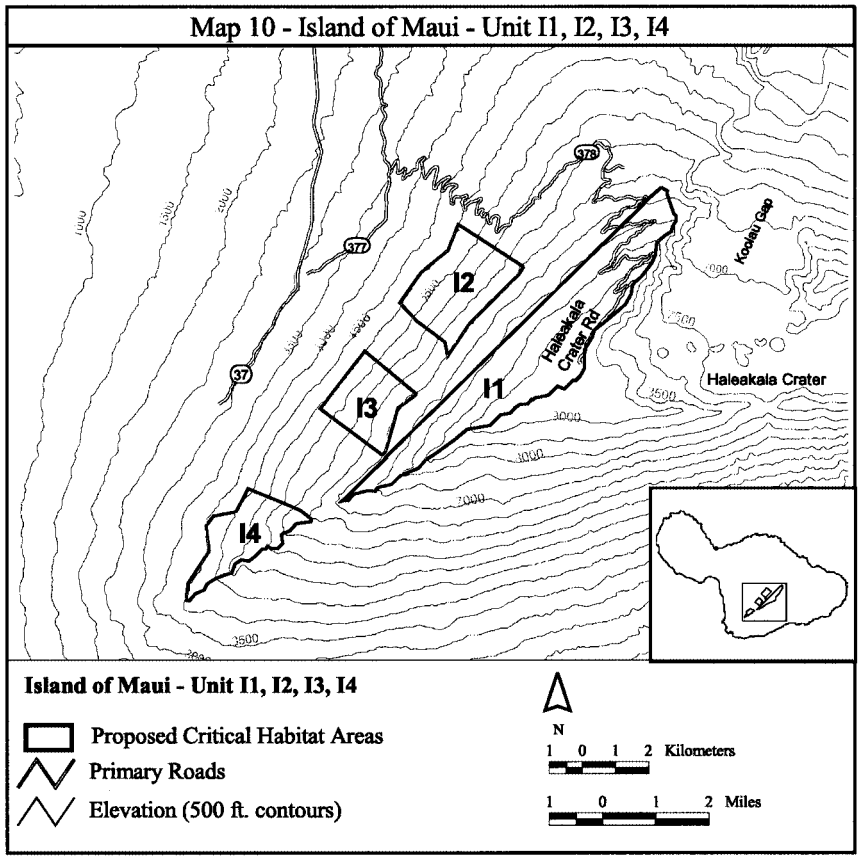
(*i*) Unit consists of the following six boundary points: 781340, 2292025; 780754, 2291599;780373, 2290270;780279, 2290173;778396, 2291591;779749, 2293351.

(*ii*) **Note:** See Map 10.

(*23*) Maui I4 (497 ha; 1,227 ac).

(*i*) Unit consists of the following 31 boundary points: 778136, 2288218; 778111, 2288132; 777661, 2288072; 777481, 2287862; 777211, 2287742; 777241, 2287472; 777091, 2287322; 776881, 2287322; 776791, 2287382; 776731, 2287292; 776611, 2287292; 776431, 2287082; 776221, 2286932; 775981, 2286962; 775801, 2286842; 775711, 2286572; 775501, 2286512; 775201, 2286392; 774961, 2286242; 774871, 2286062; 774601, 2285942; 774421, 2285732; 774305, 2285732; 774368, 2286253; 775008, 2287236; 774920, 2287996; 775155, 2288309; 775846, 2288444; 776207, 2289144; 777437, 2288634; 777822, 2288467.

(*ii*) **Note:** Map 10 follows:



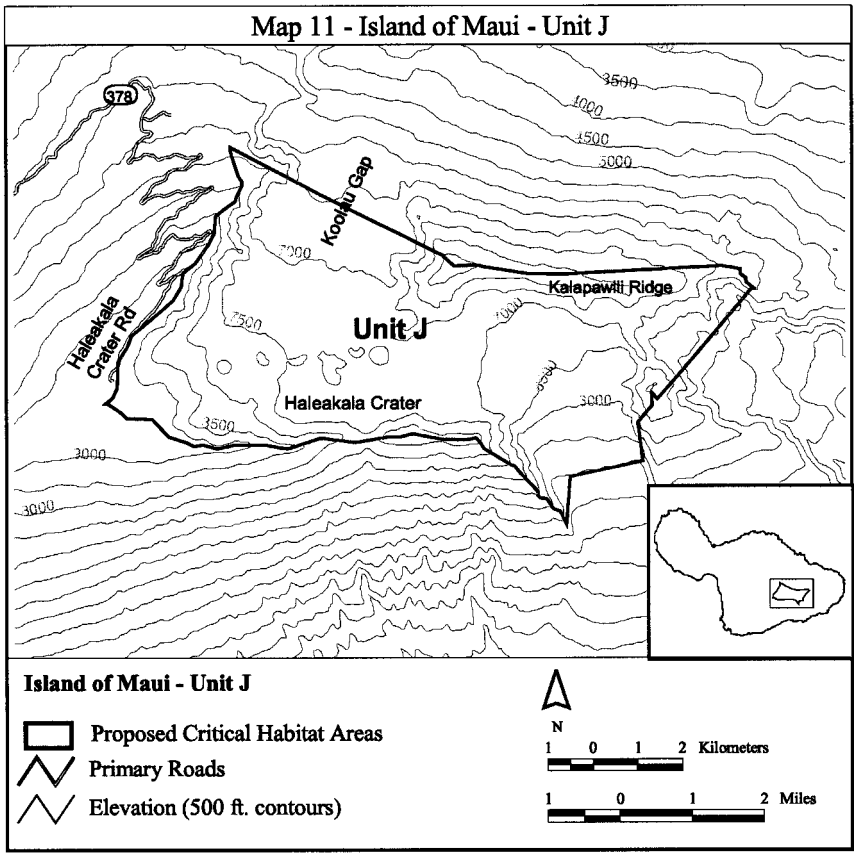
BILLING CODE 4310–55–C

(*24*) Maui J (5,790 ha; 14,308 ac).

(*i*) Unit J consists of the following 93 boundary points: 786211, 2292452; 786151, 2292452; 786299, 2292576; 786421, 2292812; 786430, 2293387; 786661, 2293742; 786737, 2293972; 787231, 2294372; 787660, 2294754; 787844, 2295067; 787886, 2295369; 788165, 2295603; 788460, 2296022; 788580, 2296262; 788619, 2296647; 788869, 2296843; 789049, 2296968; 789096, 2297113; 789207, 2297318; 789205, 2297438; 789137, 2297528; 789003, 2297908; 788932, 2298142; 788934, 2298206; 788942, 2298202; 790992, 2297103; 791410, 2296897; 791825, 2296690; 792099, 2296555; 792241, 2296484; 792656, 2296277; 793071, 2296070; 793542, 2295836; 793699, 2295758; 793717, 2295735; 793949, 2295528; 794430, 2295549; 794610, 2295512; 795570, 2295362; 796387, 2295350; 799935, 2295528; 800349, 2295462; 800349, 2295342; 800469, 2295252; 800469, 2295162; 800636, 2295040; 800632, 2295034; 800620, 2295038; 799311, 2293503; 798490, 2292539; 798357, 2292680; 798374, 2292403; 798056, 2292031; 798165, 2291162; 796545, 2290807; 796458, 2289724; 796453, 2289731; 796427, 2289780; 796310, 2290016; 796195, 2290069; 796133, 2290112; 796061, 2290232; 796008, 2290304; 795864, 2290318; 795807, 2290385; 795821, 2290462; 795400, 2290907; 795299, 2291051; 795213, 2291075; 794614, 2291434; 794523, 2291573; 794432, 2291674; 794207, 2291635; 793671, 2291645; 793450, 2291683; 793014, 2291770; 792750, 2291702; 792480, 2291702; 791730, 2291582; 790950, 2291672; 790230, 2291432; 790086, 2291458; 789720, 2291522; 789031, 2291522; 788641, 2291432; 788341, 2291522; 788131, 2291492; 787951, 2291582; 787561, 2291702; 787201, 2292092; 786631, 2292122; 786511, 2292242; 786211, 2292452.

(ii) **Note:** Map 11 follows:

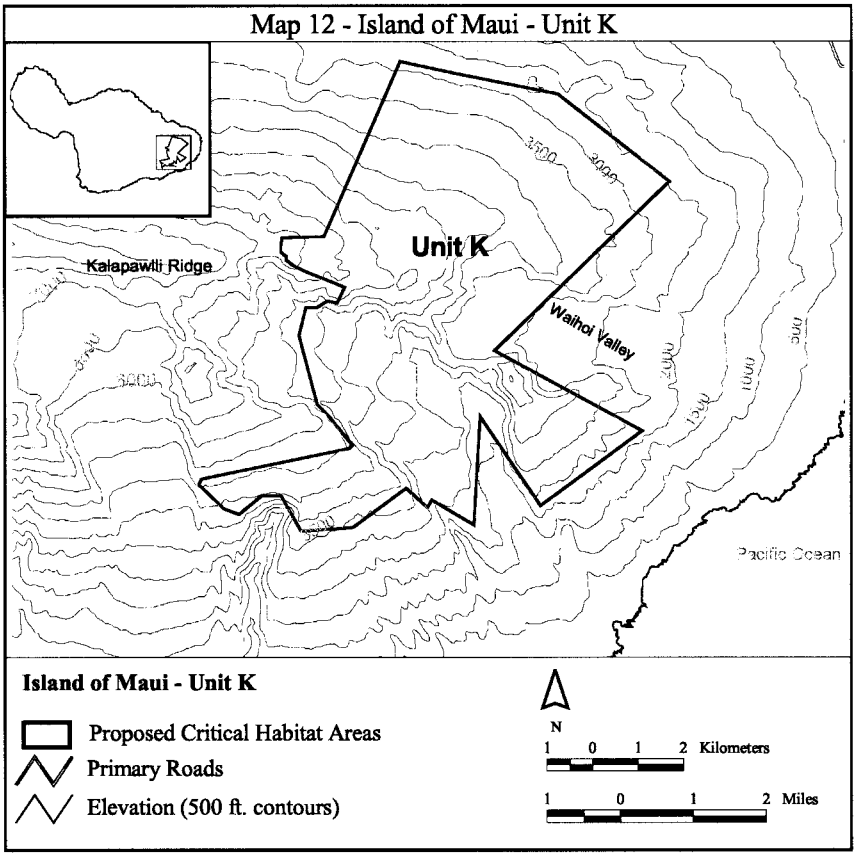
BILLING CODE 4310–55–P



(*25*) Maui K (5,464 ha; 13,502 ac).

(*i*) Unit consists of the following 39 boundary points: 798586, 2290348; 801847, 2291015; 801917, 2291085; 801389, 2291758; 801145, 2291990; 801037, 2292402; 800743, 2293514; 800900, 2294126; 801147, 2294134; 801376, 2294265; 801594, 2294228; 801760, 2294574; 800906, 2294922; 800636, 2295040; 800469, 2295162; 800469, 2295252; 800349, 2295342; 800349, 2295462; 800379, 2295672; 801296, 2295690; 802992, 2299556; 804200, 2299306; 806459, 2298838; 808913, 2296912; 805053, 2293181; 808301, 2291412; 806062, 2289747; 804741, 2291728; 804598, 2289317; 803684, 2289877; 803574, 2289704; 803114, 2290141; 801935, 2289265; 800788, 2289185; 800342, 2289966; 799912, 2289966; 799418, 2289552; 799083, 2289679; 798541, 2290221.

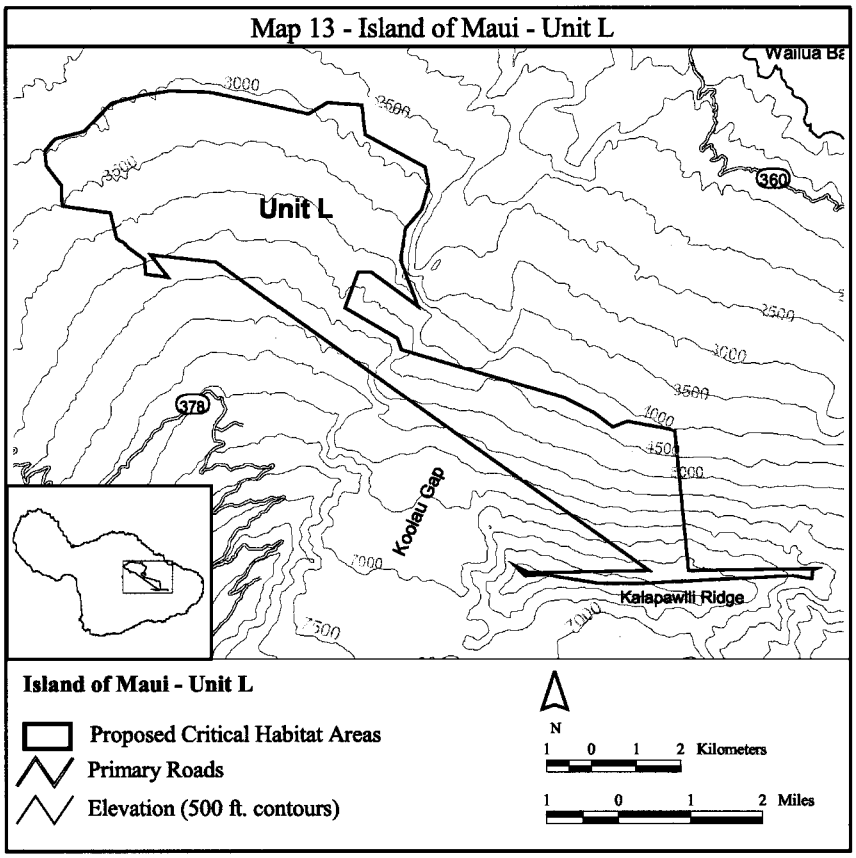
(ii) **Note:** Map 12 follows:



(*26*) Maui L (4,612 ha; 11,396 ac).

(*i*) Unit consists of the following 66 boundary points: 784691, 2306143; 785374, 2306329; 785968, 2306418; 786589, 2306409; 786953, 2306374; 789090, 2305904; 789515, 2306162; 790281, 2306097; 790360, 2305448; 791696, 2304712; 791781, 2304297; 791627, 2303742; 791264, 2303330; 791158, 2302616; 791550, 2301582; 790503, 2302354; 790198, 2302345; 789906, 2301556; 791083, 2300859; 791175, 2300611; 794821, 2299526; 795483, 2299193; 795907, 2298874; 796226, 2298998; 797155, 2298832; 797292, 2298791; 797592, 2295644; 797739, 2295646; 797990, 2295649; 799102, 2295662; 800430, 2295679; 800379, 2295672; 800349, 2295462; 799935, 2295528; 796387, 2295350; 795570, 2295362; 794610, 2295512; 794430, 2295549; 793949, 2295528; 793717, 2295735; 793699, 2295758; 794014, 2295603; 796710, 2295634; 788433, 2301564; 788429, 2301566; 787081, 2302528; 787078, 2302530; 787025, 2302567; 785551, 2302746; 785950, 2302240; 785443, 2302303; 785422, 2302623; 785067, 2302898; 784947, 2303017; 784875, 2303047; 784803, 2303101; 784660, 2303678; 783583, 2303838; 783559, 2304310; 783487, 2304404; 783488, 2304406; 783486, 2304406; 783228, 2304747; 783196, 2305076; 783422, 2305338; 784075, 2305511.

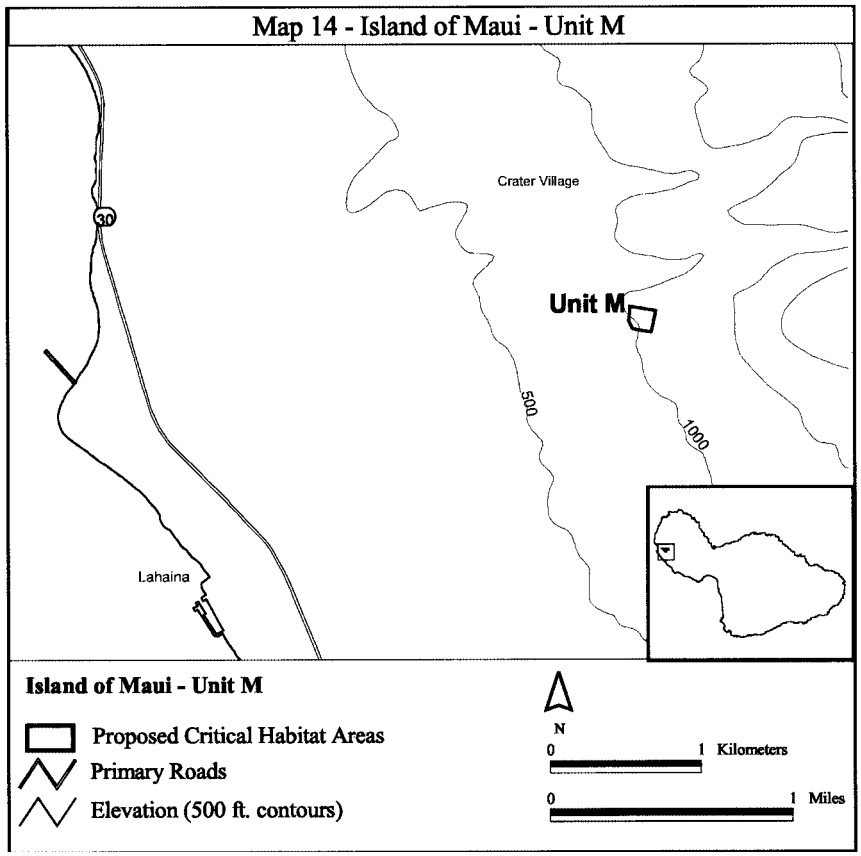
(ii) **Note:** Map 13 follows:



(*27*) Maui M (2 ha; 6 ac).

(*i*) Unit consists of the following six boundary points: 744481, 2311471; 744357, 2311489; 744330, 2311543; 744340, 2311642; 744511, 2311612; 744481, 2311471.

(ii) **Note:** Map 14 follows:



BILLING CODE 4310–55–C

TABLE (A)(1)(I)(C). PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI

Unit name	Species occupied	Species unoccupied
Maui A	*Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Cyrtandra munroi, Remya mauiensis, Sanicula purpurea*.	*Alectryon macrococcus, Cyanea glabra, Gouania vitifolia, Hedyotis mannii, Hesperomannia arbuscula, Phlegmariurus mannii, Platanthera holochila, Plantago princeps, Pteris lydgatei.*
Maui B	*Cyanea lobata, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila, Plantago princeps, Pteris lydgatei, Sanicula purpurea*.	*Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyrtandra munroi, Diplazium molokaiense.*
Maui C	*Centaurium sebaeoides, Sesbania tomentosa*	*Brighamia rockii.*
Maui D	*Ctenitis squamigera, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Diellia erecta, Dubautia plantaginea* ssp. *humilis, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arbuscula, Hibiscus brackenridgei, Lysimachia lydgatei, Neraudia sericea, Phlegmariurus mannii, Platanthera holochila, Pteris lydgatei, Remya mauiensis, Spermolepis hawaiiensis, Tetramolopium capillare*.	*Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Cyrtandra munroi, Diplazium molokaiense, Gouania vitifolia, Isodendrion pyrifolium, Peucedanum sandwicense, Plantago princeps, Sanicula purpurea, Tetramolopium remyi*
Maui E	*Bonamia menziesii, Hibiscus brackenridgei*.	
Maui F	*Vigna o-wahuensis*.	
Maui G	*Ischaemum byrone*	*Brighamia rockii, Mariscus pennatiformis, Peucedanum sandwicense*
Maui H	*Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Flueggea neowawraea, Geranium arboreum, Lipochaeta kamolensis, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, Neraudia sericea, Phlegmariurus mannii, Sesbania tomentosa, Spermolepis hawaiiensis, Zanthoxylum hawaiiense*.	*Argyroxiphium sandwicense* ssp. *macrocephalum, Clermontia lindseyana, Colubrina oppositifolia, Diellia erecta, Diplazium molokaiense, Geranium multiflorum, Nototrichium humile, Phyllostegia mollis, Plantago princeps, Schiedea haleakalensis*
Maui I	*Diellia erecta, Diplazium molokaiense, Geranium arboreum*	*Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile var. insulare, Bidens micrantha* ssp. *kalealaha, Clermontia lindseyana, Geranium multiflorum, Phlegmariurus mannii, Phyllostegia mollis, Plantago princeps*

TABLE (A)(1)(I)(C). PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
Maui J	*Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha ssp. kalealaha, Geranium multiflorum, Plantago princeps, Schiedea haleakalensis* .	*Asplenium fragile* var. *insulare, Clermontia samuelii, Platanthera holochila*
Maui K	*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Melicope balloui, Melicope ovalis, Phlegmariurus mannii, Plantago princeps* .	*Alectryon macrococcus, Cyanea glabra, Geranium multiflorum, Platanthera holochila*
Maui L	*Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora ssp. hamatiflora, Cyanea mceldowneyi, Geranium multiflorum, Melicope balloui, Phlegmariurus mannii, Zanthoxylum hawaiiense* .	*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Clermontia samuelii, Cyanea glabra, Diplazium molokaiense, Phyllostegia mannii, Phyllostegia mollis, Platanthera holochila*
Maui M	*Spermolepis hawaiiense* .	

(D) *Kahoolawe.* 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 two critical habitat units designated on the island of Kahoolawe.

(*1*) Kahoolawe A (713 ha, 1,762 ac).

(*i*) Unit consists of the whole island excluding one area that consists of the following 35 boundary points: 754797, 2277077; 755045, 2276297; 754918, 2276004; 754909, 2276004; 754904, 2275863; 754946, 2275320; 754303, 2273696; 754396, 2273017; 754242, 2272155; 754042, 2271056; 753210, 2271022; 751707, 2271460; 751597, 2271496; 751596, 2271487; 750683, 2271836; 750542, 2272275; 750349, 2272348; 749983, 2272296; 749116, 2271616; 747586, 2271444; 747413, 2271428; 747414, 2271426; 745642, 2271630; 744685, 2271955; 744751, 2272554; 745517, 2273620; 746524, 2273925; 748215, 2274039; 749280, 2273853; 749780, 2274053; 749746, 2274386; 748914, 2275218; 749580, 2276150; 753110, 2277682; 754797, 2277077.

(*ii*) **Note:** See Map 15.

(*2*) Kahoolawe B (0.5 ha, 1 ac).

(*i*) Unit consists of the following 80 boundary points: 749281, 2269833; 749285, 2269821; 749303, 2269801; 749305, 2269787; 749302, 2269778; 749294, 2269774; 749276, 2269779; 749256, 2269768; 749248, 2269757; 749240, 2269754; 749221, 2269774; 749212, 2269790; 749204, 2269793; 749194, 2269793; 749182, 2269780; 749172, 2269771; 749160, 2269766; 749155, 2269743; 749149, 2269730; 749142, 2269724; 749124, 2269721; 749120, 2269713; 749115, 2269705; 749111, 2269704; 749108, 2269707; 749099, 2269706; 749086, 2269701; 749078, 2269704; 749075, 2269707; 749076, 2269721; 749091, 2269738; 749098, 2269756; 749099, 2269769; 749104, 2269777; 749111, 2269827; 749127, 2269843; 749138, 2269874; 749150, 2269880; 749164, 2269883; 749178, 2269912; 749196, 2269952; 749209, 2269970; 749230, 2269988; 749237, 2269999; 749238, 2270015; 749251, 2270040; 749266, 2270057; 749280, 2270068; 749338, 2270081; 749352, 2270078; 749388, 2270073; 749401, 2270060; 749409, 2270057; 749418, 2270046; 749424, 2270033; 749422, 2270025; 749416, 2270012; 749415, 2270003; 749407, 2270000; 749394, 2269996; 749394, 2269987; 749395, 2269978; 749388, 2269973; 749380, 2269976; 749371, 2269980; 749363, 2269977; 749353, 2269968; 749344, 2269968; 749322, 2269972; 749308, 2269961; 749306, 2269951; 749319, 2269921; 749319, 2269916; 749312, 2269909; 749304, 2269905; 749301, 2269891; 749286, 2269880; 749283, 2269867; 749282, 2269842; 749281, 2269833.

(*ii*) **Note:** Map 15 follows:

BILLING CODE 4310–55–P

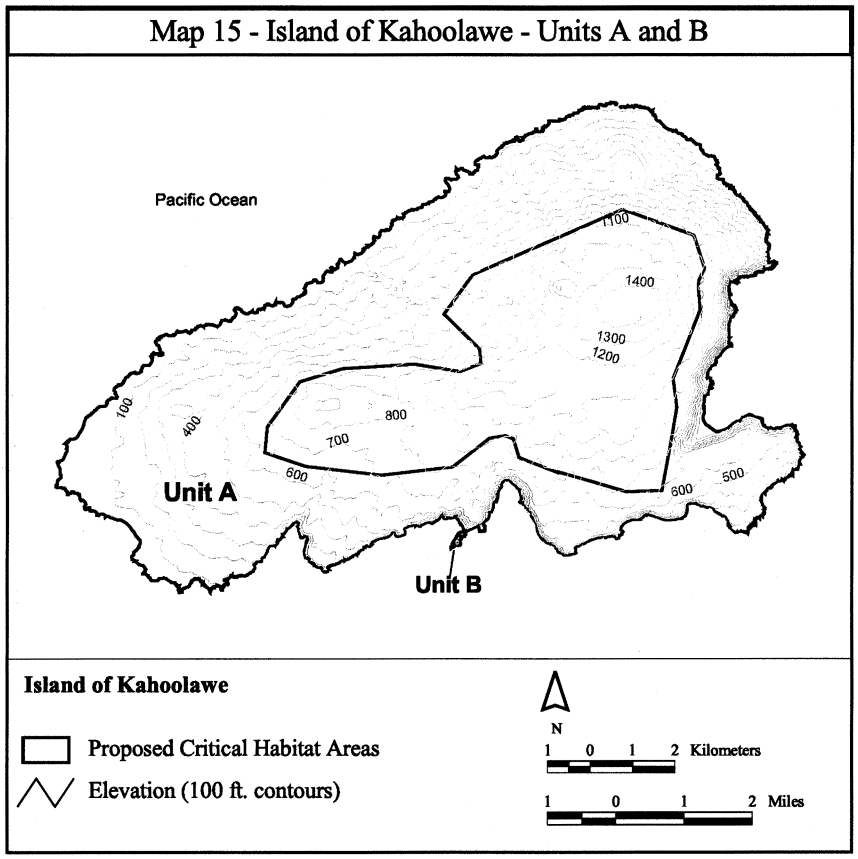


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TABLE (a)(1)(i)(D).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAHOOLAWE

Unit name	Species occupied	Species unoccupied
Kahoolawe A	*Vigna o-wahuensis*	*Hibiscus brackenridgei, Kanaloa kahoolawensis, Sesbania tomentosa.*
Kahoolawe B	*Kanaloa kahoolawensis, Sesbania tomentosa.*	

* * * * *

(ii) *Hawaiian plants—Constituent elements*

(A) *Flowering plants.*

Family Amaranthaceae: *Nototrichium humile* (kului)

Maui H, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Nototrichium humile* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Old cinder cones in dry shrubland and containing one or more of the following associated native species: *Dodonaea viscosa, Erythrina sandwicensis, Heteropogon contortus,* or *Nototrichium sandwicense;* and

(*2*) Elevations between 338 and 734 m (1,110 and 2,407 ft).

Family Apiaceae: *Peucedanum sandwicense* (makou)

Maui D and G, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Peucedanum sandwicense* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Sparsely vegetated steep to vertical cliff habitats with little soil in mesic or coastal communities containing one or more of the following associated native species: *Artemisia australis, Eragrostis* spp., *Metrosideros polymorpha, Carex* spp., *Bidens* spp., *Diospyros sandwicensis, Chamaesyce* spp., *Peperomia* spp., *Hedyotis littoralis, Lysimachia mauritiana, Pandanus tectorius, Scaevola sericea,* or *Schiedea globosa;* and

(*2*) Elevations between 237 and 1,131 m (778 and 3,711 ft).

Family Apiaceae: *Sanicula purpurea* (NCN)

Maui B and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Sanicula purpurea* on Maui. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Open *Metrosideros polymorpha* mixed montane bogs containing one or more of the following associated plant taxa: *Styphelia tameiameiae, Gahnia beecheyi, Geranium hillebrandii, Myrsine vaccinioides, Viola maviensis, Argyroxiphium caliginis, Plantago pachyphylla, Lycopodium* sp., *Argyroxiphium grayanum, Lagenifera maviensis, Machaerina* sp., or *Oreobolus furcatus;* and

(*2*) Elevations between 1,195 and 1,764 m (3,921 and 5,787 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (NCN)

Maui D, H and M, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Shady spots in *Dodonaea viscosa* lowland dry shrubland and containing one or more of the following associated native species: *Eragrostis variabilis, Wikstroemia* sp., *Erythrina sandwicensis, Diospyros* sp., *Pleomele* sp., *Lipochaeta lavarum, Sida fallax, Myoporum sandwicense, Santalum ellipticum, Gouania hillebrandii,* or *Heteropogon contortus;* and

(*2*) Elevations between 221 and 742 m (725 and 2,434 ft).

Family Asteraceae: *Argyroxiphium sandwicense* ssp. *macrocephalum* (ahinahina)

Maui H, I, J, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Lava flows and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones and *Deschampsia* grasslands, a mean annual precipitation of approximately 75 to 250 cm (29.6 to 98.4 in), substrate with almost no soil development and subject to frequent formation of ice at night and extreme heating during cloudless days, alpine dry shrubland and containing one or more of the following associated native plant species: *Agrostis sandwicensis, Deschampsia nubigena, Dubautia menziesii, Silene struthioloides, Styphelia tameiameiae, Tetramolopium humile,* or *Trisetum glomeratum;* and

(*2*) Elevations between 1,511 and 3,053 m (4,957 and 10,016 ft).

Family Asteraceae: *Bidens micrantha* ssp. *kalealaha* (kookoolau)

Maui H, I and J, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Bidens micrantha* ssp. *kalealaha* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Blocky lava flows with little or no soil development, deep pit craters, or sheer rock walls in open canopy *Metrosideros polymorpha-Acacia koa* forest, montane shrubland, *Sophora chrysophylla* forests or cliff faces; and containing one or more of the following associated native plant species: *Styphelia tameiameiae, Coprosma montana, Dodonaea viscosa, Vaccinium reticulatu, Santalum haleakalae, Dubautia menziesii,* or *Dubautia platyphylla;* and

(*2*) Elevations between 1,317 and 2,565 m (4,321 and 8,414 ft).

Family Asteraceae: *Dubautia plantaginea* ssp. *humilis* (naenae)

Maui D, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Dubautia plantaginea* ssp. *humilis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Wet, barren, steep, rocky, wind-blown cliffs containing one or more of the following associated native plant species: *Metrosideros polymorpha, Pipturus albidus, Eragrostis variabilis, Carex* sp., *Hedyotis formosa, Lysimachia remyi, Bidens* sp., *Pritchardia* sp., or *Plantago princeps;* and

(*2*) Elevations between 266 and 1,593 m (873 and 5,226 ft).

Family Asteraceae: *Hesperomannia arborescens* (NCN)

Maui B, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Hesperomannia arborescens* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slopes or ridges in lowland mesic or wet forest and containing one or more of the following associated native plant species: *Metrosideros polymorpha, Myrsine sandwicensis, Isachne distichophylla, Pipturus* sp., *Antidesma* sp., *Psychotria* sp., *Clermontia* sp., *Cibotium* sp., *Dicranopteris linearis, Bobea* sp., *Coprosma* sp., *Sadleria* sp., *Melicope* sp., *Machaerina* sp., *Cheirodendron* sp., or *Freycinetia arborea;* and

(*2*) Elevations between 346 and 1,335 m (1,135 and 4,380 ft).

Family Asteraceae: *Hesperomannia arbuscula* (NCN)

Maui A and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Hesperomannia arbuscula* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep forested slopes and ridges in mesic forest dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* and containing one or more of the following associated native plant species: *Bidens* sp., *Tetraplasandra* sp., *Alyxia oliviformis, Clermontia* sp., *Cyanea* sp., *Cheirodendron* sp., or *Psychotria* sp.; and

(*2*) Elevations between 354 and 1,453 m (1,161 and 4,767 ft).

Family Asteraceae: *Lipochaeta kamolensis* (nehe)

Maui H, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Lipochaeta kamolensis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulches or gentle slopes outside gulches in dry shrubland and containing one or more of the following associated native plant species: *Dodonaea viscosa, Plumbago zeylanica,* or *Ipomoea indica;* and

(*2*) Elevations between 40 and 602 m (132 and 1,974 ft).

Family Asteraceae: *Remya mauiensis* (NCN)

Maui D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Remya mauiensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests and containing one or more of the following associated native species: *Diospyros sandwicensis, Xylosma hawaiiense, Nestegis sandwicensis, Myrsine lessertiana, Wikstroemia* sp., *Dodonaea viscosa, Diplazium sandwichianum, Lysimachia remyi, Microlepia strigosa, Melicope* sp., *Alyxia oliviformis, Pleomele auwahiensis, Psychotria mariniana,* or *Styphelia tameiameiae;* and

(*2*) Elevations between 400 and 1,228 m (1,312 and 4,029 ft).

Family Asteraceae: *Tetramolopium capillare* (pamakani)

Maui D, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Tetramolopium capillare* on Maui. Within this unit, the currently known primary constituent elements of critical

habitat are the habitat components provided by:

(*1*) Rocky substrates in *Heteropogon contortus* lowland dry forest and containing one or more of the following associated native plant species: *Dodonaea viscosa,* or *Myoporum sandwicense;* or in *Metrosideros polymorpha-Styphelia tameiameiae* montane mesic or wet shrubland and wet cliff faces and containing one or more of the following associated plant species: *Metrosideros polymorpha, Styphelia tameiameiae,* or *Dodonaea viscosa;* and

(*2*) Elevations between 131 and 1,432 m (430 and 4,698 ft).

Family Asteraceae: *Tetramolopium remyi* (NCN)

Maui D, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Tetramolopium remyi* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry, exposed ridges or flats in lowland dry shrubland and containing one or more of the following associated native plant species: *Dodonaea viscosa, Heteropogon contortus, Bidens mauiensis, Bidens menziesii, Eragrostis atropioides, Lipochaeta heterophylla,* or *Waltheria indica;* and

(*2*) Elevations between 52 and 550 m (171 and 1,804 ft).

Family Campanulaceae: *Brighamia rockii* (pua ala)

Maui C and G, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Brighamia rockii* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep sea cliffs, often within the spray zone, in coastal dry to mesic forests and shrublands and containing one or more of the following associated plant species: *Psydrax odorata, Diospyros sandwicensis, Osteomeles anthyllidifolia,* or *Scaevola sericea;* and

(*2*) Elevations between 0 and 195 m (0 and 640 ft).

Family Campanulaceae: *Clermontia lindseyana* **(haha)**

Maui H and I, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Clermontia lindseyana* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) *Acacia koa* mesic forest containing one or more of the following associated native plant species: *Cyrtandra* spp., native fern species, *Ilex anomala, Coprosma* sp., or *Myrsine* sp.; and

(*2*) Elevations between 1,142 and 1,870 m (3,747 and 6,134 ft).

Family Campanulaceae: *Clermontia oblongifolia* ssp. *mauiensis* (oha wai)

Maui A, B, and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) The sides of ridges and tops of ridges in *Metrosideros polymorpha*-dominated montane wet forest and containing one or more of the following associated native plant species: *Dicranopteris linearis, Ilex anomala, Myrsine* sp., *Cheirodendron* sp., *Coprosma* sp., *Clermontia* sp., *Hedyotis* sp., or *Melicope;* and

(*2*) Elevations between 414 and 1,764 m (1,358 and 5,787 ft).

Family Campanulaceae: *Clermontia samuelii* (oha wai)

Maui J, K, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Clermontia samuelii* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Wet *Metrosideros polymorpha* and *Metrosideros polymorpha-Dicranopteris linearis* forest or wet *Metrosideros polymorpha* and *Metrosideros polymorpha-Cheirodendron trigynum* forest containing one or more of the following associated native plant species: *Tetraplasandra oahuensis, Hedyotis terminalis, Hedyotis hillebrandii, Broussaisia arguta, Cibotium* sp., *Dubautia* sp., *Psychotria mariniana, Melicope clusiifolia, Diplazium sandwichianum, Peperomia obovatilimba, Adenophorus tamariscinus, Vaccinium* spp., *Carex alligata, Melicope* spp., or *Cheirodendron trigynum, Hedyotis hillebrandii, Cibotium* spp., *Broussaisia arguta, Diplazium sandwichianum, Rubus hawaiiensis, Clermontia arborescens* ssp. *waihiae, Dubautia* sp., *Clermontia* sp., *Hedyotis* sp., *Vaccinium* spp., *Carex alligata,* or *Melicope* spp.; and

(*2*) Elevations between 723 and 2,244 m (2,372 and 7,362 ft).

Family Campanulaceae: *Cyanea copelandii* ssp. *haleakalaensis* (haha)

Maui K and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Stream banks or wet scree slopes or forest understory in montane wet or mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Cibotium* sp., *Perrottetia sandwicensis, Psychotria hawaiiensis, Broussaisia arguta,* or *Hedyotis acuminata;* and

(*2*) Elevations between 616 and 1,411 m (2,021 and 4,630 ft).

Family Campanulaceae: *Cyanea glabra* (haha)

Maui A, K, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea glabra* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Soil and rock stream banks in wet lowland forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Xylosma hawaiiense, Dodonea viscosa, Psychotria* sp., *Pipturis albidus, Touchardia latifolia, Boehmeria grandis, Clermontia kakeana, Cyanea elliptica, Perrottetia sandwicensis, Coprosma* sp., *Cibotium* sp., *Dubautia plantaginea, Cheirodendron trigynum, Thelypteris cyatheoides, Diplazium* sp., or *Sadleria* sp.; and

(*2*) Elevations between 413 and 1,572 m (1,355 and 5,156 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (haha)

Maui D, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Rocky or steep slopes of stream banks in wet forest gulch bottoms often dominated by *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Antidesma* sp., *Bobea* sp., *Myrsine* sp., *Nestegis sandwicensis, Psychotria* sp., or *Xylosma* sp.; and

(*2*) Elevations between 312 and 1,617 m (1,024 and 5,305 ft).

Family Campanulaceae: *Cyanea hamatiflora* ssp. *hamatiflora* (haha)

Maui K and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Montane wet forest dominated by *Metrosideros polymorpha,* with a *Cibotium* sp. and/or native shrub understory or closed *Acacia koa-Metrosideros polymorpha* wet forest containing one or more of the following associated native plant species: *Dicranopteris linearis, Cheirodendron trigynum, Broussaisia arguta, Cyanea aculeatiflora, Cyanea kunthiana, Vaccinium* sp., *Melicope* sp., *Athyrium microphyllum, Diplazium sandwichianum* or *Myrsine* sp.; and

(*2*) Elevations between 767 and 1,553 m (2,515 and 5,095 ft).

Family Campanulaceae: *Cyanea lobata* (haha)

Maui A, B, and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea lobata* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep stream banks in deep shade in wet forest and containing one or more of the following associated native plant species: *Touchardia latifolia, Morinda trimera, Metrosideros polymorpha, Clermontia kakeana, Cyrtandra* spp., *Xylosma* sp., *Psychotria* sp., *Antidesma* sp., *Pipturus albidus, Peperomia* sp., *Touchardia latifolia, Freycinetia arborea, Pleomele* sp., *Athyrium* sp.; and

(*2*) Elevations between 204 and 1,531 m (669 and 5,020 ft).

Family Campanulaceae: *Cyanea mceldowneyi* (haha)

Maui L, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cyanea mceldowneyi* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Montane wet and mesic forest with mixed *Metrosideros polymorpha-Acacia koa* and containing one or more of the following associated native plant species: *Melicope clusiifolia, Hedyotis* sp., *Clermontia arborescens, Diplazium sandwichianum, Broussaisia arguta, Cibotium* sp., *Cyrtandra* sp., *Dicranopteris linearis,* or *Cheirodendron trigynum;* and

(*2*) Elevations between 779 and 1,357 m (2,555 and 4,453 ft).

Family Caryophyllaceae: *Schiedea haleakalensis* (NCN)

Maui H and J, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Schiedea haleakalensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Rock cracks on sheer cliffs adjacent to barren lava and subalpine shrublands and grasslands with cinder, weathered volcanic ash, or bare lava substrate with little or no soil development and periodic freezing temperatures and containing one or more of the following associated native plant species: *Artemisia mauiensis, Bidens micrantha, Dubautia menziesii, Styphelia tameiameiae, Vaccinium reticulatum,* or *Viola chamissoniana;* and

(*2*) Elevations between 1,678 and 2,434 m (5,505 and 7,986 ft).

Family Convolvulaceae: *Bonamia menziesii* (NCN)

Maui E and H, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Bonamia menziesii* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Aa lava in mixed open dry forest or *Erythrina sandwicensis* lowland dry forest, or in mesic mixed Metrosideros polymorpha forest and containing one or more of the following associated native plant species: *Nestegis sandwicensis, Pleomele auwahiensis, Dodonaea viscosa, Alyxia oliviformis, Diospyros sandwicensis, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum, Xylosma hawaiiensis, Nothocestrum latifolium, Pouteria sandwicensis, Achyranthes splendens, Acacia koaia, Sida fallax, Reynoldsia sandwicensis, Sicyos* sp., *Lipochaeta rockii, Nototrichium* sp., or *Myoporum sandwicense;* and

(*2*) Elevations between 184 and 906 m (604 and 2,971 ft).

Family Cyperaceae: *Mariscus pennatiformis* (NCN)

Maui G, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Mariscus pennatiformis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Cliffs with brown soil and talus within reach of ocean spray in *Pandanus tectorius* coastal wet forests and containing one or more of the following associated native plant species: *Sadleria pallida, Lysimachia mauritiana, Cyperus laevigatus, Eragrostis* spp., or *Ipomoea* sp.; and

(*2*) Elevations between 0 and 188 m (0 and 615 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Maui H, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Flueggea neowawraea* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry or mesic forest containing one or more of the following associated native plant species: *Alectryon macrococcus, Bobea timonioides, Charpentiera* sp., *Myrsine lanaiensis, Tetraplasandra* sp., *Diplazium sandwichianum, Nesoluma polynesicum, Diospyros* sp., *Antidesma pulvinatum, Psydrax odorata, Nestegis sandwicensis, Rauvolfia sandwicensis, Pleomele* sp., *Pouteria sandwicensis,* or *Pleomele auwahiensis;* and

(*2*) Elevations between 633 and 971 m (2,078 and 3,186 ft).

Family Fabaceae: *Kanaloa kahoolawensis* (kohe malama malama o Kanaloa)

Kahoolawe A and B, identified in the legal description in (a)(1)(I)(D), constitute critical habitat for *Kanaloa kahoolawensis* on Kahoolawe. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep, rocky talus slopes in mixed coastal shrubland and containing one or more of the following associated native plants: *Sida fallax, Senna gaudichaudii, Bidens mauiensis, Lipochaeta lavarum, Portulaca molokiniensis,* or *Capparis sandwichiana;* and

(*2*) Elevations between 45 to 60 m (150 to 200 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

(*1*) Maui C and H, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, and Kahoolawe A and B, identified in the legal description in paragraph (a)(1)(I)(D) of this section, constitute

critical habitat for *Sesbania tomentosa* on Maui and Kahoolawe, respectively. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*i*) Windswept slopes, sea cliffs, and cinder cones in *Scaevola sericea* coastal dry shrublands and containing one or more of the following associated native plant species: *Lipochaeta integrifolia, Jacquemontia ovalifolia* ssp. *sandwicensis, Sida fallax, Diospyros sandwicensis, Bidens* sp. and stunted *Dodonaea viscosa;* and

(*ii*) Elevations between 0 and 608 m (0 and 1,993 ft).

(*2*) Kahoolawe A and B, identified in the legal description in paragraph (a)(1)(I)(D) of this section, constitute critical habitat for *Sesbania tomentosa* on Kahoolawe. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*i*) Windswept slopes, sea cliffs, and cinder cones in *Scaevola sericea* coastal dry shrublands and containing one or more of the following associated native plant species: *Lipochaeta integrifolia, Jacquemontia ovalifolia* ssp. *sandwicensis, Sida fallax, Diospyros sandwicensis, Bidens* sp. and stunted *Dodonaea viscosa;* and

(*ii*) Elevations between 0 and 118 m (0 and 387 ft).

Family Fabaceae: *Vigna o-wahuensis* (NCN)

(*1*) Maui F, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Vigna o-wahuensis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*i*) Dry or mesic grassland or shrubland containing one or more of the following associated plant species: *Sida fallax, Dodonaea viscosa,* or *Chamaesyce* sp.; and

(*ii*) Elevations between 0 and 50 m (0 and 164 ft).

(*2*) Kahoolawe A, identified in the legal description in paragraph (a)(1)(i)(D) of this section, constitutes critical habitat for *Vigna o-wahuensis* on Kahoolawe. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*i*) Dry or mesic grassland or shrubland containing one or more of the following associated plant species: *Sida fallax, Dodonaea viscosa,* or *Chamaesyce* sp.; and

(*ii*) Elevations between 0 and 50 m (0 and 164 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

Maui C, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Centaurium sebaeoides* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Volcanic or clay soils or cliffs in windward coastal areas and containing one or more of the following associated native plant species: *Panicum torridum, Lysimachia mauritiana, Schiedea globosa, Lipochaeta integrifolia, Bidens mauiensis, Scaevola sericea,* or *Lycium sandwicense;* and

(*2*) Elevations between 0 and 194 m (0 and 636 ft).

Family Geraniaceae: *Geranium arboreum* (nohoanu)

Maui H and I, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Geranium arboreum* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep, damp and shaded narrow canyons and gulches, steep banks, and intermittent streams in *Sophora chrysophylla* subalpine dry shrubland or *Metrosideros polymorpha* montane forest and containing one or more of the following associated native plant species: *Vaccinium reticulatum, Dodonaea viscosa, Styphelia tameiameiae, Rubus hawaiiensis,* or *Dryopteris wallichiana;* and

(*2*) Elevations between 1,451 and 2,184 m (4,760 and 7,164 ft).

Family Geraniaceae: *Geranium multiflorum* (nohoanu)

Maui units H, I, J, K, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Geranium multiflorum* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Styphelia tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands containing one or more of the following associated native plant species: *Coprosma montana, Dryopteris glabra, Dryopteris wallichiana, Rubus hawaiiensis, Vaccinium* sp., *Metrosideros polymorpha, Hedyotis* sp., *Styphelia tameiameiae* or *Sadleria cyatheoides;* and

(*2*) Elevations between 1,499 and 2,710 m (4,918 and 8,890 ft).

Family Gesneriaceae: *Cyrtandra munroi* (haiwale)

Maui A, B, and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyrtandra munroi* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Rich, moist to wet, moderately steep talus slopes in lowland wet *Metrosideros polymorpha* forest and containing one or more of the following associated native plant species: *Diospyros* sp., *Strongylodon ruber, Hedyotis acuminata, Clermontia* sp., *Alyxia oliviformis, Bobea* sp., *Coprosma* sp., *Freycinetia arborea, Melicope* sp., *Myrsine* sp., *Perrottetia sandwicensis, Pipturus* sp., *Pittosporum* sp., *Pouteria sandwicensis, Psychotria* sp., *Sadleria* sp., *Scaevola* sp., *Xylosma* sp., *Sicyos* sp., *Zanthoxylum kauense,* or other *Cyrtandra* spp.; and

(*2*) Elevations between 390 and 1,108 m (1,280 and 3,635 ft).

Family Lamiaceae: *Phyllostegia mannii* (NCN)

Maui L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Phyllostegia mannii* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gentle slopes and the steep sides of gulches in mesic to wet forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Cheirodendron trigynum, Melicope* spp., *Alyxia oliviformis, Diplazium sandwichianum, Myrsine lessertiana,* or *Dicranopteris linearis;* and

(*2*) Elevations between 1,069 and 1,615 m (3,506 and 5,297 ft).

Family Lamiaceae: *Phyllostegia mollis* (NCN)

Maui H, I, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for Phyllostegia mollis on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep slopes and gulches in mesic forest dominated by *Metrosideros polymorpha* and/or *Acacia koa* and containing one or more of the following

associated native plant species: *Cheirodendron trigynum, Melicope* spp., *Diplazium sandwichianum, Myrsine lessertiana,* or *Alyxia oliviformis;* and

(*2*) Elevations between 1,144 and 1,970 m (3,754 and 6,463 ft).

Family Malvaceae: *Hibiscus brackenridgei* (mao hau hele)

(*1*) Maui D and E, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Hibiscus brackenridgei* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*i*) Lowland dry forest sometimes with *Erythrina sandwicensis* as the dominant tree containing one or more of the following associated native plant species: *Myoporum sandwicense, Chenopodium* sp., *Achyranthes* sp., *Nototrichium* sp., *Diospyros* sp., *Chamaesyce celastroides* var. *lorifolia, Dodonaea viscosa, Psydrax odorata, Schiedea salicaria, Lipochaeta lavarum,* annual *Panicum* spp., or *Sida fallax;* and

(*ii*) Elevations between 43 and 610 m (141 and 2,001 ft).

(*2*) Kahoolawe A, identified in the legal description in paragraph (a)(1)(I)(D) of this section, constitutes critical habitat for *Hibiscus brackenridgei* on Kahoolawe. Within this unit, the currently known primary constituent elements of critical habitat for *Hibiscus brackenridgei* on Kahaoolawe are the habitat components provided by:

(*i*) Lowland dry forest sometimes with *Erythrina sandwicensis* as the dominant tree containing one or more of the following associated native plant species: *Myoporum sandwicense, Chenopodium* sp., *Achyranthes* sp., *Nototrichium* sp., *Diospyros* sp., *Chamaesyce celastroides* var. *lorifolia, Dodonaea viscosa, Psydrax odorata, Schiedea salicaria, Lipochaeta lavarum,* annual *Panicum* spp., or *Sida fallax;* and

(*ii*) Elevations between 43 and 337 m (141 and 1,105 ft).

Family Orchidaceae: *Platanthera holochila* (NCN)

Maui A, B, D, J, K, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Platanthera holochila* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *Metrosideros polymorpha* mixed montane bog or mesic scrubby *Metrosideros polymorpha* forest containing one or more of the following associated native plant species: *Cibotium* sp., *Coprosma ernodeoides, Oreobolus furcatus, Styphelia tameiameiae, Wikstroemia* sp., *Scaevola chamissoniana, Sadleria* sp., *Deschampsia nubigena, Metrosideros polymorpha, Luzula hawaiiensis, Sisyrinchium acre, Broussaisia arguta, Clermontia* sp., *Lycopodium cernuum, Dubautia scabra, Polypodium pellucidum, Morelotia gahniiformis,* or *Vaccinium reticulatum;* and

(*2*) Elevations between 536 and 2,314 m (1,759 and 7,592 ft).

Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)

Maui A, B, D, H, I, J, and K, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Plantago princeps* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Basalt cliffs that are windblown with little vegetation in *Metrosideros polymorpha* lowland wet forest, or *Acacia koa-Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha* montane wet shrubland and containing one or more of the following associated native plant species: *Eragrostis variabilis, Hedyotis formosa, Dubautia plantaginea* ssp. *humilis, Pipturus albidus, Perrottetia sandwicensis, Touchardia latifolia, Dryopteris* sp., various other ferns, *Cyanea* spp, and *Melicope ovalis, Bidens micrantha* ssp. *kalealaha, Chamaesyce celastroides, Styphelia tameiameiae,* or *Dubautia menziesii* and

(*2*) Elevations between 281 and 2,539 m (922 and 8,329 ft).

Family Poaceae: *Cenchrus agrimonioides* (kamanomano (=sandbur, agrimony))

Maui H and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cenchrus agrimonioides* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry forest or *Pleomele-Diospyros* forest and containing one or more of the following associated native plant species: *Dodonaea viscosa, Osteomeles anthyllidifolia, Alyxia oliviformis, Santalum ellipticum*; and

(*2*) Elevations between 471 and 1,091 m (1,544 and 3,579 ft).

Family Poaceae: *Ischaemum byrone* (Hilo ischaemum)

Maui G, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Ischaemum byrone* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland and containing one or more of the following associated native plant species: *Bidens* sp., *Fimbristylis cymosa*, or *Scaevola sericea*; and

(*2*) Elevations between 0 and 190 m (0 and 623 ft).

Family Primulaceae: *Lysimachia lydgatei* (NCN)

Maui D, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Lysimachia lydgatei* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis* dominated wet to mesic shrubland or *Metrosideros polymorpha-Cheirodendron* sp. montane forest and containing one or more of the following associated native plant species: *Lycopodium* sp., *Ilex anomala, Dodonaea viscosa, Vaccinium* sp., *Eurya* sp., *Styphelia tameiameiae, Coprosma* sp., *Ochna* sp., *Astelia* sp., *Broussaisia arguta* or mat ferns; and

(*2*) Elevations between 829 and 1,432 m (2,720 and 4,698 ft).

Family Rhamnaceae: *Colubrina oppositifolia* (kauila)

Maui A and H, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Colubrina oppositifolia* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Lowland dry and mesic forests dominated by *Diospyros sandwicensis* containing one or more of the following associated native plant species: *Dodonaea viscosa, Canavalia* sp., *Wikstroemia* sp., *Psydrax odorata, Pleomele auwahiensis, Freycinetia arborea, Metrosideros polymorpha, Microlepia strigosa, Bidens micrantha* spp. *micrantha*, or *Reynoldsia sandwicensis*; and

(*2*) Elevations between 192 and 929 m (630 and 3,047 ft).

Family Rhamnaceae: *Gouania vitifolia* (NCN)

Maui A and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Gouania vitifolia* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) The sides of ridges and gulches in dry to mesic forests and containing one or more of the following associated native plant species: *Erythrina sandwicensis*, *Dodonea viscosa*, *Hibiscus arnottianus*, *Pipturus albidus*, *Urera glabra*, *Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis*, *Bidens* sp., *Carex meyenii*, or *Diospyros sandwicensis*; and

(*2*) Elevations between 155 and 1,326 m (509 and 4,350 ft).

Family Rubiaceae: *Hedyotis coriacea* (kioele)

Maui D, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Hedyotis coriacea* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep, rocky, slopes in dry lowland *Dodonaea viscosa* dominated shrublands and containing one or more of the following associated native plant species: *Sida fallax*, *Gouania hillebrandii*, *Bidens menziesii*, *Lipochaeta lavarum*, *Myoporum sandwicense*, or *Schiedea menziesii*; and

(*2*) Elevations between 110 and 937 m (361 and 3,074 ft).

Family Rubiaceae: *Hedyotis mannii* (pilo)

Maui A and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Hedyotis mannii* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Basalt cliffs along stream banks in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest and containing one or more of the following associated native plant species: *Machaerina* sp., *Carex meyenii*, *Phyllostegia* sp., *Hedyotis acuminata*, *Cyrtandra platyphylla*, *Cyanea* sp., *Psychotria* sp., *Pipturus albidus*, *Boehmeria grandis*, *Urera glabra*, *Touchardia latifolia*, *Cyrtandra grayi*, *Cyrtandra hawaiensis*, or *Isachne distichophylla*; and

(*2*) Elevation between 340 and 1,593 m (1,115 and 5,226 ft).

Family Rutaceae: *Melicope adscendens* (alani)

Maui H, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope adscendens* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Aa lava with pockets of soil in *Nestegis sandwicensis-Pleomele auwahiensis-Dodonaea viscosa* lowland mesic forest or open dry forest and containing one or more of the following associated native plant species: *Osteomeles anthyllidifolia*, *Alphitonia ponderosa*, *Chamaesyce celastroides* var. *lorifolia*, *Santalum ellipticum*, *Pouteria sandwicensis*, *Styphelia tameiameiae* or *Xylosma hawaiiensis*; and

(*2*) Elevations between 761 and 1,209 m (2,497 and 3,967 ft).

Family Rutaceae: *Melicope balloui* (alani)

Maui K and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Melicope balloui* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Mesic to wet forest and containing one or more of the following associated native plant species: *Acacia koa*, *Cibotium chamissoi*, *Cibotium glaucum*, *Diplazium sandwichianum*, *Melicope clusiifolia*, *Metrosideros polymorpha*, or *Sadleria pallida*; and

(*2*) Elevations between 781 and 1,596 m (2,561 and 5,235 ft).

Family Rutaceae: *Melicope knudsenii* (alani)

Maui H, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope knudsenii* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Forested flats or talus slopes in *Nestegis-Pleomele* mixed open dry forests and containing one or more of the following associated native plant species: *Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum,* or *Xylosma hawaiiensis;* and

(*2*) Elevations between 648 and 1,331 m (2,125 and 4,367 ft).

Family Rutaceae: *Melicope mucronulata* (alani)

Maui H, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope mucronulata* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gentle south-facing slopes in lowland dry to mesic forest and containing one or more of the following associated species: *Pleomele auwahiensis, Dodonea viscosa, Nestegis sandwicensis, Pouteria sandwicensis, Antidesma pulvinatum, Streblus pendulinus, or Melicope hawaiensis;* and

(*2*) Elevations between 625 and 1,331 m (2,050 and 4,367 ft).

Family Rutaceae: *Melicope ovalis* (alani)

Maui K, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope ovalis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) *Acacia koa* and *Metrosideros polymorpha*-dominated montane wet forests along streams and containing one or more of the following associated species: *Dicranopteris linearis, Machaerina angustifolia, Labordia hedyosmifolia, Wikstroemia oahuensis, Dubautia plantaginea, Hedyotis hillebrandii, Broussaisia arguta, Cheirodendron trigynum, or Perrottetia sandwicensis;* and

(*2*) Elevations between 753 and 1,537 m (2,469 and 5,042 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (ae)

Maui H and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Zanthoxylum hawaiiense* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forests or *Acacia koa-Pleomele auwahiensis* forest, or montane dry forest containing one or more of the following associated native species: *Metrosideros polymorpha, Diospyros sandwicensis, Pisonia* sp., *Xylosma hawaiiensis, Santalum ellipticum, Alphitonia ponderosa, Osteomeles anthyllidifolia, Alectryon macrococcus, Charpentiera* sp.,

Melicope sp., *Dodonaea viscosa, Streblus pendulinus, Myrsine lanaiensis,* or *Sophora chrysophylla;* and

(*2*) Elevations between 882 and 1,540 m (2,894 and 5,051 ft).

Family Sapindaceae: *Alectryon macrococcus* (mahoe)

Maui A, H, K, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Alectryon macrococcus* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Mesic to wetter mesic and upper dryland forest containing one or more of the following associated native plant species: *Alphitonia ponderosa, Antidesma platyphylla, Antidesma pulvinatum, Bobea sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Osteomeles anthyllidifolia, Pittosporum confertiflorum, Pittosporum glabrum, Pouteria sandwicensis, Santalum ellipticum, Streblus pendulinus, Xylosma* spp., and *Xylosma hawaiiensis;* and

(*2*) Elevations between 333 and 3,562 m (1,092 and 3,337 ft).

Family Urticaceae: *Neraudia sericea* (NCN)

Maui D and H, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for Neraudia sericea on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland or forest or *Acacia koa* forest containing one or more of the following associated native plant species: *Urera glabra, Cyrtandra oxybapha, Cyrtandra* spp., *Sida fallax, Diospyros* sp., *Bobea* sp., *Coprosma* sp., or *Hedyotis* sp.; and

(*2*) Elevations between 198 and 1,658 m (650 and 5,439 ft).

Family Violaceae: *Isodendrion pyrifolium* (aupaka)

Maui D, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Isodendrion pyrifolium* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry shrubland containing one or more of the following associated native plant taxa: *Psydrax odorata, Capparis sandwichiana, Dodonaea viscosa,* or *Myoporum sandwicene;* and

(*2*) Elevations between 54 and 557 m (177 and 1,827 ft).

(B) Ferns and Allies.

Family Adiantaceae: *Pteris lidgatei* (NCN)

Maui A, B, and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Pteris lidgatei* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep stream banks in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest and containing one or more of the following native plant species: *Cibotium chamissoi, Dicranopteris linearis, Elaphoglossum crassifolium, Sadleria squarrosa, Thelypteris cyatheoides,* or *Sphenomeris chusana;* and

(*2*) Elevations between 201 and 1,717 m (659 and 5,633 ft).

Family Aspleniaceae: *Asplenium fragile* var. *insulare* (NCN)

Maui H, I, J, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Asplenium fragile* var. *insulare* on Maui. Within these units, the primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Streamside hollows and grottos in gulches that occur in mesic to dry subalpine shrubland dominated by *Styphelia tameiameiae* and *Sadleria cyatheoides,* with scattered *Metrosideros polymorpha* and containing one or more of the following native plant species: *Pteris cretica, Grammitis hookeri,* or *Dryopteris wallichiana;* and

(*2*) Elevations between 1,682 and 2,407 m (5,518 and 7,896 ft).

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Maui A, B, and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Ctenitis squamigera* on Maui. Within these units, the primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Forest understory in *Metrosideros polymorpha* montane wet forest, mesic forest, or diverse mesic forest and containing one or more of the following native plant species: *Alyxia oliviformis, Freycinetia arborea, Coprosma* sp., *Pleomele* sp., *Sadleria* sp., *Doodia* sp., *Pittosporum* sp., *Dryopteris* sp., *Bobea* sp., *Antidesma* sp., *Peperomia* sp., *Dicranopteris linearis, Schiedea pubescens* var. *pubescens, Hibiscus kokio* ssp. *kokio, Hedyotis terminalis, Pritchardia* sp., *Remya mauiensis, Canavalia* sp. *Myrsine* sp., *Psychotria* sp., or *Xylosma* sp.; and

(*2*) Elevations between 74 and 1,593 m (243 and 5,226 ft).

Family Aspleniaceae: *Diellia erecta* (NCN)

Maui D, H, and I, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Diellia erecta* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep slopes or gulch sides in deep shade in *Acacia koa-Metrosideros polymorpha* low- to mid-elevation mesic forest and containing one or more of the following associated native plant species: *Styphelia tameiameiae, Melicope* sp., *Coprosma* sp., *Dodonaea viscosa, Dryopteris unidentata, Myrsine* sp., *Psychotria* sp. or *Osteomeles anthyllidifolia;* and

(*2*) Elevations between 338 and 1,744 m (1,109 and 5,722 ft).

Family Aspleniaceae: *Diplazium molokaiense* (NCN)

Maui B, D, H, I, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Diplazium molokaiense* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Water courses often in proximity to waterfalls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest; and

(*2*) Elevations between 273 and 1,917 m (896 and 6,289 ft).

Family Lycopodiaceae: *Phlegmariurus mannii* (wawaeiole)

Maui A, B, D, H, I, K, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Phlegmariurus mannii* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) An epiphyte on *Metrosideros polymorpha, Dodonaea viscosa,* and *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *Metrosideros polymorpha-Acacia koa* forests or wet montane *Metrosideros polymorpha-Acacia koa* forests and containing one or more of the following associated native plant

species: *Thelypteris* sp., *Athyrium* sp., *Styphelia tameiameiae, Cyanea* sp., *Machaerina* sp., *Cyrtandra* sp., *Sadleria* sp., *Vaccinium* sp., *Astelia menziesii, Coprosma* sp., *Cheirodendron trigynum, Ilex anomala,* or *Myrsine* sp.; and

(*2*) Elevations from 446 and 1,688 m (1,464 and 5,539 ft).

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Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Islands of Maui and Kahoolawe, Hawaii; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

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Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Islands of Maui and Kahoolawe, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule and notice of determinations of whether designation of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose critical habitat for 61 of the 70 species known historically from the islands of Maui and Kahoolawe that are listed under the Endangered Species Act of 1973, as amended.

We propose critical habitat designations for 61 species within 13 critical habitat units totaling approximately 51,208 hectares (ha) (126,531 acres (ac)) on the island of Maui, and within 2 critical habitat units totaling approximately 714 ha (1,763 ac) on the island of Kahoolawe.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they carry out, fund, or authorize do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designations. We may revise or further refine this rule, including critical habitat boundaries, prior to final designation based on habitat and plant surveys, public comment on the revised proposed critical habitat rule, and new scientific and commercial information.

DATES: We will accept comments until June 3, 2002. Public hearing requests must be received by May 20, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section) (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are 70 plant species that, at the time of listing, were reported from the islands of Maui and Kahoolawe (Table 1). Seventeen of these species are endemic to the islands of Maui and/or Kahoolawe, while 53 species are reported from one or more other islands, as well as Maui and/or Kahoolawe.

We originally determined that designation of critical habitat was prudent for 37 plants from the islands of Maui and Kahoolawe on December 18, 2000 (65 FR 7919). In a previous proposal, published on November 7, 2000 (65 FR 66808), we determined that designation of critical habitat was prudent for 11 plants that are reported from Maui and Kahoolawe as well as from Kauai and Niihau. In addition, at the time we listed *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis,* on September 3, 1999 (64 FR 48307), we determined that designation of critical habitat was prudent for these six taxa from Maui and Kahoolawe. No change is made to these 54 prudency determinations in this revised proposal, and they are hereby incorporated by reference (64 FR 48307; 65 FR 66808; 65 FR 79192).

In the December 18, 2000 proposed rule, we determined that critical habitat was not prudent for *Acaena exigua,* a species known only from Kauai and Maui, because it had not been seen recently in the wild, and no viable genetic material of this species was known to exist. No change is made here to the December 18, 2000, prudency determination for this species and it is hereby incorporated by reference (65 FR 79192).

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 70 SPECIES FROM MAUI AND KAHOOLAWE

Species (common name)	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Isles, kahoolawe Niihau
Acaena exigua (liliwai)	H				H		
Adenophorus periens	C	C	C	R	H	C	
Alectryon macrococcus (mahoe)	C	C	C		C		
Argyroxiphium sandwicense ssp. *macrocephalum* (ahinahina)					C		
Asplenium fragile var. *insulare* (NCN*)					C	C	
Bidens micrantha ssp. *kalealaha* (kookoolau)				H	C		
Bonamia menziesii (NCN)	C	C	H	C	C	C	
Brighamia rockii (pua ala)			C	H	H		
Cenchrus agrimonioides (kamanomano)		C		H	C	R	NW Isles (H).
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Clermontia lindseyana (oha wai)					C	C	
Clermontia oblongifolia ssp. *mauiensis* (oha wai)				C	C		
Clermontia peleana (oha wai)					H	C	
Clermontia samuelii (oha wai)					C		
Colubrina oppositifolia (kauila)		C			C	C	
Ctenitis squamigera (pauoa)	H	C	C	C	C	H	
Cyanea copelandii ssp. *haleakalaensis* (haha)					C		

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 70 SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species (common name)	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Isles, kahoolawe Niihau
Cyanea glabra (haha)					C		
Cyanea grimesiana ssp. *grimesiana* (haha)		C	C	C	C		
Cyanea hamatiflora ssp. *hamatiflora* (haha)					C		
Cyanea lobata (haha)				H	C		
Cyanea mceldowneyi (haha)					C		
Cyrtandra munroi (haiwale)				C	C		
Delissea undulata (NCN)	C				H	C	Ni (H).
Diellia erecta (Asplenium-leaved diellia)	H	H	C	H	C	C	
Diplazium molokaiense (NCN)	H	H	H	H	C		
Dubautia plantaginea ssp. *humilis* (naenae)					C		
Flueggea neowawraea (mehamehame)	C	C	H		C	C	
Geranium arboreum (nohoanu)					C		
Geranium multiflorum (nohoanu)					C		
Gouania vitifolia (NCN)		C			H	C	
Hedyotis coriacea (kioele)		H			C	C	
Hedyotis mannii (pilo)			C	C	C		
Hesperomannia arborescens (NCN)		C	C	H	C		
Hesperomannia arbuscula (NCN)		C			C		
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka (R).
Ischaemum byrone (Hilo ischaemum)	C	H	C		C	C	
Isodendrion pyrifolium (wahine noho kula)		H	H	H	H	C	Ni (H).
Kanaloa kahoolawensis (kohe malama malama o Kanaloa) .							Ka (C).
Lipochaeta kamolensis (nehe)					C		
Lysimachia lydgatei (NCN)		H			C		
Mariscus pennatiformis (NCN)	H	H			C	H	NW Isles (C).
Melicope adscendens (alani)					C		
Melicope balloui (alani)					C		
Melicope knudsenii (alani)	C				C		
Melicope mucronulata (alani)			C		C		
Melicope ovalis (alani)					C		
Neraudia sericea (NCN)			C	H	C		Ka (H).
Nototrichium humile (kului)		C			H		
Peucedanum sandwicense (makou)	C	C	C		C		
Phlegmariurus mannii (wawaeiole)	H				C	C	
Phyllostegia mannii (NCN)			C		H		
Phyllostegia mollis (NCN)		C	H		C		
Phyllostegia parviflora (NCN)		C			H	H	
Plantago princeps (Laukahi kuahiwi)	C	C	C		C	H	
Platanthera holochila (NCN)	C	H	C		C		
Pteris lidgatei (NCN)		C	H		C		
Remya mauiensis (NCN)					C		
Sanicula purpurea (NCN)		C			C		
Schiedea haleakalensis (NCN)					C		
Schiedea hookeri (NCN)		C			H		
Schiedea nuttallii (NCN)	C	C	C		R		
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Ni (H), Ka (C), NW Isles (C).
Solanum incompletum (popolo ku mai)	H		H	H	H	C	
Spermolepis hawaiiensis (NCN)	C	C	C	C	C	C	
Tetramolopium arenarium (NCN)					H	C	
Tetramolopium capillare (pamakani)					C		
Tetramolopium remyi (NCN)				C	H		
Vigna o-wahuensis (NCN)		H	C	C	C	C	Ni (H), Ka (C).
Zanthoxylum hawaiiense (ae)	C		C	H	C	C	

KEY
C (Current)—population last observed within the past 30 years
H (Historical)—population not seen for more than 30 years
R (Reported)—reported from undocumented observations
* NCN—no common name

In the December 18, 2000, proposal we proposed designation of critical habitat for 50 plants from the islands of Maui and Kahoolawe. These species are: *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera,* Cyanea *copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp.

humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Vigna o-wahuensis, and *Zanthoxylum hawaiiense.* In this proposal we have revised the proposed designations for the 50 plants based on new information received during the comment periods. In addition, we incorporate new information, and address comments and new information received during the comment periods on the December 18, 2000, proposal.

In the December 18, 2000, we did not propose critical habitat for four species (*Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis,* and *Schiedea haleakalensis*) found only in Waikamoi Preserve and Haleakala National Park, on Maui. We determined that these lands did not meet the definition of critical habitat in the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). Due to new information received during the comment periods regarding management considerations or protection at Haleakala National Park, we have reconsidered our earlier finding regarding Haleakala National Park lands and propose designation of critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis,* and *Schiedea haleakalensis* within Haleakala National Park.

In the December 18, 2000, proposal we did not propose designation of critical habitat for 14 species that no longer occur on Maui and Kahoolawe but are reported from one or more other islands. We determined that critical habitat was prudent for eight of these species (*Adenophorus periens, Brighamia rockii, Delissea undulata, Isodendrion pyrifolium, Phyllostegia mannii, Schiedea nuttallii, Solanum incompletum,* and *Tetramolopium remyi*) in other proposed rules published on November 7, 2000 (Kauai), December 27, 2000 (Lanai), December 29, 2000 (Molokai), and January 28, 2002 (Kauai revised proposal). No change is made to these prudency determinations for these eight species in this proposal, and they are hereby incorporated by reference (65 FR 66808; 65 FR 82086; 65 FR 83158; and 67 FR 3940). In this proposal, we propose designation of critical habitat for *Brighamia rockii, Isodendrion pyrifolium, Phyllostegia mannii,* and *Tetramolopium remyi* on the island of Maui, based on new information and information received during the comment periods on the December 18, 2000, proposal. Critical habitat is not proposed for *Adenophorus periens, Delissea undulata, Schiedea nuttallii,* and *Solanum incompletum* on the islands of Maui and Kahoolawe because we have not identified habitat essential to their conservation on these islands.

In this proposal, we determine that critical habitat is prudent for six other species (*Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium*) for which prudency determinations have not been made previously, and that no longer occur on Maui but are reported from one or more other islands. These six plants were listed as endangered species under the Act between 1994 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We determine that designation of critical habitat is prudent for these six species because we believe that such designation would be beneficial to these species. Critical habitat is proposed at this time for *Gouania vitifolia* and *Nototrichium humile* on Maui based on new information and information received during the comment periods on the December 18, 2000, proposal. Critical habitat is not proposed for *Clermontia peleana, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* on the island of Maui because we have not identified habitat essential to their conservation on this island.

In this proposal, we determine that critical habitat is prudent for *Asplenium fragile* var. *insulare,* a species recently rediscovered on Maui and for which a prudency determination has not been made previously. Critical habitat is proposed at this time for *Asplenium fragile* var. *insulare* on Maui based on new information and information received during the comment periods on the December 18, 2000, proposal.

Critical habitat for 61 of the 70 species from the islands of Maui and Kahoolawe is proposed at this time. Critical habitat is not proposed for 8 of the 70 species (*Adenophorus periens, Clermontia peleana, Delissea undulata, Phyllostegia parviflora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum,* and *Tetramolopium arenarium*) that no longer occur on the islands of Maui or Kahoolawe, and for which we have not identified habitat essential to their conservation on the islands of Maui or Kahoolawe. However, proposed critical habitat designations, or nondesignations, for these species will be included in other future Hawaiian plants proposed critical habitat rules (see Table 2).

TABLE 2.—LIST OF PROPOSED RULES IN WHICH CRITICAL HABITAT DESIGNATIONS OR NONDESIGNATIONS WILL BE MADE FOR EIGHT SPECIES FOR WHICH WE ARE UNABLE TO DETERMINE HABITAT THAT IS ESSENTIAL FOR THEIR CONSERVATION ON THE ISLANDS OF MAUI AND KAHOOLAWE.

Species	Proposed rules in which critical habitat designations will be made
Adenophorus periens	Kauai; Molokai; Hawaii; Oahu.
Clermontia peleana	Hawaii.
Delissea undulata	Hawaii.
Phyllostegia parviflora	Oahu.
Schiedea hookeri	Oahu.
Schiedea nuttallii	Kauai; Oahu; Molokai.
Solanum incompletum	Hawaii.
Tetramolopium arenarium	Hawaii.

Critical habitat is not proposed for *Acaena exigua* for which we determined, on December 18, 2000, that critical habitat designation is not prudent because it has not been seen recently in the wild, and no viable genetic material of this species is known to exist. No change is made to this prudency determination here, and it is hereby incorporated by reference (65 FR 79192).

The Islands of Maui and Kahoolawe

Maui, the second largest island in Hawaii at 1,888 square kilometers (km^2) (729 square miles (mi^2)) in area, was formed from the remnants of two large shield volcanoes, the older west Maui volcano (1.3 million years) on the west and the larger, but much younger, Haleakala volcano on the east. Stream erosion has cut deep valleys and ridges into the originally shield-shaped West Maui volcano. The highest point on West Maui is Puu Kukui at 1,764 meters (m) (5,787 feet (ft)) elevation, which has

an average rainfall of 1,020 centimeters (cm) (400 inches (in)) per year, making it the second wettest spot in Hawaii (Department of Geography 1998). Having erupted just 200 years ago, East Maui's Haleakala crater, reaching 3,055 m (10,023 ft) in elevation, has retained its classic shield shape and lacks the diverse vegetation typical of the older and more eroded West Maui mountain. Rainfall on the slopes of Haleakala is about 89 cm (35 in) per year, with its windward (northeastern) slope receiving the most precipitation. However, Haleakala's crater is a dry cinder desert because it is above the level at which precipitation develops, and is sheltered from moisture-laden winds (Gagne and Cuddihy 1999).

The island of Kahoolawe measures about 17.7 kilometers (km) (11 miles (mi)) long by 11.3 km (7 mi) wide, comprising some 11,655 ha (28,800 ac). Located in the lee of Haleakala, the island lies approximately 11 km (6.7 mi) from East Maui. The highest point is the rim of an extinct volcano at 450 m (1,477 ft) above sea level. The estimated annual precipitation is approximately 500 millimeters (mm) (20 in), with most of it falling from November through March. In addition to the low precipitation, Kahoolawe is the windiest of the Hawaiian Islands (Gon *et al.* 1992).

Discussion of Plant Taxa

Species Endemic to Maui and/or Kahoolawe

Argyroxiphium sandwicense ssp. macrocephalum (ahinahina)

Argyroxiphium sandwicense ssp. *macrocephalum,* a long-lived perennial and a member of the aster family (Asteraceae), is called the Haleakala silversword. It is a distinctive, globe-shaped rosette plant with a dense covering of silver hairs. This subspecies is distinguished from *Argyroxiphium sandwicense* ssp. *sandwicense* by the shape and ratio of the dimensions of the inflorescence (flowering part of plant), the number of ray florets per head, and the combination of its longer, three-angled leaves; its silvery leaf hairs, which completely hide the leaf surface; and its longer achenes (Carr 1985, 1999a).

This monocarpic (flowers only once, at the end of its lifetime) plant matures from seed to its final stage in approximately 15–50 years. The plant remains a compact rosette until it sends up an erect, central flowering stalk, sets seed, and dies. Flowering occurs from June to September, with annual numbers of flowering plants varying dramatically from year to year. Reliable counts of flowering plants were made in 1935 (217 flowered) and in 1941 (815 flowered). Numbers recorded flowering in recent years have ranged from zero in 1970 to 6,632 in 1991. The environmental stimulus for synchronous flowering is as yet unknown. An apparent relationship of the 1991 mass flowering event to stratospheric alteration by the eruption of Pinatubo Volcano in the Philippines has been considered. Investigations are underway by R. Pharis of the University of Calgary and L.L. Loope to explore whether enhanced flowering is related to increased UV–B radiation due to temporary reduction of stratospheric ozone. Flying insects, especially native bees, moths, flies, bugs, and wasps, many of which are pollinators, are attracted in large numbers to the giant, aromatic inflorescences. It has been demonstrated that *Argyroxiphium sandwicense* ssp. *macrocephalum* cannot fertilize itself and is reliant on insect pollinators for reproduction. Rarely, hybrids between *A. sandwicense* ssp. *macrocephalum* and *Dubautia menziesii* (naenae) have been observed. Primarily found within Haleakala Crater, especially on Puu o Pele and Puu o Maui cinder cones, these hybrid individuals flower for several years before dying (Loope and Crivellone 1986; Loope and Medeiros, in press; Service 1997; Carr 1985; 57 FR 20772).

Currently, *Argyroxiphium sandwicense* ssp. *macrocephalum* occupies all of its historic range, a 1,000 ha (2,500 ac) area at 2,100–3,000 m (6,890–9,840 ft) elevation in the crater and outer slopes of Haleakala Volcano, within Haleakala National Park, and The Nature Conservancy of Hawaii's (TNCH) Waikamoi Preserve. There are a total of four populations on Federal and privately owned land, with a total of 39,025 to 44,025 individual plants (Loope and Crivellone 1986; TNC 1998; Geographic Decision Systems International (GDSI) 2001; Hawaii Natural Heritage Program (HINHP) Database 2001; Service 1997; 57 FR 20772).

The habitat of this species consists primarily of lava flows and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones and in *Deschampsia nubigena* (hair grass) grasslands at elevations between 1,511 and 3,053 m (4,957 and 10,016 ft). Mean annual precipitation is approximately 75 to 250 cm (29.6 to 98.4 in). The substrate has almost no soil development and is subject to frequent formation of ice at night and extreme heating during cloudless days. This species is found in alpine dry shrubland with native species, including *Agrostis sandwicensis* (bent grass), *Dubautia menziesii, Silene struthioloides* (catchfly), *Styphelia tameiameiae* (pukiawe), *Tetramolopium humile* (pamakani), or *Trisetum glomeratum* (pili uka) (Robert Hobdy, Hawaii Division of Forestry and Wildlife (DOFAW), *et al.*, pers. comm., 2001; Service 1997; 57 FR 20772).

The threats to this species are loss of pollinators due to the Argentine ant (*Iridomyrmex humilis*) and alien yellow jackets (*Vespula pennsylvanica*); native seed-eating and herbivorous insects such as the tephritid fly (*Trupanea cratericola*); limited natural range which makes it vulnerable to extinction due to catastrophic events, such as a natural disaster; competition from the alien plant species *Verbascum thapsus* (mullein); and human impacts (trampling and site degradation). Although goats (*Capra hircus*) and cattle (*Bos taurus*) have been removed from the park, they remain a potential threat (Service 1997; 57 FR 20772).

Clermontia samuelii (oha wai)

Clermontia samuelii, a short-lived perennial in the bellflower family (Campanulaceae), is a terrestrial shrub with elliptical leaves which are sometimes broader at the tips. *Clermontia samuelii* ssp. *hanaensis* is differentiated from *C. samuelii* ssp. *samuelii* by the greenish white to white flowers; longer, narrower leaves with the broadest point near the base of the leaves; and fewer hairs on the lower surface of the leaves. This species is separated from other members of this endemic Hawaiian genus by the size of the flowers and the hypanthium (Lammers 1999; Service 2001).

Little is known about the life history of *Clermontia samuelii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Clermontia samuelii* has been reported from Haleakala and from Keanae Valley on the windward side to Manawainui on the more leeward (southeastern) side of Haleakala. Currently, *Clermontia samuelii* is known from Papanalahoa Point, Kuhiwa Valley, the ridge north of Palike Stream, Kawaipapa Gulch, and Mokulehua Gulch. There is a total of four populations with 309 individual plants on State and Federal lands within Haleakala National Park, Hanawi Natural Area Reserve (NAR), the Hana Forest Reserve, and within the East Maui Watershed Partnership (Medeiros and Loope 1989; Warshauer 1998; 64 FR

48307; GDSI 2001; HINHP Database 2001; Robert Hobdy, DOFAW, *in litt.* 2000; Ken Wood, National Tropical Botanical Garden (NTBG) *in litt.* 2000; Service 2001).

Clermontia samuelii is found at elevations between 723 and 2,244 m (2,372 and 7,362 ft). *Clermontia samuelii* ssp. *hanaensis* is found in wet *Metrosideros polymorpha* (ohia) and *Metrosideros polymorpha-Dicranopteris linearis* (uluhe) forest containing one or more of the following associated native plant species: *Adenophorus tamariscinus* (pendant fern), *Broussaisia arguta* (kanawao), *Carex alligata* (NCN), *Cheirodendron trigynum* (olapa), *Cibotium* spp. (hapuu), *Diplazium sandwichianum* (hoio), *Dubautia* spp. (naenae), *Hedyotis hillebrandii* (manono), *Hedyotis terminalis* (manono), *Melicope clusiifolia* (kolokolo mokihana), *Melicope* spp. (alani), *Peperomia obovatilimba* (ala ala wai nui), *Psychotria mariniana* (kopiko), *Tetraplasandra oahuensis* (ohe ohe), or *Vaccinium* spp. (ohelo). *Clermontia samuelii* ssp. *samuelii* is found in wet *Metrosideros polymorpha* and *M. polymorpha-Cheirodendron trigynum* forest and containing one or more of the following native plant species: *Hedyotis hillebrandii*, *Hedyotis* spp. (NCN), *Cibotium* spp., *Broussaisia arguta*, *Dubautia* spp., *Diplazium sandwichianum*, *Rubus hawaiiensis* (akala), *Clermontia arborescens* ssp. *waihiae* (oha wai), *Clermontia* spp. (oha wai), *Vaccinium* spp., *Carex alligata*, or *Melicope* spp. (Service 2001; K. Wood, *in litt.* 2000; HINHP Database 2001; 64 FR 48307; R. Hobdy *et al.*, pers. comm., 2001).

Threats to *Clermontia samuelii* ssp. *hanaensis* include habitat degradation and destruction by feral pigs (*Sus scrofa*) and competition with alien plant species such as *Tibouchina herbacea* (glorybush), *Paspalum urvillei* (vasey grass), *Paspalum conjugatum* (Hilo grass), *Juncus* spp. (NCN), *Hedychium coronarium* (white ginger), or *Hedychium gardnerianum* (Kahili ginger). In addition, two extremely invasive alien plant species, *Miconia calvescens* (velvet tree) and *Clidemia hirta* (Koster's curse), are found in nearby areas and may invade this habitat if not controlled. The habitat of *C. samuelii* ssp. *samuelii* was extensively damaged by pigs in the past, and pigs are still a major threat to the populations on State owned lands. The population within the National Park has been fenced and pigs have been eradicated. However, due to the large populations of pigs in adjacent areas, the park populations must constantly be monitored to prevent further ingress. Competition with alien plant species such as *Holcus lanatus* (velvet grass) and *Juncus planifolius* (NCN) is a major threat to this subspecies. In addition, rats (mainly black rats (*Rattus rattus*)) and slugs (mainly *Milax gagetes*) are known to eat leaves, stems, and fruits of other members of this genus, and therefore are a potential threat to both subspecies (Service 2001; 64 FR 48307; K. Wood *in litt.* 2000).

Cyanea copelandii ssp. haleakalaensis (haha)

Cyanea copelandii ssp. *haleakalaensis*, a short-lived perennial member of the bellflower family (Campanulaceae), is a vine-like shrub with sprawling stems and tan latex (sap). This subspecies is differentiated from the other subspecies by its shorter elliptical leaves. The species differs from others in this endemic Hawaiian genus by the vine-like stems and the yellowish flowers that appear red due to the covering of hairs (Service 2001; Lammers 1999).

Little is known about the life history of *Cyanea copelandii* ssp. *haleakalaensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Cyanea copelandii* ssp. *haleakalaensis* was reported from the windward side of Haleakala and from Waikamoi to Kipahulu Valley. Currently, this taxon is known from three populations with a total of 204 individuals on Federal, State, and privately owned land within the East Maui Watershed Partnership in Haiku Uka, the ridge above Kuhiwa Valley, and Kipahulu Valley within Haleakala National Park and Hanawi NAR (Lammers 1999; Service 2001; 64 FR 48307; Warshauer 1998; HINHP Database 2001; GDSI 2001).

Cyanea copelandii ssp. *haleakalaensis* is found on stream banks or wet scree (a sloping mass of rocks at the base of a cliff) slopes or forest understory in montane wet or mesic forests dominated by *Acacia koa* (koa) and *Metrosideros polymorpha* at elevations between 616 and 1,411 m (2,021 and 4,630 ft). Associated species include *Broussaisia arguta*, *Cibotium* spp., *Hedyotis acuminata* (au), *Perrottetia sandwicensis* (olomea), and *Psychotria hawaiiensis* (kopiko ula) (Service 2001; 64 FR 48307; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The major threats to this species are habitat degradation and destruction by feral pigs; competition with several alien plant species; rats; slugs; human activities; and potential extinction due to random environmental events due to small population sizes (Service 2001; 64 FR 48307).

Cyanea glabra (haha)

Cyanea glabra, a member of the bellflower family (Campanulaceae), is a short-lived, perennial shrub, with the leaves of juvenile plants deeply pinnately lobed, while those of the adult plants are more or less entire and elliptical. This species is differentiated from others in this endemic Hawaiian genus by the size of the flower and the pinnately-lobed juvenile leaves (Service 2001; Lammers 1999).

Little is known about the life history of *Cyanea glabra.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Cyanea glabra* has been reported from West Maui and on Haleakala, East Maui. Currently, this species is known from a single population of 12 individual plants on privately owned land in Kauaula Valley (64 FR 48307; GDSI 2001; HINHP Database 2001).

Cyanea glabra is found on soil and rock stream banks in wet lowland forests dominated by *Acacia koa* and *Metrosideros polymorpha,* at elevations between 413 and 1,572 m (1,355 and 5,156 ft). Associated native plants include *Xylosma hawaiiense* (maua), *Dodonaea viscosa* (aalii), *Psychotria* spp. (kopiko), *Pipturus albidus* (mamaki), *Touchardia latifolia* (olona), *Boehmeria grandis* (akolea), *Clermontia kakeana* (ohai wai), *Cyanea elliptica* (haha), *Perrottetia sandwicensis, Coprosma* spp. (pilo), *Cibotium* spp., *Dubautia plantaginea* (naenae), *Cheirodendron trigynum, Thelypteris cyatheoides* (palapalaia), *Diplazium* spp. (NCN), and *Sadleria* spp. (amau) (HINHP Database 2001; Joel Lau, Hawaii Natural Heritage Program, pers. comm., 2001; Service 2001; 64 FR 48307; R. Hobdy *et al.,* pers. comm., 2001).

The threats to this species are slugs; habitat degradation and destruction by feral pigs; flooding; competition with several alien plant species; rats; the two-spotted leafhopper (*Saphonia rufofascia*); and extinction caused by random environmental events due to the small number individuals in the only remaining population (Service 2001; 64 FR 48307).

Cyanea hamatiflora ssp. hamatiflora (haha)

Cyanea hamatiflora ssp. *hamatiflora,* a short-lived perennial and member of the bellflower family (Campanulaceae), is a palm-like tree with tan colored latex. This subspecies is differentiated from the other listed subspecies (*C. hamatiflora* ssp. *carlsonii*) by its longer calyx lobes and shorter individual flower stalks. This species is separated from others in this endemic Hawaiian genus by fewer flowers per inflorescence and narrower leaves (Service 2001; Lammers 1999).

Little is known about the life history of *Cyanea hamatiflora* ssp. *hamatiflora.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Cyanea hamatiflora* ssp. *hamatiflora* was known from the windward side of Haleakala, stretching from Puu o Kakae to Manawainui. Currently, this taxon is known from seven populations with a total of 12 individuals within the East Maui Watershed Partnership in Honomanu, Wailuaiki, Kipahulu Valley, Koukouai, and Puu Ahulili on State (Koolau and Kipahulu Forest Reserves), Federal (Haleakala National Park), and privately owned lands (Service 2001; Warshauer 1998; GDSI 2001; HINHP Database 2001; 64 FR 48307).

Typical habitat for this taxon is montane wet forest dominated by *Metrosideros polymorpha,* with a *Cibotium* spp. and/or native shrub understory or closed *Acacia koa-M. polymorpha* wet forest containing one or more of the following associated native plant species: *Dicranopteris linearis, Cheirodendron trigynum, Broussaisia arguta, Cyanea aculeatiflora* (haha), *Cyanea kunthiana* (haha), *Vaccinium* spp., *Melicope* spp., *Athyrium microphyllum* (akolea), *Diplazium sandwichianum,* and *Myrsine* spp. (kolea) at elevations between 767 and 1,553 m (2,515 and 5,095 ft) (Service 2001; 64 FR 48307; HINHP Database 2001; R. Hobdy *et al.,* pers. comm., 2001).

The threats to this species are habitat degradation and destruction by feral pigs; landslides; competition with the alien plant *Ageratina adenophora* (Maui pamakani); rats; and slugs (Service 2001; 64 FR 48307).

Cyanea mceldowneyi (haha)

Cyanea mceldowneyi, a member of the bellflower family (Campanulaceae), is a short-lived, unbranched perennial shrub with rough to prickly stems. This species is distinguished from other species of *Cyanea* by the combination of a densely armed trunk; long (40 mm (1.6 in)), white-colored corollas; and leaf blade size and shape (Service 2001; Lammers 1999).

Little is known about the life history of *Cyanea mceldowneyi.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (57 FR 20772; Service 1997).

Historically, *Cyanea mceldowneyi* was known from rainforest west of Waikamoi to Honomanu on northwestern Haleakala. Currently, this species is known from six populations with a total of 36 individuals on State (Makawao Forest Reserve and Hanawi NAR) and privately owned lands within the East Maui Watershed Partnership at Kahakapao Gulch, Opana Gulch, Waikamoi, Puohokamoa, Makapipi, and the flats above Kuhiwa Valley (Lammers 1999; Warshauer 1998; GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

The habitat of this species is montane wet and mesic forest with mixed *Metrosideros polymorpha-Acacia koa* containing one or more of the following associated native plant species: *Melicope clusiifolia, Hedyotis* spp., *Clermontia arborescens, Diplazium sandwichianum, Broussaisia arguta, Cibotium* spp., *Cyrtandra* spp. (haiwale), *Dicranopteris linearis,* or *Cheirodendron trigynum* at elevations between 779 and 1,357 m (2,555 and 4,453 ft) (Service 1997; 57 FR 20772; R. Hobdy *et al.,* pers. comm., 2001).

The threats to this species are habitat degradation and physical destruction by feral pigs; small number of populations and individuals; human activities; and competition with alien plant species, especially *Setaria palmifolia* (palmgrass) (Service 1997; 57 FR 20772).

Dubautia plantaginea ssp. humilis (naenae)

Dubautia plantaginea ssp. *humilis,* a short-lived perennial of the aster family (Asteraceae), is a dwarf shrub less than 80 cm (30 in) tall with hairless or strigillose (bulbous-based hairs, all pointing in the same direction) stems. This species differs from other Hawaiian members of the genus by the number of nerves in the leaves and by the close resemblance of the leaves to the genus *Plantago.* The subspecies *humilis* differs from the other two subspecies (*D. plantaginea* ssp. *magnifolia* and *Dubautia plantaginea* ssp. *plantaginea*) by having fewer heads per inflorescence, but more florets per head (Service 2001; Carr 1985; Carr 1999b).

Little is known about the life history of *Dubautia plantaginea* ssp. *humilis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Dubautia plantaginea ssp. *humilis* has only been reported from Iao Valley, on West Maui. This population with 60 to 65 individuals occurs on privately owned land (GDSI 2001; HINHP Database 2001; Service 2001; 64 FR 48307).

The typical habitat of the species is wet, barren, steep, rocky, wind-blown cliffs containing one or more of the following associated native plant species: *Metrosideros polymorpha, Pipturus albidus, Eragrostis variabilis* (kawelu), *Carex* spp. (NCN), *Hedyotis formosa* (NCN), *Lysimachia remyi* (kolokolo kuahiwi), *Bidens* spp. (kookoolau), *Pritchardia* spp. (loulu), or *Plantago princeps* (laukahi kuahiwi) and elevations between 266 and 1,593 m (873 and 5,226 ft) (Service 2001; 64 FR 48307; HINHP Database 2001; R. Hobdy *et al.,* pers. comm., 2001).

Threats to *Dubautia plantaginea* ssp. *humilis* include landslides and competition from alien plant species. Random environmental events, such as landslides, are a threat because of the limited number of individuals and populations and their narrow distribution (Service 2001; 64 FR 48307).

Geranium arboreum (nohoanu)

Geranium arboreum, a long-lived perennial and a member of the geranium family (Geraniaceae), is a many branched, spreading, woody shrub about 1.8 to 3.7 m (6 to 12 ft) tall. This species can be distinguished from other *Geranium* species by its red petals with the upper three petals erect and the lower two reflexed, causing the flower to appear curved (Wagner *et al.* 1999).

Geranium arboreum is the only species in its genus that appears to be adapted to bird-pollination. Native honeycreepers appear to be a major pollination vector. *Geranium arboreum* from the southwest area of Haleakala in the Kula Forest Reserve produce seeds that are larger and fuller than seeds from the northwest extension of its distribution. Native honeycreepers are reasonably abundant in both areas. Little else is known about the life history of *Geranium arboreum.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Funk 1982; 1988; Service 1997; 57 FR 20772).

The original range and abundance of the species is unknown, but late 19th and early 20th century collections indicate that it once grew on the southern slopes of Haleakala and that its distribution on the northern slopes extended beyond its presently known range. Currently, there are seven populations totaling 158 individuals, within the East Maui Watershed Partnership on State (Kula and Kahikinui Forest Reserves), private and federally owned or leased (Haleakala National Park) lands. These populations are found in Kahua, Kanahau, Waiohuli, Kaipoioi Gulch, Hapapa Gulch, Keauaiwi Gulch, Kalialinui, and south of Puu Luau and east of Puu Nianiau (Warshauer 1998; HINHP Database 2001; GDSI 2001; Service 1997; 57 FR 20772).

Geranium arboreum grows in steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams in *Sophora chrysophylla* (mamane) subalpine dry shrubland or *Metrosideros polymorpha* montane forest and containing one or more of the following associated native plant species: *Vaccinium reticulatum* (ohelo ai), *Dodonaea viscosa, Styphelia tameiameiae, Rubus hawaiiensis,* or *Dryopteris wallichiana* (io nui) and elevations between 1,451 and 2,184 m (4,760 and 7,164 ft) (Service 1997; 57 FR 20772; R. Hobdy *et al.,* pers. comm., 2001).

The greatest immediate threat to the survival of this species is the encroachment and competition from naturalized, exotic vegetation, chiefly grasses and trees. Soil disturbance, caused by trampling cattle and rooting by feral pigs, also is a major threat as it destroys plants and facilitates the encroachment of competing species of naturalized plants. Other less important threats include browsing by cattle; fires; and pollen from exotic pine trees, which at times of the year completely cover the stigmas of the geraniums, precluding any fertilization by its own species. The small number of individual plants increases the potential for extinction from random environmental events, and the limited gene pool may depress reproductive vigor (Funk 1982, 1988; 57 FR 20772; Service 1997).

Geranium multiflorum (nohoanu)

Geranium multiflorum, a long-lived member of the geranium family (Geraniaceae), is a perennial many-branched shrub 1 to 3 m (3 to 10 ft) tall. Flowers are in clusters of 25 to 50, and have 5 white petals that are 10 to 15 mm (0.4 to 0.6 in) long with purple veins or bases. This species is distinguished from others of the genus by its white, regularly symmetrical flowers and by the shape and pattern of teeth on its leaf margins (Wagner *et al.* 1999).

Little is known about the life history of *Geranium multiflorum.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Geranium multiflorum* was known from Ukulele, Waieleele, and Waianapanapa on East Maui. This species is now known from Federal (Haleakala National Park), State (Hanawi NAR and Koolau Forest Reserve), and private lands within the East Maui Watershed Partnership in Haiku Ula, Kalialinui, Koolau Gap, Koolau Gap near Haiku Ula, between East Waiuaki and Kopiliula Streams, near Puu Alaea along Kalapawili Ridge, Kipahulu Valley, Waiakekeehia, and Haleakala Crater. The eight known populations extend over a distance of about 10.5 by 5.5 km (6.5 by 3.5 mi). Due to the inaccessibility of the populations, and the difficulty in determining the number of individuals (due to the plant's multi-branched form), the total number of individuals of this species is not known; however, it probably does not exceed 3,000 plants (Warshauer 1998; GDSI 2001; Service 1997; 57 FR 20772; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

Geranium multiflorum is found in wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Styphelia tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands containing one or more of the following associated native plant species: *Coprosma montana* (pilo), *Dryopteris glabra* (hohui), *Dryopteris wallichiana, Rubus hawaiiensis, Vaccinium* spp., *Hedyotis spp.,* or *Sadleria cyatheoides* (amau) at elevations between 1,499 and 2,710 m (4,918 and 8,890 ft) (Wagner *et al.* 1999; HINHP Database 2001; Service 1997; 57 FR 20772).

The major threat to *Geranium multiflorum* is competition with encroaching alien plant species, particularly *Rubus argutus* (prickly Florida blackberry). A potential threat is habitat destruction by feral pigs and goats in unfenced areas (Service 1997; 57 FR 20772).

Kanaloa kahoolawensis (kohe malama malama o kanaloa)

Kanaloa kahoolawensis, a short-lived perennial and a member of the legume family (Fabaceae), is a densely branched shrub 0.75 to 1 m (2.5 to 3.5 ft) tall. The leaves are divided into three pairs of leaflets, with a leaf nectary (nectar-bearing gland) at the joint between each pair of leaflets. One to three inflorescences are found in the leaf axils (joint between leaf and stem), developing with the flush of new leaves. The inflorescence is a globose head with 20 to 54 white flowers. Up to four fruits develop in each flowering head. The fruit is egg-shaped to subcircular, compressed, hairy at the base, and open along two sides. One heart-shaped, brown seed, 1.0 to 1.4 by 1.1 to 1.6 cm (0.4 to 0.5 by 0.4 to 0.6 in), is found in each fruit. There is no other species of legume in Hawaii that bears any resemblance to this species, which is the only one in this genus (Service 2001; Lorence and Wood 1994).

Little is known about the life history of *Kanaloa kahoolawensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Kanaloa kahoolawensis was unknown to science until its discovery by Steve Perlman and Ken Wood of NTBG in 1992 on a steep rocky spire on the coast of Kahoolawe. The only known location of *Kanaloa kahoolawensis* is this rocky stack on the southern coast of the island of Kahoolawe, which is owned by the State of Hawaii. While there are no previous records of the plant, pollen core studies on the island of Oahu revealed a legume pollen that could not be identified but is most likely this species. The pollen cores indicate that this previously unidentified species was a codominant with D*odonaea viscosa* and *Pritchardia* spp. from before 1210 B.C. to 1565 A.D., at which point *K. kahoolawensis* disappeared from the pollen record and *D. viscosa* and *Pritchardia* spp. declined dramatically. Only one population with two living individuals is known (Athens *et al.* 1992; Athens and Ward 1993; Lorence and Wood 1994; Paul Higashino, Kahoolawe Island Reserve Commission (KIRC), pers. comm., 2000; Service 2001; 64 FR 48307).

The only known habitat is steep rocky talus slopes in mixed coastal shrubland at elevations between 45 to 60 m (150 to 200 ft) and containing one or more of the following associated native plant species: *Sida fallax* (ilima), *Senna gaudichaudii* (kolomona), *Bidens mauiensis* (kookoolau), *Lipochaeta lavarum* (nehe), *Portulaca molokiniensis* (ihi), or *Capparis sandwichiana* (maiapilo) (Service 2001; 64 FR 48307; R. Hobdy *et al.,* pers. comm., 2001).

The major threats to *Kanaloa kahoolawensis* are landslides and competition with the alien plant species *Emilia fosbergii* (pualele), *Chloris barbata* (swollen finger grass), or *Nicotiana glauca* (tobacco tree). Goats played a major role in the destruction of vegetation on Kahoolawe before they were removed, and K. kahoolawensis probably survived only because the rocky stack is almost completely separated from the island and inaccessible to goats. Rats are a potential threat to *K. kahoolawensis,* because the species has seeds similar in appearance and presentation to the seeds of the federally endangered *Caesalpinia kavaiensis* (uhiuhi), which are eaten by rats. Rats may have been the cause of the decline of this species 800 years ago. Trampling and habitat degradation from introduced cats and native seabirds are also potential threats. Random environmental events and reduced reproductive vigor are also threats to this species, because only two individuals are known (P. Higashino, pers. comm., 2000; Cuddihy and Stone 1990; Lorence and Wood 1994; Service 2001; 64 FR 48307).

Lipochaeta kamolensis (nehe)

Lipochaeta kamolensis, a short-lived perennial herb of the aster family (Asteraceae), has trailing or climbing stems that are woody at the base and reach a length of 0.3 to 3 m (1 to 10 ft). This species is distinguished from others of the genus by the simple leaves which are pinnately lobed or cut and by the size of the flower heads (Wagner *et al.* 1999).

Lipochaeta kamolensis has been observed flowering from December through February, as well as in April. The growing season coincides with the wet season between November and April to May. Plants are deciduous and appear to be metabolically inactive during the dry season. Little else is known about the life history of *Lipochaeta kamolensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Lipochaeta kamolensis* was known from Kamole Gulch, west of Kepuni Gulch, and 7.2 km (11.8 mi) southeast of Ulupalakua Ranch Office. This species still occurs in Kamole Gulch, on State owned (Department of Hawaiian Home Lands) land. The only known population, which extends over an area of about 40 ha (100 ac), is estimated to contain less than 500 individuals (Wagner *et al.* 1999; GDSI 2001; HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1997; 57 FR 20772).

Lipochaeta kamolensis typically grows in gulches or on gentle slopes outside gulches in dry shrubland at elevations between 40 and 602 m (132 and 1,974 ft) and containing one or more of the following associated native plant species: *Dodonaea viscosa, Plumbago zeylanica* (iliee), or *Ipomoea indica* (koali awa) (Wagner *et al.* 1999; K. Wood, *in litt.* 1999; Service 1997; 57 FR 20772; R. Hobdy *et al.,* pers. comm., 2001).

The major threats to *Lipochaeta kamolensis* are habitat destruction and predation by cattle and goats, competition with alien plants such as *Lantana camara* (lantana), fire, and the one population subject to extinction by random environmental events (57 FR 20772; Service 1997).

Melicope adscendens (alani)

Melicope adscendens, a long-lived perennial of the rue family (Rutaceae), is a sprawling shrub with long, slender branches covered with gray hairs when young, which become hairless when older. *M. adscendens* is distinguished from other species of the genus by its growth habit, the distinct follicles of its fruit, and the persistent (remaining attached) sepals and petals (Stone *et al.* 1999).

Melicope adscendens fruits have been collected in March and July. Little else is known about the life history of *Melicope adscendens.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 59 FR 62346).

Melicope adscendens has been found only on the southwestern slope of Haleakala; two plants, separated by an unspecified distance, were found by Forbes in 1920. Today, there are two known populations with a total of 16 individuals on State (Kanaio NAR) and privately owned lands at Puu Ouli and on the border of the Hana and Makawao Districts (GDSI 2001; HINHP Database 2001; Service 1997; 59 FR 62346).

This species typically grows on aa lava (a particular type of lava flow with very sharp edges) with pockets of soil in *Nestegis sandwicensis* (olopua)-*Pleomele auwahiensis* (hala pepe)-*Dodonaea viscosa* lowland mesic forest or open dry forest and containing one or more of the following associated native plant species: *Osteomeles anthyllidifolia* (ulei), *Alphitonia ponderosa* (kauila), *Chamaesyce celastroides* var. *lorifolia* (akoko), *Santalum ellipticum* (iliahialoe), *Pouteria sandwicensis* (alaa), *Styphelia tameiameiae,* or *Xylosma hawaiiensis* (maua) at elevations between 761 and 1,209 m (2,497 and 3,967 ft) (HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1997; 59 FR 62346; R. Hobdy *et al.,* pers. comm., 2001).

Major threats are habitat damage and trampling by cattle; competition with alien plant species, including *Lantana camara, Bocconia frutescens* (NCN), and *Pennisetum clandestinum* (kikuyu grass), and reduced reproductive vigor or extinction from random environmental events due to the small number of individuals and narrow distribution. Potential threats include habitat degradation and damage to plants by axis deer (*Axis axis*), feral goats, feral pigs, black twig borer, fire, and ranch activities (Service 1997; 59 FR 62346; HINHP Database 2001).

Melicope balloui (alani)

Melicope balloui, a long-lived perennial of the rue family (Rutaceae), is a small tree or shrub. New growth has yellowish brown woolly hairs and waxy scales; plant parts later become nearly hairless. *Melicope balloui* is distinguished from other species of the genus by the partially fused carpels of its four-lobed capsule and usually persistent sepals and petals (Stone *et al.* 1999).

Little is known about the life history of Melicope balloui. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 59 FR 62346).

Melicope balloui has been found only on the northern and southeastern slopes of Haleakala. There are two known populations with a total of approximately 50 individuals on private and federally owned (Haleakala National Park) lands within the East Maui Watershed Partnership at Puu O Kakae and Palikea Stream (GDSI 2001; HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1997; 59 FR 62346).

Melicope balloui typically grows in mesic to wet forest between 781 and 1,596 m (2,561 and 5,235 ft), containing one or more of the following associated native plant species: *Acacia koa, Cibotium chamissoi* (hapuu), *Cibotium glaucum* (hapuu), *Diplazium sandwichianum, Melicope clusiifolia, Metrosideros polymorpha,* or *Sadleria pallida* (amau) (HINHP Database 2001; J. Lau, pers. comm., 2001; Service 1997; 59 FR 62346).

Major threats are habitat degradation and damage to plants by feral pigs and axis deer and reduced reproductive vigor or extinction caused by random environmental events due to the small

number of existing populations and individuals. Potential threats include competition with alien plant species such as *Paspalum conjugatum, Clidemia hirta, Paspalum urvillei, Andropogon virginicus* (broomsedge), and *Psidium cattleianum* (strawberry guava); susceptibility to black twig borer (Xylosandrus compactus); and predation by rats (59 FR 62346; Service 1997; HINHP Database 2001).

Melicope ovalis (alani)

Melicope ovalis, a long-lived perennial of the rue family (Rutaceae), is a tree growing up to 5 m (16 ft) tall. New growth has fine, short, brownish hairs, but soon becomes hairless. Leaves are opposite, leathery, and broadly elliptic. The upper and lower surfaces of the leaves are hairless, and bruised foliage has an anise odor similar to that of *M. anisata* (mokihana). Each flower cluster is on a main stalk and comprises three to seven flowers on individual stalks. Further details of the flowers are unknown. The fruit, a capsule, has carpels that are fused along almost their entire length. Each fertile carpel contains one or two glossy black seeds. The exocarp and endocarp are both hairless. *M. ovalis* is distinguished from other species of the genus by the almost entirely fused carpels of its capsule, its nonpersistent sepals and petals, and its well-developed petioles (Stone *et al.* 1999).

Little is known about the life history of *Melicope ovalis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 59 FR 62346).

Melicope ovalis has been found only on the eastern and southeastern slopes of Haleakala. There is one known population with approximately 200 individuals, found on federally owned land along the Palikea Stream in Haleakala National Park within the East Maui Watershed Partnership (GDSI 2001; HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1997; 59 FR 62346).

This species typically grows in *Acacia koa* and *Metrosideros polymorpha*-dominated montane wet forests along streams at elevations between 753 and 1,537 m (2,469 and 5,042 ft). Associated plant species include *Dicranopteris linearis, Machaerina angustifolia* (uki), *Labordia hedyosmifolia* (NCN), *Wikstroemia oahuensis* (akia), *Dubautia plantaginea, Hedyotis hillebrandii, Broussaisia arguta, Cheirodendron trigynum,* or *Perrottetia sandwicensis* (Service 1997; 59 FR 62346; HINHP Database 2001; R. Hobdy *et al.,* pers. comm., 2001).

Major threats to the only known population are habitat degradation and damage to plants by feral pigs and reduced reproductive vigor and/or extinction due to random environmental events. Competition with introduced plants such as *Paspalum conjugatum, Clidemia hirta, Rubus rosifolius* (thimbleberry), and *Psidium cattleianum;* seed predation by rats; and susceptibility to black twig borer are also threats to this species. Habitat degradation and damage to plants by feral goats and axis deer are potential threats if the integrity of the fence currently surrounding the population is compromised (Service 1997; 59 FR 62346; HINHP Database 2001; K. Wood, *in litt.* 1999).

Remya mauiensis (NCN)

Remya mauiensis is a short-lived perennial member of the aster family (Asteraceae). The genus *Remya* is endemic to the Hawaiian Islands. It is a small perennial shrub, about 90 cm (3 ft) tall, with many slender, sprawling, or scandent to weakly erect branches, covered with a fine tan fuzz near their tips. The leaves are narrow, up to about 15 cm (6 in) long, and are bunched at the ends of the branches. The coarsely toothed leaf blade is 5 to 12 times longer than wide, has a long-attenuate base, and a petiole of less than 1 cm (0.4 in) long. The leaves are green on the upper surface and covered with a dense mat of fine white hairs on the lower surface. The flowers are small, about 0.7 cm (0.3 in) in diameter, dark yellow, and densely clustered at the ends of their stems (Wagner *et al.* 1999).

Little is known about the life history of *Remya mauiensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 56 FR 1450).

Remya mauiensis was collected twice by William Hillebrand on West Maui between 1851 and 1871, and again in 1920 by Charles Forbes, also on West Maui. It was thought to be extinct until its rediscovery in 1971 by L.E. Bishop, W. Gagne, and S. Montgomery on the slopes of Manawainui Gulch, West Maui. Currently, *R. mauiensis* is known from three small populations on State owned land within the West Maui Mountains Watershed Partnership at Paupau, Kokuula, Kanaulaiki, and Maunawainui Gulch in the Panaewa section of the West Maui NAR, the West Maui Forest Reserve, and the Manawainui Plant Sanctuary. Because of the sprawling habit of this species, and the often dense growth of the surrounding vegetation, it is difficult to determine the exact number of individuals in a population; however, there is an estimate of 21 individuals (HINHP Database 2001; GDSI 2001; Service 1997; 56 FR 1450).

Remya mauiensis grows chiefly on steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests and containing one or more of the following associated native species: *Diospyros sandwicensis* (lama), *Xylosma hawaiiensis, Nestegis sandwicensis, Myrsine lessertiana* (kolea lau nui), *Wikstroemia* spp. (akia), *Dodonaea viscosa*, *Diplazium sandwichianum*, *Lysimachia remyi*, *Microlepia strigosa* (palapalai), *Melicope* spp., *Alyxia oliviformis* (maile), *Pleomele auwahiensis, Psychotria mariniana,* or *Styphelia tameiameiae* at elevations between 400 and 1,228 m (1,312 and 4,029 ft) (HINHP Database 2001; Service 1997; 56 FR 1450; R. Hobdy *et al.,* pers. comm., 2001).

This species is threatened by extinction due to random catastrophic environmental events by virtue of the extremely small size of the populations coupled with a limited distribution of the remaining populations. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals. However, the primary threat to this species is the loss and degradation of its habitat due to the introduction of alien plants, such as *Rubus rosifolius, Schinus terebinthifolius* (Christmas berry), *Adiantum hispidulum* (rough maidenhair fern), or *Tibouchina herbacea*; human activities; and feral goats and pigs (56 FR 1450; Service 1997).

Schiedea haleakalensis (NCN)

Schiedea haleakalensis, a short-lived perennial of the pink family (Caryophyllaceae), is a hairless shrub, with slightly fleshy, narrow leaves and a single vein. Flowers are arranged in clusters at the ends of the branches. The flower has five green, oval sepals; no petals; five nectaries; and ten stamens. Capsules contain grayish to reddish brown seeds. This species differs from other species of the genus on East Maui by its crowded, hairless inflorescence composed of bisexual flowers (Wagner *et al.* 1999).

Schiedea haleakalensis is gynodioecious (individuals either have only female flowers or only perfect flowers) and so likely needs cross pollination by small insects. Small, short-flighted flies and moths have been observed visiting flowers. Fruits and seeds have been observed from August

through September. Little else is known about the life history of *Schiedea haleakalensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Due to the lack of early collections or sightings, the historical range of *Schiedea haleakalensis* is unknown. This species is known only from Leleiwi Pali and Kaupo Gap in Haleakala National Park within the East Maui Watershed Partnership. The two populations are estimated to contain a total of 100 to 200 individuals, which together extend over a total area of 11 ha (28 ac) (GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

Schiedea haleakalensis typically grows in rock cracks on sheer cliffs adjacent to barren lava and subalpine shrublands and grasslands with cinder, weathered volcanic ash, or bare lava substrate with little or no soil development and periodic freezing temperatures and containing one or more of the following associated plant species: *Artemisia mauiensis* (hinahina), *Bidens micrantha* (kookoolau), *Dubautia menziesii*, *Styphelia tameiameiae*, *Vaccinium reticulatum*, or *Viola chamissoniana* (pamakani) at elevations between 1,678 and 2,434 m (5,505 and 7,986 ft) (Service 1997; 57 FR 20772; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The greatest threats to *Schiedea haleakalensis* are fire and other catastrophic events that could severely impact the species due the small number and restricted distribution of remaining individuals and populations (Service 1997; 57 FR 20772).

Tetramolopium capillare (pamakani)

Tetramolopium capillare, a short-lived perennial of the sunflower family (Asteraceae), is a sprawling shrub with stems measuring 50 to 80 cm (20 to 31 in) long and covered with many glands when young. The very firm, stalkless leaves are involute (edges rolled under). Flower heads are situated singly at the ends of stalks. Located beneath each flower head are 45 to 50 bracts, arranged in a structure 3 to 4 mm (about 0.1 in) high and 7 to 10 mm (0.3 to 0.4 in) in diameter. In each flower head, 30 to 50 white, male ray florets are surround by 15 to 25 greenish yellow tinged with red, functionally female florets. The achenes (dry, one-seeded fruits) are topped by a white pappus comprising a single series of bristles. *Tetramolopium capillare* differs from other species of the genus by its very firm leaves with edges rolled under, its solitary flower heads, the color of its disk florets, and its shorter pappus. It differs from *T. remyi*, with which it sometimes grows, by its more sprawling habit and the shorter stalks of its smaller flower heads (Lowrey 1999).

Little is known about the life history of *Tetramolopium capillare*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Lowrey 1999).

Historically, *Tetramolopium capillare* is known from Lahaina Luna to Wailuku on West Maui. Currently, four known populations with a total of 166 individuals are known from State (West Maui Forest Reserve) and privately owned lands within the West Maui Mountains Watershed Partnership, south of Kanaha Stream, Kauaula, Ulaula, and Koia (Lowrey 1999; GDSI 2001; Service 1997; 59 FR 49860).

Tetramolopium capillare typically grows on rocky substrates in *Heteropogon contortus* (pili grass) lowland dry forest containing one or more of the following associated native plant species: *Dodonaea viscosa* or *Myoporum sandwicense* (naio); or in *Metrosideros polymorpha-Styphelia tameiameiae* montane mesic or wet shrubland and wet cliff faces and containing one or more of the following associated plant species: *Metrosideros polymorpha*, *Styphelia tameiameiae*, or *Dodonaea viscosa* at elevations between 131 and 1,432 m (430 and 4,698 ft) (Service 1997; 59 FR 49860; R. Hobdy *et al.*, pers. comm., 2001).

The major threats to *Tetramolopium capillare* are fires; competition from alien plant species, particularly *Lantana camara*, *Leucaena leucocephala* (koa haole), or *Melinis repens* (natal redtop); and reduced reproductive vigor and/or extinction from random environmental events due to the small number of existing populations and individuals (Service 1997; 59 FR 49860).

Multi-Island Species

Acaena exigua (liliwai)

Acaena exigua is a small perennial rosette herb in the rose family (Rosaceae) with narrow, fern-like, divided leaves and slender flowering stalks 5–15 cm (2–5.9 in) long. It is easily hidden among the other low, tufted bog plants with which it grows. The narrow, oblong leaves are usually 10–25 mm (0.4–1.0 in) long with 6–17 leaflets 1–4 mm (0.04–0.16 in) long and 1–2 mm (0.04–0.08 in) wide. The leaflet on the end is wider (to 3 mm (0.12 in)). The upper surface of the leaves is glossy with conspicuous veins; the lower surface is whitish. The flowers lack petals and are arranged in short, dense spikes 5–10 mm (0.2–0.4 in) long held on slender, sparsely leafy stalks 5–15 cm (2–6 in) tall. The base of the flower is urn-shaped, sometimes with very short spines or bristles, and encloses a single cone-shaped dry fruit (achene) 1 mm (0.04 in) long (Wagner *et al.* 1999).

Little is known about the life history of *Acaena exigua*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Acaena exigua* was known from Puu Kukui on West Maui and from Mount Waialeale on Kauai. On Maui, *Acaena exigua* was last seen by Hank Oppenheimer and Steve Perlman in 1999 within the Puu Kukui Watershed Management Area. It has not been seen in the wild since March 2000 (Hank Oppenheimer, Maui Pineapple Company Limited, pers. comm., 2001; Service 1997; 57 FR 20772).

Acaena exigua is known only from montane bogs characterized by a thick peat substrate overlying an impervious clay substrate, with hummocks of sedges and grasses, stunted trees, and shrubs at elevations between 1,178 and 1,764 m (3,865 and 5,787 ft). Associated native species include the sedges and grasses *Carex montis-eeke* (NCN), *Deschampsia nubigena*, *Dichanthelium cynodon* (NCN), *Dichanthelium hillebrandianum* (NCN), *Dichanthelium isachnoides* (NCN), *Oreobolus furcatus* (NCN), or *Rhynchospora chinensis* (kuolohia), and the shrubs *Metrosideros polymorpha*, *Viola maviensis* (pamakani), *Myrsine* spp., *Lagenifera maviensis* (NCN), or *Vaccinium* spp. (Service 1997; 57 FR 20772; R. Hobdy *et al.*, pers. comm., 2001).

The reason for the disappearance of this species is not known. The main current threats to *Acaena exigua*, if it exists, are believed to include small population size; human impacts (collecting and site degradation); potentially consumption of vegetative or floral parts of this species by non-native slugs and/or rats; predation and habitat disturbance by feral pigs; and non-native plant species (Service 1997; 57 FR 20772).

Adenophorus periens (pendant kihi fern)

Adenophorus periens, a member of the grammitis family (Grammitidaceae) and a short-lived perennial, is a small, pendant, epiphytic fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna margins, by the

pinnae being at right angles to the midrib axis, by the placement of the sori on the pinnae, and the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens*, which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects. Spores lack a thick resistant coat which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not known (Linney 1989).

Historically, *Adenophorus periens* was reported from Kauai, Oahu, Lanai, Maui, and the island of Hawaii. Currently, it is known from Kauai, Molokai, and Hawaii. On Maui, it has not been seen in the wild since 1929 (HINHP Database 2001; Service 1999; 59 FR 56333; GDSI 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Adenophorus periens* on the island of Maui (Service 1999; 59 FR 56333).

Nothing is known of the threats to *Adenophorus periens* on the island of Maui (Service 1999; 59 FR 56333).

Alectryon macrococcus (mahoe)

Alectryon macrococcus, a long-lived perennial and a member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis*, both trees with reddish-brown branches and net-veined paper- or leather-like leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, only when young in *A. macrococcus* var. *macrococcus*, and persistent in *A. macrococcus* var. *auwahiensis*. The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.5 cm (1 in) or more in diameter (Service 1997; 57 FR 20772; Wagner et al. 1999).

Alectryon macrococcus is a relatively slow-growing, long-lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of *A. macrococcus*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Service 1997; 57 FR 20772).

Historically and currently, *Alectryon macrococcus* var. *macrococcus* is known from Kauai, Oahu, Molokai, and Maui. On Maui, three populations with a total of 22 individuals is found along the Honokowai Ditch Trail, Launiupoko Valley, and Iao Valley on privately owned land within the West Maui Mountains Watershed Partnership. Currently, *A. macrococcus* var. *auwahiensis* is known from two populations with 22 individuals on leeward East Maui in Auwahi in the Hana District and on the ridge east of Pahihi Gulch on private and State owned (Kahikinui Forest Reserve) lands (Medeiros *et al.* 1986; GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

The habitat of *Alectryon macrococcus* var. *macrococcus* is mesic forests with *Pouteria sandwicensis*, *Nestegis sandwicensis*, *Xylosma* spp. (maua), *Antidesma platyphylla* (hame), *Antidesma pulvinatum* (hame), *Bobea sandwicensis* (ahakea), *Pittosporum confertiflorum* (hoawa), or *Pittosporum glabrum* (hoawa) at elevations between 1,017 and 3,562 m (1,168 and 3,337 ft). The habitat of *A. macrococcus* var. *auwahiensis* is mesic to wetter mesic and upper dryland forest containing one or more of the following associated native plant species: *Diospyros sandwicensis*, *Dodonaea viscosa*, *Osteomeles anthyllidifolia*, *Alphitonia ponderosa*, *Santalum ellipticum*, *Xylosma hawaiiensis*, *Streblus pendulinus* (aiai), *Pouteria sandwicensis*, or *Pleomele auwahiensis* at elevations between 333 and 1,210 m (1,092 and 3,969 ft) (HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1997; 57 FR 20772; R. Hobdy *et al.*, pers. comm., 2001).

The threats to *Alectryon macrococcus* var. *macrococcus* on Maui include feral goats and pigs; alien plant species, such as *Melinus minutiflora* (molasses grass), *Pennisetum clandestinum*, *Schinus terebinthifolius*, or *Psidium cattleianum*; damage from the black twig borer; seed predation by rats and mice (*Mus musculus*); fire; seed predation by insects (probably the endemic microlepidopteran *Prays* cf. *fulvocanella*); loss of pollinators; depressed reproductive vigor; and due to the very small remaining number of individuals and their limited distribution, a single natural or human-caused environmental disturbance could easily be catastrophic. The threats to *A. macrococcus* var. *auwahiensis* on Maui are damage from the black twig borer; seed predation by rats and mice; habitat degradation by feral pigs, deer, and escaped cattle; seed predation by insects (probably *Prays* cf. *fulvocanella*); alien plant species; loss of pollinators; depressed reproductive vigor; and due to the very small remaining number of individuals and their limited distribution, a single natural or human-caused environmental disturbance could easily be catastrophic (Service 1997; 57 FR 20772).

Asplenium fragile var. insulare (NCN)

Asplenium fragile var. *insulare*, a short-lived perennial and a member of the spleenwort family (Aspleniaceae), is a fern with a short sub-erect stem with a dull gray or brown main axis with two greenish ridges. This Hawaiian fern species is most similar to *Asplenium macraei*. The two can be distinguished by the size and shape of the pinnae and the number of sori per pinna (Wagner and Wagner 1992).

Little life history information is available for *Asplenium fragile* var. *insulare*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown. Researchers have collected information on species composition, extent of cover, and age-class structure in six sub-populations at Pohakuloa Training Area in order to describe the populations. No gametophytes (gamete-producing life stage) were found, and the age-class structure of the sub-populations sampled was determined to be 100 percent reproductive adults because all the sporophytes (spore-producing life stage) had sori (spore-bearing structures) on some fronds (Service 1998a; 59 FR 49025).

Asplenium fragile var. *insulare* was known historically and currently from East Maui and on the island of Hawaii. Currently, on Maui there is one population with 18 individuals found in Kalialinui within the East Maui Watershed Partnership on private and federally (Haleakala National Park) owned lands (GDSI 2001; Service 1998a; 59 FR 49025).

On Maui, *Asplenium fragile* var. *insulare* is found in streamside hollows and grottos in gulches that occur in mesic to dry subalpine shrubland dominated by *Styphelia tameiameiae* and *Sadleria cyatheoides*, with scattered *Metrosideros polymorpha* between 1,682 and 2,407 m (5,518 and 7,896 ft). Associated native plant species include *Grammitis hookeri* (makue lau lii), and *Dryopteris wallichiana* (Service 1998a; 59 FR 49025; R. Hobdy *et al.*, pers. comm., 2001).

The primary threat to *Asplenium fragile* var. *insulare* on the island of Maui is the risk of extinction due to random naturally occurring events due

to the small number of existing individuals (Service 1998a; 59 FR 49025; Shaw 1992).

Bidens micrantha ssp. kalealaha (ko oko olau)

Bidens micrantha ssp. kalealaha, a short-lived member of the aster family (Asteraceae), is an erect perennial herb. This subspecies can be distinguished from other subspecies by the shape of the seeds, the density of the flower clusters, the numbers of ray and disk florets per head, differences in leaf surfaces, and other characteristics (57 FR 20772; Ganders and Nagata 1999).

Bidens micrantha is known to hybridize with other native *Bidens*, such as *B. mauiensis* and *B. menziesii*, and possibly *B. conjuncta*. Little else is known about the life history of *B. micrantha* ssp. *kalealaha*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Ganders and Nagata 1999; Service 1997; 57 FR 20772).

Historically, *Bidens micrantha ssp. kalealaha* was known from Lanai, the south slope of Haleakala on East Maui, and from one locality on West Maui. Currently, this taxon remains only on East Maui in Kahua, Nakula, and Haleakala Crater and Kaupo Gap, on State (Kahikinui Forest Reserve) and Federal (Haleakala National Park) lands within the East Maui Watershed Partnership. There are a total of three populations with less than a total of 2,000 individuals (Ganders and Nagata 1999; HINHP Database 2001; Service 1997; 57 FR 20772; GDSI 2001; HINHP Database 2001).

The habitat of *Bidens micrantha ssp. kalealaha* is blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy *Metrosideros polymorpha-Acacia koa* forest, montane shrubland, *Sophora chrysophylla* forests or cliff faces containing one or more of the following associated native plant species: *Styphelia tameiameiae*, *Coprosma montana* (pilo), *Dodonaea viscosa*, *Dubautia platyphylla* (naenae), *Vaccinium reticulatum*, or *Santalum haleakalae* (iliahi) at elevations between 1,317 and 2,565 m (4,321 and 8,414 ft) (Ganders and Nagata 1999; HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy *et al.*, pers. comm., 2001).

The threats to this species on Maui are habitat destruction by feral goats, pigs, and cattle; competition from a variety of invasive plant species; and fire (Service 1997; 57 FR 20772).

Bonamia menziesii (NCN)

Bonamia menziesii, a short-lived perennial member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Bonamia menziesii* was known from Kauai, Oahu, Molokai, one location on West Maui, and the island of Hawaii. Currently, this species is known from Kauai, Oahu, Lanai, Maui, and Hawaii. On Maui, there are four populations containing a total of eight individuals on State (Kanaio NAR) and privately owned lands within the West Maui Mountains Watershed Partnership at Honokawai, Keokea, Haunauhane, and Kanaio (GDSI 2001; HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1999; 59 FR 56333).

Bonamia menziesii is found on aa lava in mixed open dry forest, or *Erythrina sandwicensis* (wiliwili) lowland dry forest, and in mesic mixed *Metrosideros polymorpha* forest and containing one or more of the following associated native plant species: *Nestegis sandwicensis*, *Pleomele auwahiensis*, *Dodonaea viscosa*, *Alyxia oliviformis*, *Diospyros sandwicensis*, *Osteomeles anthyllidifolia*, *Alphitonia ponderosa*, *Santalum ellipticum*, *Xylosma hawaiiensis*, *Nothocestrum latifolium* (aiea), *Pouteria sandwicensis*, *Achyranthes splendens* (NCN), *Acacia koaia* (koaia), *Sida fallax*, *Reynoldsia sandwicensis* (ohe), *Sicyos* spp. (anunu), *Lipochaeta rockii* (nehe), *Nototrichium* spp. (kului), or *Myoporum sandwicense* at elevations between 184 and 906 m (604 and 2,971 ft) (HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1999; 59 FR 56333; R. Hobdy *et al.*, pers. comm., 2001).

The primary threats to this species on Maui are habitat degradation and possible predation by feral pigs, goats, axis deer, and cattle; competition with a variety of alien plant species, particularly *Lantana camara* or *Bocconia frutescens*; and an alien beetle (*Physomerus grossipes*) (Service 1999; 59 FR 56333).

Brighamia rockii (pua ala)

Brighamia rockii, a long-lived perennial member of the bellflower family (Campanulaceae), grows as an unbranched stem succulent with a thickened stem that tapers from the base. This species is a member of a unique endemic Hawaiian genus with only one other species, found on Kauai, from which it differs by the color of its petals, its longer calyx (fused sepals) lobes, and its shorter flower stalks (Lammers 1999).

Observations of *Brighamia rockii* have provided the following information: the reproductive system is protandrous, meaning there is a temporal separation between the production of male and female gametes, in this case a separation of several days; only five percent of the flowers produce pollen; very few fruits are produced per inflorescence; there are 20 to 60 seeds per capsule; and plants in cultivation have flowers at an age of 9 months. This species was observed in flower during August. Little else is known about the life history of *Brighamia rockii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996b; 57 FR 4632).).

Historically, *Brighamia rockii* ranged along the northern coast of East Molokai from Kalaupapa to Halawa and may possibly have grown on Lanai and Maui. Currently, it is only extant on Molokai (Lammers 1999; HINHP Database 2001; K. Wood, *in litt.* 2000; Service 1996b; 57 FR 46325).

On Maui, *Brighamia rockii* occurs in rock crevices on steep sea cliffs, often within the spray zone, in coastal dry to mesic forests and shrublands between 0 and 195 m (0 and 640 ft). Associated plant species include *Psydrax odorata* (alahee), *Diospyros sandwicensis, Osteomeles anthyllidifolia, and Scaevola sericea* (naupaka kahahai) (J. Lau, pers. comm., 2001; Service 1996b; 57 FR 46325).

Nothing is known of the threats to *Brighamia rockii* on the island of Maui (Service 1996b; 57 FR 46325).

Cenchrus agrimonioides (kamanomano)

Cenchrus agrimonioides is a short-lived perennial member of the grass family (Poaceae) with leaf blades which are flat or folded and have a prominent midrib. There are two varieties, *C. agrimonioides* var. *laysanensis* and *C. agrimonioides* var. *agrimonioides.* They differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of *Cenchrus agrimonioides.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. This species has been observed to produce fruit year round (Service 1999; 61 FR 53108).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from the Oahu, Lanai, and the south slope of Haleakala and Ulupalakua on Maui, and an undocumented report from the Island of Hawaii. Historically, *C. agrimonioides* var *laysanensis* was known from Laysan, Kure, and Midway, all within the Northwestern Hawaiian Islands National Wildlife Refuge. This variety has not been seen since 1973. Currently, *C. agrimonioides* var. *agrimonioides* is known from Oahu and Maui. On Maui, this variety is known from two populations on State owned land (West Maui Forest Reserve within the West Maui Mountains Watershed Partnership and Kanaio NAR) at Ukumehame and Kanaio, East Maui containing an unknown number of individuals (Corn 1980; Service 1999; 61 FR 53108; HINHP Database 2001).

Cenchrus agrimonioides var. *agrimonioides* is found in mid-elevation dry forest or *Pleomele-Diospyros* forest associated with *Dodonaea viscosa, Osteomeles anthyllidifolia, Alyxia oliviformis,* or *Santalum ellipticum* at elevations between 471 and 1,091 m (1,544 and 3,579 ft) (Service 1999; 61 FR 53108; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The major threats to the only known population of *Cenchrus agrimonioides* var. *agrimonioides* on Maui are competition with alien plant species; browsing and habitat degradation by goats and cattle; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals (Service 1999; 61 FR 53108).

Centaurium sebaeoides (awiwi)

Centaurium sebaeoides is an annual herb in the gentian family (Gentianaceae), with fleshy leaves and stalkless flowers. This species is distinguished from C. erythraea, which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Populations are found in dry areas, and plants are more likely to be found following heavy rains. Other than that, little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental regulations, and limiting factors are generally unknown (Service 1999; 56 FR 55770).

Historically and currently, *Centaurium sebaeoides* is known from Kauai, Oahu, Molokai, Lanai, and Maui. On Maui, there are three populations of this species, with a total of more than 50 individuals, on State and privately owned lands at Kahakuloa Head, Lahoole, and Kupaa Gulch (Wagner *et al.* 1999; HINHP Database 2001; Service 1999; 56 FR 55770).

This species typically grows in volcanic or clay soils or on cliffs in windward coastal areas at elevations between 0 and 194 m (0 and 636 ft) and containing one or more of the following associated native plant species: *Panicum torridum* (kakonakona), *Lysimachia mauritiana* (kolokolo kuahiwi), *Schiedea globosa* (NCN), *Lipochaeta integrifolia* (nehe), *Bidens mauiensis, Scaevola sericea,* or *Lycium sandwicense* (ohelo kai) (Service 1999; 56 FR 55770; Wagner *et al.* 1999; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The major threats to this species on Maui are habitat degradation by feral goats and cattle; competition from the alien plant species *Leucaena leucocephala;* trampling by humans on or near trails; and fire (Service 1999; 56 FR 55770).

Clermontia lindseyana (oha wai)

Clermontia lindseyana, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a small, branched tree that grows 2.5 to 6 m (8.2 to 20 ft) tall. *Clermontia lindseyana* is either terrestrial or epiphytic, living on the surface of other plants. The upper surface of the oblong-shaped leaves is dark green while the lower is pale green or purplish and hairy. Leaf stalks are 2.5–7 cm (1–2.8 in) long and hairy. Berries are 2.5–4 cm (1–1.6 in) wide, almost round, and orange. *Clermontia lindseyana* is easily separable from the other species within this genus by several characters: much larger leaves and flowers, similar petals and sepals, and spreading floral lobes. Rock (1962) commented on the leaves being conspicuously hairy beneath (Cuddihy *et al.* 1983; Lammers 1999).

This species was observed in fruit from June to October, and in flower from February to August. Little else is known about the life history of *Clermontia lindseyana.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305; HINHP Database 2001).

Historically, *Clermontia lindseyana* was known from Maui and the island of Hawaii. The two Maui populations are located in Waiopai and Wailaulau Gulches in the Kahikinui and Kula Forest Reserves on State and private lands, and are estimated to total about 330 individuals (Service 1996a; 59 FR 10305; Arthur Medeiros, U.S. Geological Survey, Biological Resources Division, *in litt.* 2000; HINHP Database 2001; GDSI 2001).

On Maui, *Clermontia lindseyana* grows in *Acacia koa* mesic forest containing one or more of the following associated native plant species: *Cyrtandra* spp., native fern species, *Ilex anomala* (kawau), *Coprosma* spp., or *Myrsine* spp. at elevations between 1,142 and 1,870 m (3,747 and 6,134 ft) (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy *et al.,* pers. comm., 2001).

The threats to *Clermontia lindseyana* are trampling and grazing by cattle, trampling and browsing by goats, and rooting and trampling by pigs; competition with the alien plant *Pennisetum clandestinum;* and consumption of berries, flowers, and vegetation by black rats (Service 1996a; 59 FR 10305).

Clermontia oblongifolia ssp. mauiensis (oha wai)

Clermontia oblongifolia ssp. *mauiensis*, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a shrub or tree with oblong to lance-shaped leaves on leaf stalks (petioles). *Clermontia oblongifolia* is distinguished from other members of the genus by its calyx and corolla, which are similar in color and are each fused into a curved tube that falls off as the flower ages. The species is also distinguished by the leaf shape, the male floral parts, the shape of the flower buds, and the lengths of the leaf and flower stalks, the flower, and the smooth green basal portion of the flower (the hypanthium). *Clermontia oblongifolia* ssp. *mauiensis* is reported from Maui and Lanai, while ssp. *oblongifolia* is only known from Oahu and ssp. *brevipes* is only known from Molokai (57 FR 20772; Lammers 1988, 1999).

Clermontia oblongifolia ssp. *mauiensis* is known to flower from November to July. Little else is known about the life history of *Clermontia oblongifolia* ssp. *mauiensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and

limiting factors are unknown (Rock 1919; Service 1997; 57 FR 20772).

Historically, *Clermontia oblongifolia* ssp. *mauiensis* known from Lanai and from Honomanu Valley on Haleakala, East Maui. Currently, it is known from Lanai and Maui. On West Maui, this taxon is currently known from one population with an unknown number of individuals, at Kaulalewelewe on privately owned land within the West Maui Mountains Watershed Partnership (Service 1997; 57 FR 20772; GDSI 2001; HINHP Database 2001; Lammers 1999).

This plant typically grows on the sides of ridges and ridge tops in *Metrosideros polymorpha*-dominated montane wet forests at elevations between 414 and 1,764 m (1,358 and 5,787 ft) and containing one or more of the following associated native plant species: *Dicranopteris linearis, Ilex anomala, Myrsine* spp., *Cheirodendron* spp. (NCN), *Coprosma* spp., *Clermontia* spp., *Hedyotis* spp., or *Melicope* spp. (Service 1997; 57 FR 20772; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The only known population of this species on Maui is vulnerable to extinction from a natural or human-caused environmental disturbance due to its small size; depressed reproductive vigor; competition with the alien plan species *Tibouchina herbacea;* and habitat degradation by feral pigs (Service 1997; 57 FR 20772).

Clermontia peleana (oha wai)

Clermontia peleana, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an epiphytic shrub or tree that grows on native trees and tree ferns. Two subspecies are recognized: *C. peleana* ssp. *singuliflora* (greenish-white petals) and *C. peleana* ssp. *peleana* (blackish-purple petals). This species can be separated from other Hawaiian members of the genus by its epiphytic growth, small triangular green calyx lobes, and single-lipped flowers (Lammers 1999).

Clermontia peleana has been observed in flower during June and November, and in fruit during November. Little else is known about the life history of *Clermontia peleana*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305; HINHP Database 2001).

Clermontia peleana ssp. *singuliflora* was formerly found on the island of Hawaii and on East Maui, but has not been seen in either place since the early 1900s (HINHP Database 2001; Wagner *et al.* 1999, L. Perry, pers. comm., 2000; Service 1996a; 59 FR 10305).

Nothing is known of the preferred habitat of or native plant species: associated with *Clermontia peleana* on the island of Maui (Service 1996a; 59 FR 10305; R. Hobdy *et al.*, pers. comm., 2001).

Nothing is known of the threats to *Clermontia peleana* on the island of Maui (Service 1996a; 59 FR 10305).

Colubrina oppositiofolia (kauila)

Colubrina oppositiofolia, a member of the buckthorn family (Rhamnaceae), is a long-lived tree with extremely hard red wood. This species is readily distinguished from the other species in Hawaii by the opposite leaf position, dull leaf surface, and entire leaf margins (Wagner *et al.* 1999).

This species has been observed in fruit and flower in September and June, and in flower during December and January. Little else is known about the life history of *Colubrina oppositiofolia.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996a; 59 FR 10305).

Historically and currently, *Colubrina oppositiofolia* is known from Oahu, Maui, and the Island of Hawaii. Currently on Maui, there are two populations containing one individual each on privately owned land in Honokawai and in Auwahi in the Hana District (Service 1996a; 59 FR 10305; Warshauer 1998; GDSI 2001; HINHP Database 2001).

Habitats of this species are lowland dry and mesic forests dominated by *Diospyros sandwicensis*, at elevations between 192 and 929 m (630 and 3,047 ft) and containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Canavalia* spp. (awikiwiki), *Wikstroemia* spp., *Psydrax odorata*, *Pleomele auwahiensis*, *Freycinetia arborea* (ieie), *Metrosideros polymorpha*, *Microlepia strigosa*, *Bidens micrantha* spp. *micrantha* (kookoolau), or *Reynoldsia sandwicensis* (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy *et al.*, pers. comm., 2001).

The threats to this species on Maui are habitat destruction by feral pigs; competition with the alien plants *Lantana camara, Pennisetum setaceum,* or *Schinus terebinthifolius;* black twig borer; Chinese rose beetles (*Adoretus sinicus*); fire; and its small population numbers and limited distribution (Service 1996a; 59 FR 10305).

Ctenitis squamigera (pauoa)

Ctenitis squamigera is a short-lived perennial of the spleenwort family (Aspleniaceae). It has a rhizome (horizontal stem) 5 to 10 mm (0.2 to 0.4 in) thick, creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. The leaf stalks are densely clothed with tan-colored scales up to 1.8 cm (0.7 in) long and 1 mm (0.04 in) wide. The sori are tan-colored when mature and are in a single row one-third of the distance from the margin to the midrib of the ultimate segments. The indusium (the membrane enclosing the sori) is whitish before wrinkling, thin, suborbicular with a narrow sinus extending about half way, glabrous except for a circular margin which is ciliolate with simple several-celled glandular and nonglandular hairs arising directly from the margin or from the deltoid base. *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Degener and Degener 1957; Wagner and Wagner 1992).

Little is known about the life history of *Ctenitis squamigera.* Flowering cycles, pollination vectors, seed dispersal agents, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Ctenitis squamigera* was recorded from the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. It is currently found on Oahu, Lanai, Molokai, and Maui. On Maui, there are currently six populations with 41 individuals on State (West Maui Forest Reserve) and privately owned lands at Honolua, Kahana, Honokawai, Wahikuli, Kapilau Ridge, Paupau, and Hukoula within the West Maui Mountains Watershed Partnership (GDSI 2001; H. Oppenheimer, *in litt.* 2000; K. Wood, pers. comm., 2000; J. Lau, pers. comm., 2000 and *in litt.* 2000; HINHP Database 2001; Service 1998a; 59 FR 49025).

This species is found in the forest understory, in *Metrosideros polymorpha* montane wet forest or diverse mesic forest at elevations between 74 and 1,593 m (243 and 5,226 ft) and containing one or more of the following native plant species: *Alyxia oliviformis, Freycinetia arborea, Coprosma* spp., *Pleomele* spp. (hala pepe), *Sadleria* spp., *Doodia* spp. (okupukupu lauii), *Pittosporum* spp. (hoawa), *Dryopteris* spp. (NCN), *Bobea* spp. (ahakea), *Antidesma* spp. (hame), *Peperomia* spp. (ala ala wainui), *Dicranopteris linearis, Schiedea pubescens* var. *pubescens* (NCN), *Hibiscus kokio* ssp. *kokio*

(kokio), *Hedyotis terminalis, Pritchardia* spp., *Remya mauiensis, Canavalia* spp., *Myrsine* spp., *Psychotria* spp., or *Xylosma* spp. (Service 1998a; 59 FR 49025; HINHP Database 2001; H. Oppenheimer, pers. comm., 2000; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats to *Ctenitis squamigera* are habitat degradation by feral pigs, goats, and axis deer; competition with alien plant species, especially *Psidium cattleianum* and *Schinus terebinthifolius;* fire; and extinction from naturally occurring events due to the small number of existing populations and individuals (Service 1998a; 59 FR 49025).

Cyanea grimesiana ssp. grimesiana (haha)

Cyanea grimesiana ssp. *grimesiana,* a short-lived member of the bellflower family (Campanulaceae), is a perennial shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1990).

On Molokai, flowering plants have been reported in July and August. Little else is known about the life history of *Cyanea grimesiana* ssp. *grimesiana.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically and currently, *Cyanea grimesiana* ssp. *grimesiana* is known from Oahu, Molokai, Lanai, and scattered locations on Maui. Currently on Maui, there are two populations with a total of five individuals on privately owned land in Iao Valley and Kapilau Ridge (Service 1999; 61 FR 53108; GDSI 2001; HINHP Database 2001).

This species is typically found on rocky or steep slopes of stream banks in wet forest gulch bottoms often dominated by *Metrosideros polymorpha* at elevations between 312 and 1,617 m (1,024 and 5,305 ft) and containing one or more of the following associated native plant species: *Antidesma* spp., *Bobea* spp., *Myrsine* spp., *Nestegis sandwicensis, Psychotria* spp., or *Xylosma* spp. (Service 1999; 61 FR 53108; R. Hobdy *et al.,* pers. comm., 2001).

The threats to this species on Maui are habitat degradation and/or destruction caused by axis deer, goats, and pigs; competition with various alien plants; randomly naturally occurring events that could cause extinction due to the small number of existing individuals; trampling by hikers; landslides; rats; and slugs (Service 1999; 61 FR 53108).

Cyanea lobata (haha)

Cyanea lobata, a short-lived member of the bellflower family (Campanulaceae), is a sparingly branched perennial shrub with smooth to somewhat rough stems and oblong, irregularly lobed leaves. This species is distinguished from other species of *Cyanea* by the size of the flower and the irregularly lobed leaves with petioles (Lammers 1990).

Cyanea lobata is known to flower from August to February, even in individuals as small as 50 cm (20 in) in height. Little else is known about the life history of *Cyanea lobata*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Rock 1919; Degener 1936; Service 1997; 57 FR 20772).

Historically, *Cyanea lobata* was known from Lanai and West Maui. It is no longer extant on Lanai. On Maui, there are currently four populations with a total of 12 individuals on privately owned land within the West Maui Mountains Watershed Partnership at Kaulalewelewe, Honolowai, Honokohau, and Waikapu (Lammers 1999; GDSI 2001: HINHP Database 2001; Service 1997; 57 FR 20772).

This species has been seen and collected on steep stream banks in deep shade in wet forest at elevations between 204 and 1,531 m (669 and 5,020 ft) and containing one or more of the following associated native plant species: *Touchardia latifolia, Morinda trimera* (noni kuahiwi), *Metrosideros polymorpha, Clermontia kakeana, Cyrtandra* spp., *Xylosma* spp., *Psychotria* spp., *Antidesma* spp., *Pipturus albidus, Peperomia* spp., *Touchardia latifolia, Freycinetia arborea, Pleomele* spp., or *Athyrium* spp. (akolea) (Service 1997; 57 FR 20772; Lammers 1999; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The threats to this species on Maui are habitat degradation by feral pigs; depressed reproductive vigor; and natural or human-caused environmental disturbance that could easily be catastrophic to the only known population due to the small number of remaining individuals and the limited and scattered distribution of the species (Service 1997; 57 FR 20772).

Cyrtandra munroi (ha iwale)

Cyrtandra munroi, a short-lived perennial and member of the African violet family (Gesneriaceae), is a shrub with opposite, elliptic to almost circular leaves which are sparsely to moderately hairy on the upper surface and covered with velvety, rust-colored hairs underneath. This species is distinguished from other species of the genus by the broad opposite leaves, the length of the flower cluster stalks, the size of the flowers, and the amount of hair on various parts of the plant (Wagner *et al.* 1999).

Some work has been done on the reproductive biology of some species of *Cyrtandra*, but not on that of *C. munroi* specifically. The pollinators of these plants have not been identified, although studies indicate that a specific pollinator may be necessary for successful pollination. Seed dispersal may be carried out by birds which eat the fruits. Little else is known about the life history of *Cyrtandra munroi*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995b; 57 FR 20772).

Historically and currently, *Cyrtandra munroi* is known from Lanai and West Maui. Currently on Maui, there are four populations with a total of approximately 1,000 individuals on private and State (West Maui Forest Reserve) owned lands within the West Maui Mountains Watershed Partnership in Kahanaiki Gulch, Pulepule Gulch, Honokahua Gulch, along Makamakaole Stream, and Hahakea (Wagner *et al.* 1999; GDSI 2001; HINHP Database 2001; Service 1995b; 57 FR 20772).

The habitat of this species is rich, moist to wet, moderately steep talus slopes in lowland wet *Metrosideros polymorpha* forest at elevations between 390 and 1,108 m (1,280 and 3,635 ft) and containing one or more of the following associated native plant species: *Diospyros* spp. (lama), *Strongylodon ruber* (nuku iiwi), *Hedyotis acuminata, Clermontia* spp., *Alyxia oliviformis, Bobea* spp., *Coprosma* spp., *Freycinetia arborea, Melicope* spp., *Myrsine* spp., *Perrottetia sandwicensis, Pipturus* spp. (mamaki), *Pittosporum* spp., *Pouteria sandwicensis, Psychotria* spp., *Sadleria* spp., *Scaevola* spp. (naupaka), *Xylosma* spp., *Sicyos* spp., *Zanthoxylum kauense* (ae), or other *Cyrtandra* spp. (Service 1995b; 57 FR 20772; HINHP Database 2001; R. Hobdy *et al.*, pers. comm., 2001).

The threats to this species on Maui are from competition with the alien

plant species *Psidium cattleianum, Pluchea symphytifolia* (sourbush), *Melinis minutiflora, Rubus rosifolius*, and *Paspalum conjugatum*; loss of appropriate pollinators; a very small number of extant individuals which can cause depressed reproductive vigor; and the effects of random environmental events that could easily be catastrophic to the only known population on Maui (Service 1995b; 57 FR 20772).

Delissea undulata (NCN)

Delissea undulata, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched, palm-like, woody-stemmed tree, with a dense cluster of leaves at the tips of the stems. One or two knob-like structures often occur on the back of the flower tube. Three subspecies, all but the last of which are considered extinct, may be separated on the basis of leaf shape and margin characters: *D. undulata* var. *kauaiensis* (leaf blades are oval and flat-margined with sharp teeth) (Kauai), *D. undulata* var. *niihauensis* (leaf blades are heart shaped and flat-margined with shallow, rounded teeth) (Niihau) and *D. undulata* var. *undulata* (leaf blades are elliptic to lance-shaped and wavy-margined with small, sharply pointed teeth) (Maui, Hawaii). This species is separated from the other closely related members of the genus by its large flowers and berries and broad leaf bases. *Delissea undulata* ssp. *undulata* is the only subspecies known from Maui (Lammers 1999).

Delissea undulata var. *undulata* was observed in fruit and flower during December. Little else is known about the life history of *Delissea undulata* var. *undulata.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 61 FR 53124; HINHP Database 2001).

Delissea undulata var. *undulata* was known from southwestern Maui, western Hawaii and Niiahu. Currently it occurs Kauai and the island of Hawaii (GDSI 2001; HINHP Database 2001; Linda Pratt, U.S. Geological Survey-Biological Resources Division, *et al.,* pers. comm., 2001; K. Wood pers comm., 2001; Service 1996a; 61 FR 53124).

Nothing is known of the preferred habitat of or native plant species associated with *Delissea undulata* var. *undulata* on the island of Maui (Service 1996a; 61 FR 53124; R. Hobdy *et al.,* pers. comm., 2001).

Nothing is known of the threats to *Delissea undulata* var. *undulata* on the island of Maui (Service 1996a; 61 FR 53124).

Diellia erecta (Asplenium-leaved diellia)

Diellia erecta, a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of three to nine lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having brown or dark gray scales usually more than 2 cm (0.8 in) in length, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Smith 1934; Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of *Diellia erecta.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. Currently, it is only known from Molokai, Maui, and Hawaii. On Maui, there are five known populations with a total of 35 individual plants on State (West Maui Forest Reserve, Manawainui Plant Sanctuary, and Department of Hawaiian Home Lands) or privately owned lands within the West Maui Mountains Watershed Partnership in Iao Valley, Hanaulaiki, Manawainui Gulch, Near Polipoli in Kamaole and West of Waiopai Gulch (Service 1999; 59 FR 56333; GDSI 2001; HINHP Database 2001).

This species is found in steep slopes or gulch sides in deep shade in *Acacia koa-Metrosideros polymorpha* low-to mid-elevation mesic forests at elevations between 338 and 1,744 m (1,109 and 5,722 ft) and containing one or more of the following associated native plant species: *Styphelia tameiameiae, Melicope* spp., *Coprosma* spp., *Dodonaea viscosa, Dryopteris unidentata* (NCN), *Myrsine* spp., *Psychotria* spp., or *Osteomeles anthyllidifolia* (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy *et al.,* pers. comm., 2001).

The major threats to *Diellia erecta* on Maui are habitat degradation by pigs, goats, and cattle; competition with alien plant species, including *Blechnum occidentale* (NCN); and random naturally occurring events that could cause extinction and/or reduced reproductive vigor due to the small number of existing individuals (Service 1999; 59 FR 56333).

Diplazium molokaiense (NCN)

Diplazium molokaiense, a short-lived perennial member of the woodfern family (Dryopteridaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Little is known about the life history of *Diplazium molokaiense.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Ainahou Valley and Maliko Gulch (East Maui) and Wailuku (Iao) Valley and Waikapu (West Maui) on Maui. Currently, this species is only known from Maui. Four populations with a total of 23 individuals are found on State (Kula and Kahikinui Forest Reserves) and privately owned lands within the East Maui Watershed Partnership Near Polipoli in Kamaole, between Kahakapao Gulch and Puu O Kakae, Honomanu, and Waiopai Gulch (Warshauer 1998; GDSI 2001; HINHP Database 2001; Service 1998a; 59 FR 49025).

This species occurs near water courses often in proximity to waterfalls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest at elevations between 273 and 1,917 m (896 and 6,289 ft) (Service 1998a; 59 FR 49025; HINHP Database 2001; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats on Maui are habitat degradation by feral goats, cattle, pigs, and axis deer; competition with alien plant species; decreased reproductive vigor; and extinction from randomly occurring natural events due to the small number of populations and individuals (Service 1998a; 59 FR 49025; HINHP Database 2001).

Flueggea neowawraea (mehamehame)

Flueggea neowawraea, a long-lived perennial and a member of the spurge family (Euphorbiaceae), is a large tree with white oblong pores covering its scaly, pale brown bark. This species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size, scaly bark, the shape, size, and color of the leaves, flowers clustered along the branches, and the size and shape of the fruits (Linney 1982; Hayden 1999).

Individual trees of *Flueggea neowawraea* bear only male or female

flowers, and must be cross-pollinated from a different tree to produce viable seed. Little else is known about the life history of *Flueggea neowawraea.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Hayden 1999; Service 1999; 59 FR 56333).

Historically, *Flueggea neowawraea* was known from the islands of Molokai, Oahu, Kauai, and Hawaii. Currently, populations are known from Kauai, Oahu, East Maui, and Hawaii. On Maui, there are three populations with a total of five trees on State (Department of Hawaiian Home Lands) and privately owned lands at Auwahi, and above the Lualailua and Alena (GDSI 2001; HINHP Database 2001; Mahealani Kaiaokamelie, (formerly with) Ulupalakua Ranch, *in litt.* 2000; Service 1999; 59 FR 56333).

Flueggea neowawraea occurs in dry or mesic forest at elevations between 633 and 971 m (2,078 and 3,186 ft) and containing one or more of the following associated native plant species: *Alectryon macrococcus, Bobea timonioides* (ahakea), *Charpentiera* spp. (papala), *Myrsine lanaiensis* (kolea), *Tetraplasandra* spp. (oheohe), *Diplazium sandwichianum, Nesoluma polynesicum* (keahi), *Diospyros* spp., *Antidesma pulvinatum, Psydrax odorata, Nestegis sandwicensis, Rauvolfia sandwicensis* (hao), *Pleomele* spp., *Pouteria sandwicensis,* or *Pleomele auwahiensis* (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy *et al.,* pers. comm., 2001).

The threats to the populations on Maui are the black twig borer; habitat degradation by feral pigs, goats, deer, and cattle; competition with alien plant species; depressed reproductive vigor; the risk of extinction from a random environmental event due to the small number of individuals; and predation of the fruit by rats (Service 1999; 59 FR 56333; HINHP Database 2001).

Gouania vitifolia (NCN)

Gouania vitifolia, a member of the buckthorn family (Rhamnaceae) and a short-lived perennial, is a climbing shrub with tendriled flowering branches. This species differs from other members of its genus by having flowering branches with a tendril and coarsely crenate (wavy) to serrate-dentate (toothed) leaf margins (Wagner *et al.* 1999).

In winter and late spring the main vine of *Gouania vitifolia* produces new young side shoots which soon die. Plants have been observed flowering from late November to January, but flowering probably depends on precipitation. Little else is known about the life history of *Gouania vitifolia.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 59 FR 32932).

Historically, *Gouania vitifolia* was known from West Maui, the Kau District of the island of Hawaii, and Oahu. The species currently occurs on Oahu and on the island of Hawaii (GDSI 2001; Jon Giffin, DOFAW, *in litt.* 2000; Service 1998b; 59 FR 32932).

On Maui, *Gouania vitifolia* typically grows on the sides of ridges and gulches in dry to mesic forests at elevations between 155 and 1,326 m (509 and 4,350 ft). Associated plant species include *Erythrina sandwicensis, Dodonaea viscosa, Hibiscus arnottianus* (kokio keokeo), *Pipturus albidus, Urera glabra* (opuhe), *Chamaesyce* spp. (akoko), *Psychotria* spp., *Hedyotis* spp., *Melicope* spp., *Nestegis sandwicensis, Bidens* spp., *Carex meyenii* (NCN), and *Diospyros sandwicensis* (J. Lau, pers. comm., 2001; Service 1998b; 59 FR 32932).

Nothing is known of the threats to *Gouania vitifolia* on the island of Maui (Service 1998b; 59 FR 32932).

Hedyotis coriacea (kio ele)

Hedyotis coriacea, a member of the coffee family (Rubiaceae), is a small, short-lived perennial shrub with leathery leaves which are generally elliptic to oblong in shape, 3 to 8 cm (1.2 to 3.1 in) long and usually 1.5 to 3 cm (0.6 to 1.2 in) wide. This species is distinguished from others of the genus by its small, triangular calyx lobes, which do not enlarge in fruit, and the combination of capsules which are longer than wide and flower buds which are square in cross section (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis coriacea.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Hedyotis coriacea* was known from Oahu and the Island of Hawaii. Considered extinct on all islands in recent years, this species was discovered in 1990 by Steve Perlman in the State owned Lihau section of the West Maui NAR and in 1991 on the 1859 lava flow in the Pohakuloa Training Area, Island of Hawaii. Currently, only a single individual is known from West Maui on State owned land withing the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

Hedyotis coriacea is found on steep, rocky, slopes in dry lowland *Dodonaea viscosa* dominated shrublands at elevations between 110 and 937 m (361 and 3,074 ft) and containing one or more of the following associated native plant species: *Sida fallax, Gouania hillebrandii* (NCN), *Bidens menziesii* (kookoolau), *Lipochaeta lavarum, Myoporum sandwicense,* or *Schiedea menziesii* (NCN) (HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy *et al.,* pers. comm., 2001).

The single remaining individual of *Hedyotis coriacea* on Maui is threatened by extinction from a random naturally occurring event (Service 1997; 57 FR 20772).

Hedyotis mannii (pilo)

Hedyotis mannii, a member of the coffee family (Rubiaceae), is a short-lived perennial plant with smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long, which are woody at the base and four-angled or winged. The leaves are opposite, thin in texture, and elliptic to sometimes lance-shaped. Stipules (leaf-like appendages), which are attached to the slightly winged leaf stalks where they join and clasp the stem, are triangular. Flowers are arranged in loose clusters up to 30 cm (1 ft) long at the ends of the stems and are either bisexual or female. This species' growth habit, its quadrangular or winged stems, the shape, size, and texture of its leaves, and its dry capsule, which opens when mature, separate it from other species of the genus (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis mannii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b; 57 FR 46325).

Currently and historically, *Hedyotis mannii* is known from Lanai, West Maui, and Molokai. On Maui, there is a single population of approximately 20 individuals located on private land in Kauaula Valley (Service 1996b; 57 FR 46325; GDSI 2001; K. Wood *in litt.* 2000).

The population on Maui is found on basalt cliffs along stream banks in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest at elevations between 340 and 1,593 m (1,115 and 5,226 ft) and containing one or more of the following associated native plant species: *Machaerina* spp. (uki), *Carex meyenii, Phyllostegia* spp. (NCN), *Hedyotis acuminata, Cyrtandra platyphylla* (haiwale), *Cyanea* spp.

(haha), *Psychotria* spp., *Pipturus albidus, Boehmeria grandis, Urera glabra, Touchardia latifolia, Cyrtandra grayi* (haiwale), *Cyrtandra hawaiensis* (haiwale), or *Isachne distichophylla* (ohe) (K. Wood *in litt.* 2000; Service 1996b; 57 FR 46325; R. Hobdy *et al.,* pers. comm., 2001).

Hedyotis mannii on Maui is threatened by landslides; competition with the alien plant species *Rubus rosifolius, Ageratina adenophora, Buddleia asiatica* (butterfly bush), *Pluchea carolinensis* (sourbush), and *Clidemia hirta;* and the low number of individuals makes it extremely vulnerable to extinction by random naturally occurring events (Service 1996b; 57 FR 46325; K. Wood *in litt.* 2000).

Hesperomannia arborescens (NCN)

Hesperomannia arborescens, a long-lived perennial of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomannia* species in having the following combination of characteristics: erect to ascending flower heads, thick flower head stalks, and usually hairless and relatively narrow leaves (Wagner *et al.* 1999).

This species has been observed in flower from April through June and fruit during March and June. Little else is known about the life history of *Hesperomannia arborescens.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 59 FR 14482).

Hesperomannia arborescens was formerly known from Lanai, Molokai, and Oahu. This species is now known from Oahu, Molokai, and Maui. There are currently two populations with a total of six individuals on State (Kahukuloa section West Maui NAR) and privately-owned lands in Honokohau and Lanilii within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1998b; 59 FR 14482).

Hesperomannia arborescens is found on slopes or ridges in lowland mesic or wet forest at elevations between 346 and 1,335 m (1,135 and 4,380 ft) and containing one or more of the following associated native plant species: *Metrosideros polymorpha, Myrsine sandwicensis* (kolea), *Isachne distichophylla, Pipturus* spp., *Antidesma* spp., *Psychotria* spp., *Clermontia* spp., *Cibotium* spp., *Dicranopteris linearis, Bobea* spp., *Coprosma* spp., *Sadleria* spp., *Melicope* spp., *Machaerina* spp., *Cheirodendron* spp., or *Freycinetia arborea* (HINHP Database 2001; Service 1998b; 59 FR 14482; R. Hobdy *et al.,* pers. comm., 2001).

The major threats to *Hesperomannia arborescens* on Maui are habitat degradation by feral pigs and goats; competition with alien plant species; extinction due to random environmental events or reduced reproductive vigor due to the small number of individuals in one remaining population; and impact by humans (Service 1998b; 59 FR 14482; HINHP Database 2001).

Hesperomannia arbuscula (NCN)

Hesperomannia arbuscula, a long-lived perennial member of the aster family (Asteraceae), is a small shrubby tree, 2 to 3.3 m (7 to 11 ft) tall. This species can be distinguished from other members of the genus by the erect flower heads and the leaves, usually hairy beneath, which are one to two times as long as wide (Wagner *et al.* 1999).

Hesperomannia arbuscula usually flowers in the spring depending on precipitation. Seeds mature in about 6 weeks and trees live about 10 to 15 years. Little else is known about the life history of *Hesperomannia arbuscula.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 56 FR 55770).

Historically and currently, *Hesperomannia arbuscula* is known from Oahu and West Maui. On Maui, this species is found in two populations with a total of 37 individuals, on privately owned land along the Waihee Stream and Nakalaloa within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; K. Wood, *in litt.* 1999; Service 1998b; 56 FR 55770).

Hesperomannia arbuscula typically grows on steep forested slopes and ridges in mesic forest dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* at elevations between 354 and 1,453 m (1,161 and 4,767 ft) and containing one or more of the following associated native plant species: *Bidens* spp., *Tetraplasandra* spp., *Alyxia oliviformis, Clermontia* spp., *Cyanea* spp., *Cheirodendron* spp., or *Psychotria* spp. (HINHP Database 2001; J. Lau, pers. comm., 2001; Service 1998b; 56 FR 55770; R. Hobdy *et al.,* pers. comm., 2001).

The major threats to *Hesperomannia arbuscula* on Maui are habitat degradation by feral pigs, competition from alien plant species, trampling by humans, and extinction from naturally occurring random events due to the small number of populations (Service 1998b; 56 FR 55770).

Hibiscus brackenridgei (ma o hau hele)

Hibiscus brackenridgei, a short-lived perennial and a member of the mallow family (Malvaceae), is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptic scar. Two subspecies are currently recognized, *Hibiscus brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1990).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length. Little else is known about the life history of *Hibiscus brackenridgei.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, Kahoolawe and Hawaii. Currently, *Hibiscus brackenridgei* ssp. *mokuleianus* is known from Oahu and from undocumented observations on Kauai. *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and Hawaii. On Maui, *Hibiscus brackenridgei* ssp. *brackenridgei* is found in five populations, containing 40 individuals, on State (Lihau section of West Maui NAR and Department of Hawaiian Home Lands) and privately owned lands at Lihau, Kaonohua, Keokea, and near Puu O Kali (Bates 1990; Service 1999; 59 FR 56333; GDSI 2001; HINHP Database 2001).

Hibiscus brackenridgei ssp. *brackenridgei* occurs in lowland dry forest sometimes with *Erythrina sandwicensis* as the dominant tree at elevations between 43 and 610 m (141 and 2,001 ft) and containing one or more of the following associated native plant species: *Myoporum sandwicense, Chenopodium* spp. (aheahea), *Achyranthes* spp. (NCN), *Nototrichium* spp., *Diospyros* spp., *Chamaesyce celastroides* var. *lorifolia, Dodonaea viscosa, Psydrax odorata, Schiedea salicaria* (NCN), *Lipochaeta lavarum,* annual *Panicum* spp., or *Sida fallax* (HINHP Database 2001; Service 1999; 59

FR 56333; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats to *Hibiscus brackenridgei* ssp. *brackenridgei* on Maui and or Kahoolawe are habitat degradation and possible predation by pigs, goats, cattle, axis deer, and rats; competition with alien plant species; fire; and susceptibility to extinction caused by random environmental events or reduced reproductive vigor due to small population size and a limited number of populations (Service 1999; 59 FR 56333).

Ischaemum byrone (Hilo ischaemum)

Ischaemum byrone, a short-lived member of the grass family (Poaceae), is a perennial species with creeping underground and erect stems. *Ischaemum byrone* can be distinguished from other Hawaiian grasses by its tough outer flower bracts, dissimilar basic flower units, which are awned (slender bristle) and two-flowered, and a dichotomously- or trichotomously-branching (forking or branching in two's or three's) inflorescence (O'Connor 1999).

Little is known about the life history of *Ischaemum byrone.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Historically, *Ischaemum byrone* was reported from Oahu, Molokai, East Maui, the Island of Hawaii, and an undocumented site on Kauai. Currently, this species is found on Kauai, Molokai, Hawaii, and Maui. On Maui, it is currently found State and privately owned lands at Keopuka Rock, Paupalu Point, Moku Huki, West of Kalahu Point, between Keakulikuli Point and Pukaulua Point, and Kauiki Head. There is a total of six populations with less than 2,000 individuals (GDSI 2001; HINHP Database 2001; Service 1996a; 59 FR 10305).

Ischaemum byrone grows in close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland at elevations between 0 and 190 m (0 and 623 ft) and containing one or more of the following associated native plant species: *Bidens* spp., *Fimbristylis cymosa* (mauu akiaki), or *Scaevola sericea* (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy *et al.,* pers. comm., 2001).

The most serious threat to *Ischaemum byrone* is the invasion of alien plant species, particularly *Digitaria ciliaris* (Henry's crabgrass), *Ardisia elliptica* (shoebutton ardisia) and *Casuarina equisetifolia* (ironwood). Additionally, fire may pose a threat in areas infested with alien grasses, provided enough fuel is present. Other potential threats include grazing and browsing by goats and axis deer. Disturbance incurred from these ungulates further promotes the introduction and establishment of alien weeds. Some populations are also threatened by residential development (Service 1996a; 59 FR 10305; HINHP Database 2001).

Isodendrion pyrifolium (wahine noho kula)

Isodendrion pyrifolium, a short-lived perennial of the violet family (Violaceae), is a small, branched shrub with elliptic to lance-shaped leaf blades. The papery-textured blade is moderately hairy beneath (at least on the veins) and stalked. The petiole (stalk) is subtended by oval, hairy stipules. Fragrant, bilaterally symmetrical flowers are solitary. The flower stalk is white-hairy, and subtended by two bracts. Bracts arise at the tip of the main flower stalk. The five sepals are lance-shaped, membranous-edged and fringed with white hairs. Five green-yellow petals are somewhat unequal, and lobed, the upper being the shortest and the lower the longest. The fruit is a three-lobed, oval capsule, which splits to release olive-colored seeds. *Isodendrion pyrifolium* is distinguished from other species in the genus by its smaller, green-yellow flowers, and hairy stipules and leaf veins (Wagner *et al.* 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening 1 to 2 months later. Little else is known about the life history of *Isodendrion pyrifolium*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Isodendrion pyrifolium is known historically from six of the Hawaiian Islands: Niihau, Molokai, Lanai, Oahu, Maui, and the island of Hawaii. Currently, it is only found on the island of Hawaii (Service 1996a; 59 FR 10305; GDSI 2001; HINHP Database 2001; Marie Bruegmann, Service, pers. comm., 2000).

On Maui, *Isodendrion pyrifolium* occurs in dry shrubland at elevations between 54 and 557 m (177 and 1,827 ft) with one or more of the following associated native plant species: *Psydrax odorata, Capparis sandwichiana, Dodonaea viscosa,* or *Myoporum sandwicense* (J. Lau, pers. comm., 2001; Service 1996a; 59 FR 10305; R. Hobdy *et al.,* pers. comm., 2001).

Nothing is known of the threats to *Isodendrion pyrifolium* on the island of Maui (Service 1996a; 59 FR 10305).

Lysimachia lydgatei (NCN)

Lysimachia lydgatei, a short-lived perennial member of the primrose family (Primulaceae), is a sprawling, branched shrub with stems from 1 to 1.3 m (3 to 4 ft) long. This species is distinguished from others in the genus by the dense hairs on both the upper and lower surfaces of mature leaves (Wagner *et al.* 1999).

Little is known about the life history of *Lysimachia lydgatei.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Lysimachia lydgatei was known historically from a gulch behind Lahaina on West Maui and from Oahu. Currently, it is found only on Maui on State (Lihau section of West Maui NAR and the West Maui Forest Reserve) and privately owned lands Helu, Lihau, east of Halepohaku, and Ulaula within the West Maui Mountains Watershed Partnership. The four Maui populations number approximately 240 individuals (Wagner *et al.* 1999; HINHP Database 2001; GDSI 2001; Service 1997; 57 FR 20772).

Lysimachia lydgatei typically grows on the sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis* dominated wet to mesic shrubland or *Metrosideros-Cheirodendron* spp. montane forest at elevations between 829 and 1,432 m (2,720 and 4,698 ft) and containing one or more of the following associated native plant species: *Lycopodium* spp. (wawae iole), *Ilex anomala, Dodonaea viscosa, Vaccinium* spp., *Eurya sandwicensis* (anini), *Styphelia tameiameiae, Coprosma* spp., *Ochrosia* spp. (holei), *Astelia* spp. (painiu), *Broussaisia arguta*, or mat ferns such as *Dicranopteris* spp. (HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy *et al.,* pers. comm., 2001).

The greatest threats to *Lysimachia lydgatei* are the threat of extinction from a random environmental event due to the small number of populations; competition with alien plant species such as *Rubus argutus*; and fire (Service 1997; 57 FR 20772).

Mariscus pennatiformis (NCN)

Mariscus pennatiformis, a short-lived member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with brown scales. *Mariscus pennatiformis* is a subdivided into two subspecies, ssp.

bryanii and ssp. *pennatiformis,* which are distinguished by the length and width of the spikelets; color, length, and width of the glume; and by the shape and length of the achenes. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems (Koyama 1990).

Mariscus pennatiformis is known to flower from November to December after heavy rainfall. Little else is known about the life history of *Mariscus pennatiformis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Mariscus pennatiformis* was known from Kauai, Oahu, East Maui (Keanae Valley, Hana, and Nahiku), the Island of Hawaii, and from Laysan in the Northwestern Hawaiian Islands. *Mariscus pennatiformis* ssp. *bryanii* is only known from Laysan Island in the Northwestern Hawaiian Islands National Wildlife Refuge. *Mariscus pennatiformis* ssp. *pennatiformis* is currently found only on East Maui. One population of approximately 30 individuals is found on State owned land near the mouth of Hanawi Stream (HINHP Database 2001; GDSI 2001; K. Wood *in litt.* 1999; Service 1999; 59 FR 56333).

On Maui, *Mariscus pennatiformis* ssp. *pennatiformis* is found on cliffs with brown soil and talus within reach of ocean spray in *Pandanus tectorius* (hala) coastal wet forests at elevations between 0 and 188 m (0 and 615 ft) and containing one or more of the following associated native plant species: *Sadleria pallida, Lysimachia mauritiana* (kolokolo kuahiwi), *Cyperus laevigatus* (makaloa), *Eragrostis* spp. (NCN), or *Ipomoea* spp. (morning glory) (HINHP Database 2001; K. Wood *in litt.* 1999; J. Lau, pers. comm., 2001; Service 1999; 59 FR 56333).

Threats to the only known population of *Mariscus pennatiformis* ssp. *pennatiformis* on Maui include grazing and habitat destruction caused by ungulates; competition from alien plant species; and extinction from random naturally occurring events (Service 1999; 59 FR 56333).

Melicope knudsenii (alani)

Melicope knudsenii, a long-lived perennial and a member of the rue family (Rutaceae), is a tree with smooth gray bark and yellowish brown to olive-brown hairs on the tips of the branches. The species is distinguished from *M. haupuensis* and other members of the genus by the distinct carpels present in the fruit, a hairless endocarp, a larger number of flowers per cluster, and the distribution of hairs on the underside of the leaves (Stone *et al.* 1999).

Little is known about the life history of *Melicope knudsenii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995a; 59 FR 9304).

Historically and currently, *Melicope knudsenii* was known from the southeast slope of Haleakala on Maui and from Kauai. Currently on Maui, there is one population with three individuals on State (Department of Hawaiian Home Lands) and privately owned lands from Puu Mahoe to east of Puu Ouli (GDSI 2001; HINHP Database 2001; Service 1995a; 59 FR 9304).

Melicope knudsenii grows in *Nestegis-Pleomele* mixed open dry forests at elevations between 648 and 1,331 m (2,125 and 4,367 ft) and containing one or more of the following associated native plant species: *Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum,* or *Xylosma hawaiiensis* (HINHP Database 2001; Service 1995a; 59 FR 9304; R. Hobdy *et al.,* pers. comm., 2001).

Threats to *Melicope knudsenii* include habitat degradation by alien animals, such as goats, cattle, and pigs; reduced reproductive vigor; fire; natural aging and death; and invasive plant species, such as *Pennisetum clandestinum* (Service 1995a; 59 FR 9304).

Melicope mucronulata (alani)

Melicope mucronulata, a long-lived perennial of the rue family (Rutaceae), is a small tree up to 4 m (13 ft) tall with oval to elliptic-oval leaves, 8 to 16 cm (3 to 6.5 in) long and 3.5 to 6.5 cm (1.5 to 2.5 in) wide. This species is distinguished from others in the genus by the growth habit, the number of flowers in each flower cluster, the size and shape of the fruit, and the degree of hairiness of the leaves and fruit walls (Stone *et al.* 1999).

Little is known about the life history of *Melicope mucronulata.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

First discovered in 1920 in Kanaio, East Maui, *Melicope mucronulata* was not relocated until 1983 when it was reported from privately owned land with an unknown number of plants in Auwahi. This species was also found 2 years later on East Molokai (Stone *et al.* 1999; GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

Melicope mucronulata typically grows on gentle south-facing slopes in lowland dry to mesic forest at elevations between 625 and 1,331 m (2,050 and 4,367 ft) and containing one or more of the following associated species: *Pleomele auwahiensis, Dodonaea viscosa, Nestegis sandwicensis, Pouteria sandwicensis, Antidesma pulvinatum, Streblus pendulinus,* and *Melicope hawaiensis* (alani) (Service 1997; 57 FR 20772; J. Lau, pers. comm., 2001).

The major threat to the continued existence of the only known population of *Melicope mucronulata* on Maui is the risk of extinction from a random environmental event. Habitat degradation by goats and pigs, predation by goats, and competition with alien plant species, particularly *Melinis minutiflora,* also pose immediate threats to this species (Service 1997; 57 FR 20772).

Neraudia sericea (NCN)

Neraudia sericea, a short-lived perennial member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The elliptic or oval leaves have smooth margins or slightly toothed margins on young leaves. The upper leaf surface is moderately hairy and the lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. The male flowers may be stalkless or have short stalks. The female flowers are stalkless and have a densely hairy calyx that is either toothed, collar-like, or divided into narrow unequal segments. The fruits are achenes with the apical section separated from the basal portion by a deep constriction. Seeds are oval with a constriction across the upper half. *Neraudia sericea* differs from the other four closely related species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.* 1999).

Little is known about the life history of *Neraudia sericea.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Neraudia sericea was known historically from Molokai, Lanai, Olowalu Valley on West Maui, the southern slopes of Haleakala on East Maui, and from Kahoolawe. Currently, this species is known from Molokai and Maui. On Maui, three populations totaling more than five individuals are found on State (Department of Hawaiian

Home Lands) and privately owned lands in Pohakea Gulch (West Maui) and in Manawainui and Kamole Gulches (East Maui) (GDSI 2001; HINHP Database 2001; M. Kaiaokamelie, *in litt.* 2000; Service 1999; 59 FR 56333).

Neraudia sericea generally occurs in dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland or forest or *Acacia koa* forest at elevations between 198 and 1,658 m (650 and 5,439 ft) and containing one or more of the following associated native plant species: *Urera glabra, Cyrtandra oxybapha* (haiwale), *Cyrtandra* spp., *Sida fallax, Diospyros* spp., *Bobea* spp., *Coprosma* spp., or *Hedyotis* spp. (Wagner *et al.* 1999; HINHP Database 2001; M. Bruegmann, *in litt.* 1995; Service 1999; 59 FR 56333; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats to *Neraudia sericea* on Maui are habitat degradation by feral pigs and goats; competition with the alien plant species, *Melinus minutiflora, Pennisetum clandestinum, Holcus lanatus, Cymbopogon refractus* (barbwire grass), and alien *Eragrostis* spp. (love grass); and a risk of extinction due to random environmental events (Service 1999; 59 FR 56333).

Nototrichium humile (kulu i)

Nototrichium humile, a member of the amaranth family (Amaranthaceae), is an upright to trailing shrub with branched stems to 1.5 m (5 ft) long. Stems and young leaves are covered with short hairs. Leaves are oppositely arranged, oval to oblong in outline, 3 to 9 cm (1.2 to 3.5 in) long, and 2 to 5 cm (0.8 to 2.0 in) wide. Stalkless flowers are arranged in a spike at the ends of the stem. Membranous bracts grow below each flower. Two of the bracts and the sepals fall off with the mature fruit. This species is distinguished from the only other species in the genus by its inflorescence, a slender spike 4 mm (0.2 in) in diameter or less, which is covered with short hairs (Wagner *et al.* 1999).

Nototrichium humile has been observed flowering after heavy rain, but flowering is generally heaviest in the spring and summer. Fruits mature a few weeks after flowering. In cultivation, this species is known to live for more than a decade. Little else is known about the life history of *Nototrichium humile.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 56 FR 55770).

Historically, *Nototrichium humile* was known from Oahu and Maui. It currently occurs only on Oahu. On Maui, *Nototrichium humile* was last seen in the wild by Robert Hobdy in 1979 in Pohakea Gulch (HINHP Database 2001; Service 1998b; 56 FR 55770).

On Maui, *Nototrichium humile* occurred on old cinder cones in dry shrubland at elevations between 338 and 734 m (1,110 and 2,407 ft) with one or more of the following associated native plant species: *Dodonaea viscosa, Erythrina sandwicensis, Heteropogon contortus,* and *Nototrichium sandwicense* (J. Lau, pers. comm., 2001; Service 1998b; 56 FR 55770).

Nothing is known of the threats to *Nototrichium humile* on the island of Maui (Service 1998b; 56 FR 55770).

Peucedanum sandwicense (makou)

Peucedanum sandwicense, a member of the parsley family (Apiaceae), is a short-lived, parsley-scented, sprawling herb. Hollow stems arise from a short, vertical, perennial stem with several fleshy roots. This species is the only member of the genus in the Hawaiian Islands (Constance and Affolter 1999).

Little is known about the life history of *Peucedanum sandwicense.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995a; 59 FR 9304).

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai. Discoveries in 1990 extended the known distribution of this species to the island of Oahu. Currently, on Maui there are three populations on State and privately owned lands at Keopuka Islet, near Pauwalu Point, and east of Hanawi Stream, with a total of 32 individuals (Service 1995a; 59 FR 9304; GDSI 2001; HINHP Database 2001).

This species grows sparsely vegetated steep to vertical cliff habitats with little soil in mesic or coastal communities at elevations between 0 and 1,131 m (0 and 3,711 ft) and containing one or more of the following associated native species: *Artemisia australis*, *Eragrostis* spp., *Metrosideros polymorpha*, *Carex* spp., *Bidens* spp., *Diospyros sandwicensis, Chamaesyce* spp., *Peperomia* spp., *Pandanus tectorius, Scaevola sericea, Lysimachia mauritiana, Schiedea globosa* (NCN), or *Hedyotis littoralis* (NCN) (Constance and Affolter 1999; Service 1995a; HINHP Database 2001; 59 FR 9304; R. Hobdy *et al.*, pers. comm., 2001; J. Lau pers. comm., 2001).

Competition with introduced plants is the major threat to *Peucedanum sandwicense* on Keopuka Rock. Additionally, small population sizes also make the species subject to extinction due to random environmental events (Service 1995a; 59 FR 9304).

Phlegmariurus mannii (wawae iole)

Phlegmariurus mannii (=*Huperzia mannii, = Lycopodium mannii*), a short-lived member of the clubmoss family (Lycopodiaceae), is a hanging epiphyte (growing on the outside of other plants instead of being rooted in the ground) with clustered, delicate red stems and forked reproductive spikes. These traits distinguish it from others in the genus in Hawaii (Degener and Degener 1959; St. John 1981; Wagner and Wagner 1992).

Little is known about the life history of *Phlegmariurus mannii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Phlegmariurus mannii* was known from Kauai, West Maui (Haelaau and Hanaula), and the Island of Hawaii. Currently, this species is found on Maui and Hawaii. On Maui, this species is now known on State (Lihau section West Maui NAR, Makawao Forest Reserve, Department of Hawaiian Home Lands, and Kipahulu Forest Reserve), Federal and privately owned lands in Honokohau, Lihau, Puu Okakae, Manawainui, Healani Stream, Puu Ahulili, and Kaapahu within the East Maui Watershed Partnership and the West Maui Mountains Watershed Partnership. There are seven populations with a total of 22 individuals on Maui (GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

On Maui, *Phlegmariurus mannii* typically grows as an epiphyte on *Metrosideros polymorpha, Dodonaea viscosa* and *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *Metrosideros polymorpha-Acacia koa* forests or wet montane *Metrosideros polymorpha-Acacia koa* forests at elevations between 446 and 1,688 m (1,464 and 5,539 ft) and containing one or more of the following associated native plant species: *Thelypteris* spp. (NCN), *Athyrium* spp., *Styphelia tameiameiae, Cyanea* spp., *Machaerina* spp., *Cyrtandra* spp., *Sadleria* spp., *Vaccinium* spp., *Astelia menziesii* (kaluaha), *Coprosma* spp., *Cheirodendron trigynum,* or *Ilex anomala* (Service 1997; 57 FR 20772; R. Hobdy *et al.*, pers. comm., 2001).

The primary reasons for the endangerment of this species are habitat alteration by goats, cattle and pigs, and the impacts of alien plant species. Additionally, small population sizes

also make the species subject to extinction due to random environmental events (Service 1997; 57 FR 20772).

Phyllostegia mannii (NCN)

Phyllostegia mannii, a nonaromatic member of the mint family (Lamiaceae), is a climbing vine with many-branched, four-sided, hairy stems. The opposite, hairy leaves, which are shaped like narrow triangles or narrow triangular ovals, have coarsely toothed margins. Clusters of four to six white flowers are arranged in each of several false whorls along an unbranched flowering stem. The fruits are fleshy, dark-green to black nutlets (dry seeds with a hard outer covering). This species is distinguished from others in the genus by its hairiness; its thin, narrow leaves, which are not pinnately divided; and the usually six flowers per false whorl in a terminal inflorescence (Wagner *et al.* 1999).

This species was observed with fruit in July. Little else is known about the life history of *Phyllostegia mannii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b; 57 FR 46325).

Historically, *Phyllostegia mannii* was found from Hanalilolilo to Ohialele on East Molokai and at Ukulele on East Maui. It has not been seen on Maui for over 70 years. This species is now known only from Molokai (HINHP Database 2001; Service 1996b; 57 FR 46325).

On Maui, *Phyllostegia mannii* occurs in gentle slopes and the steep sides of gulches in mesic to wet forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* at elevations between 1,069 and 1,615 m (3,506 and 5,297 ft) with one or more of the following associated native plant species: *Cheirodendron trigynum, Melicope* spp., *Alyxia oliviformia, Diplazium sandwichianum, Myrsine lessertiana,* or *Dicranopteris linearis* (J. Lau, pers. comm., 2001; Service 1996b; 57 FR 46325).

Nothing is known of the threats to *Phyllostegia mannii* on the island of Maui (Service 1996b; 57 FR 46325).

Phyllostegia mollis (NCN)

Phyllostegia mollis, a short-lived member of the mint family (Lamiaceae), grows as a nearly erect, densely hairy, nonaromatic, perennial herb. Leaves are oval in outline with rounded teeth. Flowers, usually in groups of six, are spaced along a stem; there are two shorter flowering stems directly below the main stem. The flowers have fused sepals and white petals fused into a tube and flaring into a smaller upper and a larger lower lip. Fruits are fleshy, dark green to black nutlets. A suite of technical characteristics concerning the kind and amount of hair, the number of flowers in a cluster, and details of the various plant parts separate this species from other members of the genus (Wagner *et al.* 1990).

Individual *Phyllostegia mollis* plants live for approximately 5 years. The species is known to flower in late winter and spring. Little else is known about the life history of *Phyllostegia mollis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 56 FR 55770).

Historically, *Phyllostegia mollis* was known from Oahu, Molokai, and East Maui. Currently, this species is only known from Oahu and Maui. On East Maui, a single population of an unknown number of individuals remains on State (on the border of Kahikinui Forest Reserve and Department of Hawaiian Home Lands) land in Waiopai Gulch (Wagner *et al.* 1999; GDSI 2001; HINHP Database 2001; Service 1998b; 56 FR 55770).

Phyllostegia mollis typically grows on steep slopes and in gulches in mesic forests dominated by *Metrosideros polymorpha* and/or *Acacia koa* at elevations between 1,144 and 1,970 m (3,754 and 6,463 ft). Associated native plant species include *Cheirodendron trigynum, Melicope* spp., *Diplazium sandwichianum, Myrsine lessertiana,* and *Alyxia oliviformis* (J. Lau, pers. comm., 2001; Service 1998b; 56 FR 55770).

The major threats to *Phyllostegia mollis* are competition from the alien plant species *Rubus* spp. and *Schinus terebinthifolius;* and a risk of extinction of the only known population of this species on Maui due to random environmental events (Service 1998b; 56 FR 55770).

Phyllostegia parviflora (NCN)

Phyllostegia parviflora, a member of the mint family (Lamiaceae), is a perennial herb with forward-bending hairs on the stems and straight or slightly curved hairs on the flowering stalk. The species is distinguished from others of the genus by the egg-shaped to broadly egg-shaped leaves, leaf stalks usually 6 to 13.5 cm (2.4 to 5.3 in) long, and the lower corolla lip 6 to 9 mm (0.24 to 0.36 in) long. *Phyllostegia parviflora* var. *glabriuscula* has fewer glandular hairs in the inflorescence, less pubescent leaves, and usually unbranched inflorescences compared with *Phyllostegia parviflora* var. *parviflora. Phyllostegia parviflora* var. *lydgatei* has shorter leaf stalks, spreading hairs on the leaf stalks, and fewer gland-tipped hairs in the inflorescence. At the time of listing of this species only two varieties were recognized, *glabriuscula* and *parviflora.* Subsequent to the final rule listing this species in 1996, we became aware of Wagner's (1999) taxonomic treatment of this group in which *P. parviflora* var. *lydgatei* was changed to variety status and recognized as distinct from *P. parviflora* var. *parviflora.* Wagner's (1999) treatment is cited in the supplement in the revised edition of the Manual of the Flowering Plants of Hawaii as the basis for recognizing *P. parviflora* var. *lydgatei.* This name change will be addressed in a future **Federal Register** notice (Wagner *et al.* 1999).

Historically *Phyllostegia parviflora* was known from three islands, Oahu, Hawaii, and Maui. This species is now known only from two populations on Oahu (HINHP Database 2001; GDSI 2001; Service 1999; 61 FR 53108).

Nothing is known of the preferred habitat of or native plant species associated with *Phyllostegia parviflora* on the island of Maui (Service 1999; 61 FR 53108; R. Hobdy *et al.*, pers. comm., 2001).

Nothing is known of the threats to *Phyllostegia parviflora* on the island of Maui (Service 1999; 61 FR 53108).

Plantago princeps (laukahi kuahiwi)

Plantago princeps, a short-lived member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, *anomala, laxiflora, longibracteata*, and *princeps*, are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Individuals have been observed in fruit from April through September. Little else is known about the life history of *Plantago princeps.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Plantago princeps is historically and currently found on Kauai, Oahu, Molokai, and Maui. It is no longer extant on the island of Hawaii. *Plantago princeps* var. *anomala* is currently

known from Kauai and Oahu; var. *longibracteata* is known from Kauai and Oahu; var. *princeps* is known from Oahu; and var. *laxiflora* is known from Molokai and Maui. On Maui, there are five populations of *Plantago princeps* var. *laxiflora,* with a total of 118 individuals, on Federal (Haleakala National Park) and privately owned lands within the East Maui Watershed Partnership. This variety is found at Kahoolewa Ridge, Nakalaloa Stream, Iao Valley near the Needle, Hanakauhi, the west side of Kaupo Gap, and Palikea Stream (Service 1999; 59 FR 56333; GDSI 2001; HINHP Database 2001).

On Maui, *Plantago princeps* var. *laxiflora* is typically found on basalt cliffs that are windblown with little vegetation in *Metrosideros polymorpha* lowland wet forest; or *Acacia koa-Metrosideros polymorpha* montane wet forest; or *Metrosideros polymorpha* montane wet shrubland at elevations between 281 and 2,539 m (922 and 8,329 ft) and containing one or more of the following associated native plant species: *Eragrostis variabilis, Hedyotis formosa, Dubautia plantaginea* spp. *humilis*, *Pipturus albidus, Perrottetia sandwicensis, Touchardia latifolia, Dryopteris* spp., various other ferns, *Cyanea* spp, and *Melicope ovalis*, *Bidens micrantha* ssp. *kalealaha, Chamaesyce celastroides, Styphelia tameiameiae* or *Dubautia menziesii* (Service 1999; 59 FR 56333; HINHP Database 2001; R. Hobdy et al., pers. comm., 2001).

The primary threats to *Plantago princeps* var. *laxiflora* on Maui are herbivory and habitat degradation by feral pigs and goats and competition with various alien plant species (Service 1999; 59 FR 56333).

Platanthera holochila (NCN)

Platanthera holochila, a short-lived, perennial member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance to egg-shaped and the greenish-yellow flowers occur in open spikes. This is the only species of this genus that occurs in the Hawaiian Islands (Wagner *et al.* 1999).

Little is known about the life history of *Platanthera holochila.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically, *Platanthera holochila* was known from Maui, Oahu, Molokai, and Kauai. Currently, *Platanthera holochila* is extant on Kauai, Molokai, and Maui. On Maui, four populations with 22 individuals are reported on State (West Maui Forest Reserve) and privately owned lands within the West Maui Mountains Watershed Partnership and the East Maui Watershed Partnership from Kapaloa Stream, Waihee River, the border of Lahaina and Wailuku Districts and Koolau Gap (GDSI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

Platanthera holochila is found in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed montane bog or mesic scrubby *M. polymorpha* forest at elevations between 536 and 2,314 m (1,759 and 7,592 ft) containing one or more of the following associated native plant species: *Cibotium* spp., *Coprosma ernodeoides* (kukae nene), *Oreobolus furcatus, Styphelia tameiameiae, Wikstroemia* spp., *Scaevola chamissoniana* (naupaka kuahiwi), *Sadleria* spp., *Deschampsia nubigena, Metrosideros polymorpha, Luzula hawaiiensis* (wood rush), *Sisyrinchium acre* (mauu laili), *Broussaisia arguta, Clermontia* spp., *Lycopodium cernuum* (wawae iole), *Dubautia scabra* (naenae), *Polypodium pellucidum* (ae), *Morelotia gahniiformis* (NCN), or *Vaccinium reticulatum* (Service 1999; 61 FR 53108; R. Hobdy et al., pers. comm., 2001).

The primary threats to *Platanthera holochila* on Maui are habitat degradation and/or destruction by feral pigs; landslides; competition with alien plant species; and a risk of extinction on Maui from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining populations and individuals. Predation by slugs may also be a potential threat to this species (Service 1999; 61 FR 53108).

Pteris lidgatei (NCN)

Pteris lidgatei, a short-lived member of the maidenhair fern family (Adiantaceae), is a coarse perennial herb, 0.5 to 1 m (1.6 to 3.3 ft) tall. It has a horizontal rhizome 1.5 cm (0.6 in) thick and at least 10 cm (3.9 in) long when mature. The fronds, including the leaf stalks, are 60 to 95 cm (24 to 37 in) long and 20 to 45 cm (8 to 18 in) wide. The leafy portion of the frond is oblong-deltoid to broadly ovate-deltoid, thick, brittle, and dark gray-green. The sori are apparently marginal in position, either fused into long linear sori, or more typically separated into distinct shorter sori, with intermediate conditions being common. *Pteris lidgatei* can be distinguished from other species of *Pteris* in the Hawaiian Islands by the texture of its fronds and the tendency of the sori along the leaf margins to be broken into short segments instead of being fused into continuous marginal sori (Wagner 1949; Wagner and Wagner 1992).

Little is known about the life history of *Pteris lidgatei.* Flowering cycles, pollination vectors, seed dispersal agents, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Pteris lidgatei* was found on Oahu, Molokai, and Waihee on West Maui. Currently, this species is known from Oahu and Maui. Two populations with approximately 20 individuals occur on Maui on State (Kahakuloa section of the West Maui NAR) and privately owned lands within the West Maui Mountains Watershed Partnership north of Eke Crater and at Kauala (GDSI 2001; HINHP Database 2001; Service 1998a; 59 FR 49025).

This species grows on steep stream banks in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest at elevations between 201 and 1,717 m (659 and 5,633 ft) and containing one or more of the following native plant species: *Cibotium chamissoi* (hapuu), *Dicranopteris linearis, Elaphoglossum crassifolium* (ekaha), *Sadleria squarrosa* (amau), *Thelypteris cyatheoides,* or *Sphenomeris chusana* (palaa) (HINHP Database 2001; Service 1998a; 59 FR 49025; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats to *Pteris lidgatei* on Maui are the alien plants *Clidemia hirta, Tibouchina herbacea,* and *Ageratina adenophora;* habitat destruction by feral pigs; and a risk of extinction due to random environmental events (Service 1998a; 59 FR 49025).

Sanicula purpurea (NCN)

Sanicula purpurea, a short-lived member of the parsley family (Apiaceae), is a stout perennial herb, 8 to 36 cm (3 to 14 in) tall, arising from a massive perennial stem. The stems are tufted and branched, with the lower portion of the stem lying close to the ground, while the upper portion rises. The basal leaves are numerous and leathery in texture and are kidney-shaped or circular to egg-heart-shaped, with three to seven lobes. The leaf lobes are circular to inversely egg-shaped. The leaf veins are impressed on the upper surface and prominent on the lower surface. The leaf margins bear short, sharp teeth. The basal leaf stalks are slender and abruptly sheathed at the base. The leaves are palmately three-to five-lobed. The small purple, or cream-colored with a purple tinge, flowers occur in branched terminal clusters, each of which contains six to 10 flowers. Each flower cluster contains one to three perfect flowers and five to

seven staminate flowers. Below the inflorescence is a series of about 10 oblong or inversely lance-shaped bracts. The nearly spherical fruits are covered with prickles. This species is distinguished from others in the genus by the number of flowers per cluster and by the color of the petals (Constance and Affolter 1999).

Little is known about the life history of *Sanicula purpurea.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically and currently, *Sanicula purpurea* is known from Oahu and West Maui. On Maui, five populations totaling between 200 individuals are currently known on State (Kahakuloa and Honokawai sections of the West Maui NAR) and private lands within the West Maui Mountains Watershed Partnership north of Eke Crater and east of Kahakuloa Stream, south of Eke Crater, near Violet Lake, the ridge west of Puu Kukui, and Kahoolewa Ridge east of Puu Kukui (GSDI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

This species typically grows in open *Metrosideros polymorpha* mixed montane bogs at elevations between 1,195 and 1,764 m (3,921 and 5,787 ft) containing one or more of the following associated plant species *Styphelia tameiameiae, Gahnia beecheyi* (NCN), *Geranium hillebrandii* (nohoanu), *Myrsine vaccinioides* (kolea), *Viola maviensis, Argyroxiphium caliginis* (eke silversword), *Plantago pachyphylla* (laukahi kuahiwi), *Lycopodium* spp., *Argyroxiphium grayanum* (green sword), *Lagenifera maviensis, Machaerina* spp., or *Oreobolus furcatus* (HINHP Database 2001; Service 1999; 61 FR 53108; R. Hobdy *et al.,* pers. comm., 2001).

Habitat degradation by feral pigs; a risk of extinction due to random environmental events, and/or reduced reproductive vigor due to the small number of existing populations; and slugs are the major threats to *Sanicula purpurea* (Service 1999; 61 FR 53108; HINHP Database 2001).

Schiedea hookeri (NCN)

Schiedea hookeri, a member of the pink family (Caryophyllaceae), is a sprawling or clumped perennial herb. The stems, 0.3 to 0.5 m (1 to 1.6 ft) long, curve slightly upward or lie close to the ground and often produce matted clumps. The thin, opposite leaves are narrowly lance-shaped to narrowly elliptic. The petalless, perfect flowers are borne in open branched inflorescences, which are hairy, somewhat sticky, and 5 to 22 cm (2 to 9 in) long. The lance-shaped sepals are green to purple and 3 to 4.5 mm (1.2 to 1.8 in) long. The fruit is a capsule about 3 mm (0.1 in) long. This species is distinguished from others in this endemic Hawaiian genus by its open, hairy, and sometimes sticky inflorescence, and by the size of the capsules (Wagner *et al.* 1999).

Based on field and greenhouse observations, it is hermaphroditic, which means each individual has both male and female reproductive organs. Mature fruits have been observed in June and August. *Schiedea hookeri* appears to be an outcrossing species. Under greenhouse conditions, flowers do not set fruit unless pollinated. In the field, the species is presumed to be pollinated by insects, although none have been observed (a related species, *Schiedea lydgatei* on Molokai, is apparently pollinated by native, night-flying moths). A series of self-pollinations, intra-populational crosses, and crosses among populations have demonstrated that *Schiedea hookeri* experiences moderately strong inbreeding depression. These results indicate that reductions in population size could result in expression of inbreeding depression among progeny, with deleterious consequences for the long-term persistence of this species. Individuals of *Schiedea hookeri* appear to be long-lived, but there is no evidence of reproduction from seed under field conditions. Seedlings of *Schiedea* occurring in mesic or wet sites are apparently consumed by introduced slugs and snails, which have been observed feeding on *Schiedea membranacea,* another mesic forest species that occurs on Kauai. In contrast to mesic-forest species, *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because the drier sites have fewer alien consumers. *Schiedea hookeri* differs considerably through its range in potential for clonal growth. Plants from Kaluakauila Gulch are upright and show little potential for clonal spread. In contrast, clonal growth has been detected for individuals at Kaluaa Gulch, where the growth form is decumbent and plants apparently root at the nodes. Little else is known about the life history of *Schiedea hookeri.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Weller and Sakai, unpublished data; Service 1999; HINHP Database 2001; 61 FR 53108).

Historically, *Schiedea hookeri* was known from the Waianae Mountains of Oahu and from a single fragmentary collection from Haleakala on Maui that may represent *Schiedea menziesii* rather than *Schiedea hookeri.* Currently, this species is known only from Oahu (Service 1999; 61 FR 53108; HINHP Database 2001; EDA Database 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Schiedea hookeri* on the island of Maui (Service 1999; 61 FR 53108; R. Hobdy *et al.,* pers. comm., 2001).

Nothing is known of the threats to *Schiedea hookeri* on the island of Maui (Service 1999; 61 FR 53108).

Schiedea nuttallii (NCN)

Schiedea nuttallii, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. This long-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of the inflorescence, number of flowers per inflorescence, and smaller leaves, flowers, and seeds (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea nuttallii.* Based on field and greenhouse observations, it is hermaphroditic. Plants on Oahu have been under observation for 10 years, and they appear to be long-lived. *Schiedea nuttallii* appears to be an outcrossing species. Under greenhouse conditions, plants fail to set seed unless hand pollinated, suggesting that this species requires insects for pollination. Fruits and flowers are abundant in the wet season but can be found throughout the year. Little else is known about the life history of *Schiedea nuttallii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically, *Schiedea nuttallii* was known from Kauai and Oahu and was reported from Maui. Currently, it is found on Kauai, Oahu, and Molokai (Service 1999; 61 FR 53108; HINHP Database 2001; GDSI 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Schiedea nuttallii* on the island of Maui (Service 1999; 61 FR 53108; R. Hobdy *et al.,* pers. comm., 2001).

Nothing is known of the threats to *Schiedea nuttallii* on the island of Maui (Service 1999; 61 FR 53108).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a short-lived member of the legume family

(Fabaceae), is typically a sprawling shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon tinged with yellow, orange-red, scarlet or rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that populations at Kaena Point on Oahu are probably pollinator limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Little else is known about the life history of *Sesbania tomentosa.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Sesbania tomentosa* occurred on all eight of the main Hawaiian Islands and on the Northwestern Hawaiian Islands of Nihoa and Necker. Currently, *Sesbania tomentosa* occurs on Kauai, Oahu, Molokai, Kahoolawe, Maui, the island of Hawaii, Nihoa and Necker. On Maui, *S. tomentosa* is known from seven populations with a total of 83 individuals. The populations are located on State owned and/or leased land (Lihau section of West Maui NAR, Hana Forest Reserve, and Kanaio Training Area), under Federal jusisdiction (Kanaio National Guard Training Area) and on privately owned land within the East Maui Watershed Partnership and West Maui Mountains Watershed Partnership at Poelua Bay, Mokolea Point, between Kahakuloa Head and Puu Kahulianapa Mahinanui, Olowalu, Pimoe, south of Puu Puou. Off the south central coast of Kahoolawe, approximately 100 individuals of *S. tomentosa* are found on a small islet, Puu Koae, a State owned seabird sanctuary (R. Hobdy *in litt.* 2000; Service 1999; 59 FR 56333; GDSI 2001; HINHP Database 2001).

Sesbania tomentosa is found in windswept slopes, sea cliffs and cinder cones in *Scaevola sericea* coastal dry shrublands at elevations between 0 and 608 m (0 and 1,993 ft) and containing one or more of the following associated native plant species: *Jacquemontia ovalifolia* ssp. *sandwicensis* (pauohiiaka), *Sida fallax, Diospyros sandwicensis, Lipochaeta integrifolia* (nehe), *Bidens* spp., or stunted *Dodonaea viscosa* (Service 1999; 59 FR 56333; HINHP Database 2001; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats to *Sesbania tomentosa* on Maui are habitat degradation caused by competition with various alien plant species such as *Lantana camara, Waltheria indica* (uhaloa), and various grass species; feral cattle; lack of adequate pollination; seed predation by rats, mice and, potentially, alien insects; fire; and destruction by off-road vehicles and other human disturbances. Threats to *Sesbania tomentosa* on Kahoolawe include habitat degradation caused by competition with various alien plant species, erosion, and trampling by cats and seabirds (Service 1999; 59 FR 56333; P. Higashino, pers. comm., 2000).

Solanum incompletum (popolo ku mai)

Solanum incompletum, a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. The oval to elliptic leaves have prominent veins on the lower surface and lobed leaf margins. Numerous flowers grow in loose branching clusters with each flower on a stalk. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in) long, and berries 1 to 2 cm (0.4 to 0.8 in) in diameter (Symon 1999).

Little is known about the life history of *Solanum incompletum.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Solanum incompletum* was known from central and northeastern Lanai, scattered locations on Maui, and the island of Hawaii. According to David Symon (1999), the known distribution of *Solanum incompletum* also extended to the islands of Kauai and Molokai. Currently, *Solanum incompletum* is only known from the island of Hawaii (Service 1999; 59 FR 56333; HINHP Database 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Solanum incompletum* on the island of Maui (Service 1999; 59 FR 56333; R. Hobdy *et al.,* pers. comm., 2001).

Nothing is known of the threats to *Solanum incompletum* on the island of Maui (Service 1999; 59 FR 56333).

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a nonsucculent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Spermolepis hawaiiensis* was known from the islands of Kauai, Oahu, Lanai, and Hawaii. Currently, it is extant on Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. On Maui, there are four known populations with hundreds to thousands of individuals on State (Lihau section of West Maui NAR and Kanaio NAR) and privately owned lands within the West Maui Mountains Watershed Partnership in Puu Hipa, south of Kanaha Stream, Olowalu, and Kanaio (Service 1999; 59 FR 56333; GDSI 2001; HINHP Database 2001; Charles Chimera, USGS Biological Research Division, pers. comm., 2000).

Spermolepis hawaiiensis is known from *Dodonaea viscosa* lowland dry shrubland at elevations between 221 and 742 m (725 and 2,434 ft) and containing one or more of the following associated native species: *Eragrostis variabilis, Wikstroemia* spp., *Erythrina sandwicensis, Diospyros* spp., *Pleomele* spp., *Lipochaeta lavarum, Sida fallax, Myoporum sandwicensis, Santalum ellipticum, Gouania hillebrandii,* or *Heteropogon contortus* (Service 1999; 59 FR 56333; HINHP Database 2001; C. Chimera, pers. comm., 2000; R. Hobdy *et al.,* pers. comm., 2001).

The primary threats to *Spermolepis hawaiiensis* on Maui are habitat degradation by feral goats, pigs, cattle,

and axis deer; competition with various alien plants, such as *Melinis repens* and *Lantana camara;* fire; and erosion, landslides, and rock slides due to natural weathering which result in the death of individual plants as well as habitat destruction (Service 1999; 59 FR 56333).

Tetramolopium arenarium (NCN)

Tetramolopium arenarium is a short-lived perennial and an upright, branched shrub in the sunflower family (Asteraceae). Alternate leaves are lance-shaped, hairy, glandular, and gray-green. This species is separated from other species of the genus in the Hawaiian Islands by several characters: upright habit; number of heads per flower cluster (five to 11); presence and type of glands and hairs; size of male ray flowers (1.3 to 2.2 mm (.002 to .009 in); number of bisexual disk flowers (five to nine) and their maroon color; and a wide, two- to four-nerved fruit with white hairs at the tip. Three infra-specific species are recognized: *Tetramolopium arenarium* ssp. *arenarium* var. *arenarium* (Maui and Hawaii), *T. arenarium* ssp. *arenarium* var. *confertum* (Hawaii), and *T. arenarium* ssp. *laxum* (Maui). These species are distinguished one from the other by a combination of characters. *T. arenarium* ssp. *arenarium* var. *confertum* and *T. arenarium* ssp. *laxum* have not been seen the late 1800s (Lowrey 1999).

Little is known about the life history of *Tetramolopium arenarium.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Tetramolopium arenarium was historically known from the islands of Maui and Hawaii. The taxon was considered extinct until *Tetramolopium arenarium* ssp. *arenarium* var. *arenarium* was recently rediscovered on the island of Hawaii. Both supspecies were last seen on Maui in the late 1800s (Service 1996a; 59 FR 10305; HINHP Database 2001; GDSI 2001).

Nothing is known about the preferred habitat of *Tetramolopium arenarium* on Maui (Service 1996a; 59 FR 10305; R. Hobdy *et al.,* pers. comm., 2001).

Nothing is known of the threats to *Tetramolopium arenarium* on the island of Maui (Service 1996a; 59 FR 10305).

Tetramolopium remyi (NCN)

Tetramolopium remyi, a short-lived perennial member of the sunflower family (Asteraceae), is a much branched, decumbent (reclining, with the end ascending) or occasionally erect shrub up to about 38 cm (15 in) tall. Its leaves are firm, very narrow, and with the edges rolled inward when the leaf is mature. There is a single flower head per branch. The heads are each comprised of 70 to 100 yellow disk and 150 to 250 white ray florets. The stems, leaves, flower bracts, and fruit are covered with sticky hairs. *Tetramolopium remyi* has the largest flower heads in the genus. Two other species of the genus are known historically from Lanai, but both have purplish rather than yellow disk florets and from four to 60 rather than one flower head per branch (Lowrey 1999).

Tetramolopium remyi flowers between April and January. Field observations suggest that the population size of the species can be profoundly affected by variability in annual precipitation; the adult plants may succumb to prolonged drought, but apparently there is a seedbank in the soil that can replenish the population during favorable conditions. Such seed banks are of great importance for arid-dwelling plants to allow populations to persist through adverse conditions. The aridity of the area, possibly coupled with human-induced changes in the habitat and subsequent lack of availability of suitable sites for seedling establishment, may be a factor limiting population growth and/or expansion. Requirements of this taxon in these areas are not known, but success in greenhouse cultivation of these plants with much higher water availability implies that, although these plants are drought-tolerant, perhaps the dry conditions in which they currently exist are not optimum. Individual plants are probably not long-lived. Pollination is hypothesized to be possibly by butterflies, bees, or flies. Little else is known about the life history of *Tetramolopium remyi.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995b; 56 FR 47686).

Historically, the species was known from the Lahaina area of West Maui and Lanai. Currently, *T. remyi* is known from two populations on Lanai. It was last seen on Maui in 1944 by E. Y. Hosaka (GDSI 2001; HINHP Database 2001; Service 1995b; 56 FR 47686).

On Maui, *Tetramolopium remyi* occurs in lowland dry shrubland on dry, exposed ridges or flats at elevations between 52 and 550 m (171 and 1,804 ft). Associated plant species include *Dodonaea viscosa, Heteropogon contortus, Bidens mauiensis, Bidens menziesii, Eragrostis atropioides* (lovegrass), *Lipochaeta heterophylla* (NCN), or *Waltheria indica* (Service 1995b; 56 FR 47686; R. Hobdy *et al.*, pers. comm., 2001).

Nothing is known of the threats to *Tetramolopium remyi* on the island of Maui (Service 1995b; 56 FR 47686).

Vigna o-wahuensis (NCN)

Vigna o-wahuensis, a member of the legume family (Fabaceae), is a slender, twining, long-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain seven to 15 gray to black seeds. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods which may or may not be slightly inflated (Geesink *et al.* 1999).

Little is known about the life history of *Vigna o-wahuensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, and on East Maui in Makawao, Waiakoa, and Haleakala, and at an unspecified site on West Maui. Currently, *Vigna o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and Hawaii. There are no currently known populations on Niihau or Oahu. On the State owned island of Kahoolawe, there are a total of three populations with an unknown number of individuals in the Makaalae/Lua Kealialalo, the Puhi a Nanue area near a tidal pond, and on Lua Makika. On Maui, there is a single population of at least one individual on State owned land at Kamanamana (HINHP Database 2001; GDSI 2001; C. Chimera, pers. comm., 2000; Service 1999; 59 FR 56333).

On Kahoolawe and Maui, *Vigna o-wahuensis* occurs in dry to mesic grassland and shrubland at elevations between 0 and 50 m (0 and 164 ft) containing one or more of the following associated plant species: *Sida fallax, Chenopodium* spp., or *Chamaesyce* spp. (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy *et al.*, pers. comm., 2001).

The primary threats to *Vigna o-wahuensis* on Kahoolawe are competition with various alien plant

species, fire; and a risk of extinction due to random environmental events, and/or reduced reproductive vigor due to the small number of existing populations and individuals. The primary threats to this species on Maui are competition with the alien plant species *Lantana camara* and *Cenchrus ciliaris* (buffelgrass), and herbivory by axis deer and goats (Service 1999; 59 FR 56333).

Zanthoxylum hawaiiense (ae)

Zanthoxylum hawaiiense, a long-lived perennial, is a medium-size tree with pale to dark gray bark, and lemon-scented leaves in the rue family (Rutaceae). Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaves (leaflets) with surfaces usually without hairs. *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characters: three leaflets all of similar size, one joint on lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.* 1999).

Little is known about the life history of *Zanthoxylum hawaiiense.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Historically, *Zanthoxylum hawaiiense* was known from the islands of Kauai, Molokai, Lanai, Hawaii, and southern and southwestern slopes of Haleakala on Maui. Currently, *Zanthoxylum hawaiiense* is extant on the islands of Kauai, Molokai, Maui, and Hawaii. This species is found on Maui in four populations with a total of 11 individuals on private and State (Makawao Forest Reserve and Department of Hawaiian Home Lands) owned lands at Kahakapao, and in the Hana District north and south of Jeep Trail and north of Kula Pipeline (GDSI 2001; HINHP Database 2001; Service 1996a; 59 FR 10305).

Zanthoxylum hawaiiense is reported from open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forests, *Acacia koa-Pleomele auwahiensis* forest, or montane dry forest at elevations between 882 and 1,540 m (2,894 and 5,051 ft) containing one or more of the following associated native species: *Metrosideros polymorpha, Diospyros sandwicensis, Pisonia* spp. (papala kepau), *Xylosma hawaiiensis, Santalum ellipticum, Alphitonia ponderosa, Osteomeles anthyllidifolia, Alectryon macrococcus, Charpentiera* spp., *Melicope* spp., *Dodonaea viscosa, Streblus pendulinus, Myrsine lanaiensis,* or *Sophora chrysophylla* (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy *et al.*, pers. comm., 2001).

The threats to *Zanthoxylum hawaiiense* on Maui include browsing, grazing, and trampling by feral goats and cattle; competition with the alien plant species *Melia azedarach* (chinaberry), *Lantana camara*, and *Pennisetum clandestinum;* fire; human disturbance; and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of populations (Service 1996a; 59 FR 10305).

A summary of populations and landownership for the 70 plant species reported from the islands of Maui and Kahoolawe is given in Table 3.

TABLE 3.—SUMMARY OF EXISTING POPULATIONS OCCURRING ON MAUI AND KAHOOLAWE, AND LANDOWNERSHIP FOR 70 SPECIES REPORTED FROM MAUI AND KAHOOLAWE.

Species	Number of current populations	Landownership		
		Federal	State	Private
Acaena exigua	0			
Adenophorus periens	0			
Alectryon macrococcus	7		X	X
Argyroxiphium sandwicense ssp. *macrocephalum*	4	X		X
Asplenium fragile var. *insulare*	1	X		X
Bidens micrantha ssp *kalealaha*	3	X	X	
Bonamia menziesii	4		X	X
Brighamia rockii	0			
Cenchrus agrimonioides	2		X	
Centaurium sebaeoides	3		X	X
Clermontia lindseyana	2		X	X
Clermontia oblongifolia ssp. *mauiensis*	1			X
Clermontia peleana	0			
Clermontia samuelii	4	X	X	
Colubrina oppositifolia	2			X
Ctenitis squamigera	6		X	X
Cyanea copelandii ssp. *haleakalaensis*	3	X	X	X
Cyanea glabra	1			X
Cyanea grimesiana spp. *grimesiana*	2			X
Cyanea hamatiflora spp. *hamatiflora*	7	X	X	X
Cyanea lobata	4			X
Cyanea mceldowneyi	6		X	X
Cyrtandra munroi	4		X	X
Delissea undulata	0			
Diellia erecta	5		X	X
Diplazium molokaiense	4		X	X
Dubautia plantaginea spp. *humilis*	1			X
Flueggea neowawraea	3		X	X
Geranium arboreum	7	X	X	X
Geranium multiflorum	8	X	X	X
Gouania vitifolia	0			
Hedyotis coriacea	1		X	
Hedyotis mannii	1			X
Hesperomannia arborescens	2		X	X
Hesperomannia arbuscula	2			X

TABLE 3.—SUMMARY OF EXISTING POPULATIONS OCCURRING ON MAUI AND KAHOOLAWE, AND LANDOWNERSHIP FOR 70 SPECIES REPORTED FROM MAUI AND KAHOOLAWE.—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
Hibiscus brackenridgei	5		X	X
Ischaemum byrone	6		X	X
Isodendrion pyrifolium	0			
Kanaloa kahoolawensis	1		X	
Lipochaeta kamolensis	1		X	
Lysimachia lydgatein	4		X	X
Mariscus pennatiformis	1		X	
Melicope adscendens	2		X	X
Melicope balloui	2	X		X
Melicope knudsenii	1		X	X
Melicope mucronulata	1			X
Melicope ovalis	1	X		
Neraudia sericea	3		X	X
Nototrichium humile	0			
Peucedanum sandwicense	3		X	X
Phlegmariurus mannii	7	X	X	X
Phyllostegia mannii	0			
Phyllostegia mollis	1		X	
Phyllostegia parvilfora	0			
Plantago princeps	5	X		X
Platanthera holochila	3		X	X
Pteris lidgatei	2		X	X
Remya mauiensis	3		X	
Sanicula purpurea	5		X	X
Schiedea haleakalensis	2	X		
Schiedea hookeri	0			
Schiedea nuttallii	0			
Sesbania tomentosa	8	X	X	X
Solanum incompletum	0			
Spermolepis hawaiiensis	4		X	X
Tetramolopium arenarium	0			
Tetramolopium capillare	4		X	X
Tetramolopium remyi	0			
Vigna o-wahuensis	4		X	
Zanthoxylum hawaiiense	4		X	X

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Alectryon macrococcus* (as *Alectryon macrococcum* var. *macrococcum* and *Alectryon mahoe*), *Bonamia menziesii, Brighamia rockii, Clermontia lindseyana, Colubrina oppositifolia, Cyanea glabra* (as *Cyanea scabra* var. *variabilis*), *Cyanea lobata* (as *Cyanea baldwinii*), *Cyanea mceldowneyi, Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Geranium arboreum, Geranium multiflorum* (as *Geranium multiflorum* var. *multiflorum,* var. *ovatifolium,* and var. *superbum*), *Hedyotis mannii* (as *Hedyotis thyrsoidea* var. *thyrsoidea*), *Hesperomannia arborescens* (as *Hesperomannia arborescens* var. *bushiana* and var. *swezeyi*), *Hesperomannia arbuscula, Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei,* var. *mokuleianus,* and var. ''from Hawaii''), *Ischaemum byrone, Melicope balloui* (as *Pelea balloui*), *Melicope knudsenii* (as *Pelea multiflora*), *Melicope ovalis* (as *Pelea ovalis*), *Neraudia sericea* (as *Neraudia kahoolawensis*), *Nototrichium humile, Peucedanum sandwicense* (as *Peucedanum kauaiense*), *Phyllostegia mollis, Plantago princeps* (as *Plantago princeps* var. *elata,* var. *laxiflora,* var. *princeps*), *Remya mauiensis, Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citriodora*), were considered to be endangered; *Cyrtandra munroi, Diellia erecta,* and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered to be threatened; and, *Asplenium fragile* var. *insulare* (as *Asplenium fragile*), *Bidens micrantha* ssp. *kalealaha* (as *Bidens distans* and *Bidens micrantha* spp. *kalealaha*), *Ctenitis squamigera, Diplazium molokaiense, Gouania vitifolia, Hedyotis coriacea, Isodendrion pyrifolium, Melicope knudsenii* (as *Pelea knudsenii* and *Pelea tomentosa*), *Melicope mucronulata* (as *Pelea mucronulata*), *Phlegmariurus mannii* (as *Lycopodium mannii*), *Plantago princeps* (as *Plantago princeps* var. *acaulis,* var. *denticulata,* and var. *queleniana*), *Pteris lidgatei, Tetramolopium arenarium* (as *Tetramolopium arenarium* var. *arenarium,* var. *confertum,* and var. *dentatum*), *Tetramolopium capillare,* and *Tetramolopium remyi* were considered extinct. On July 1, 1975, we published notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16,

1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa considered to be endangered or thought to be extinct except for *Cyanea glabra* and *Cyrtandra munroi;* additionally, *Argyroxiphium sandwicense* ssp. *macrocephalum* (as *Argyroxiphium macrocephalum*) appeared in the 1976 proposed rule as endangered. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated Notices of Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). A summary of the status categories for these 70 plant species in the 1980–1996 notices of review can be found in Table 4(a). We listed the 70 species as endangered or threatened between 1991 and 1999. A summary of the listing actions can be found in Table 4(b).

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE.

Species	FEDERAL REGISTER notice of review				
	1980	1985	1990	1993	1996
Acaena exigua	C1	C1	C1		
Adenophorus periens	C1	C1	C1		
Alectryon macrococcus	C1	C1	C1		
Argyroxiphium sandwicense ssp. *macrocephalum*	C1	C1	C1		
Asplenium fragile var. *insulare*	C1*	C1*	C1		
Bidens micrantha ssp. *kalealaha*	C1	C1	C1		
Bonamia menziesii	C1	C1	C1		
Brighamia rockii	C1	C1	C1		
Cenchrus agrimonioides					
Centaurium sebaeoides			C1		
Clermontia lindseyana	C1	C1	C1		
Clermontia oblongifolia ssp. *mauiensis*			C1		
Clermontia peleana	3C	3C	C1		
Clermontia samuelii					
Colubrina oppositifolia	C1	C1	C1		
Ctenitis squamigera	C1*	C1*	C1*		
Cyanea copelandii ssp. *haleakalaensis*					C
Cyanea glabra					C
Cyanea grimesiana spp. *grimesiana*	C1	C1		C2	
Cyanea hamatiflora spp. *hamatiflora*					C
Cyanea lobata	C1	C1	C1		
Cyanea mceldowneyi	C1	C1	C1		
Cyrtandra munroi	C2	C2	C1		
Delissea undulata	C1	C1*	C1*	C2*	
Diellia erecta	C1	C1	C1		
Diplazium molokaiense	C1*	C1*	C1		
Dubautia plantaginea spp. *humilis*			C2	C2	C
Flueggea neowawraea	C1	C1	C1		
Geranium arboreum	C1	C1	C1		
Geranium multiflorum	C1	C1	C1		
Gouania vitifolia	C1*	C1*	C1*		
Hedyotis coriacea	C1	C1	C1		
Hedyotis mannii	C1	C1	C1		
Hesperomannia arborescens	C1	C1	C1		
Hesperomannia arbuscula	C1	C1	C1		
Hibiscus brackenridgei	C1	C1	C1		
Ischaemum byrone	C1	C1	C1		
Isodendrion pyrifolium	C1*	C1*	3A		
Kanaloa kahoolawensis					C
Lipochaeta kamolensis	C1	C1	C1		
Lysimachia lydgatei			C1		
Mariscus pennatiformis		C1	C1		
Melicope adscendens			3A		
Melicope balloui	C1	C1	C1*		
Melicope knudsenii	C1*	C1*	C1		
Melicope mucronulata	C1	C1	C1		
Melicope ovalis	C1	C1*	C1*		
Neraudia sericea	3A	3A	C1		
Nototrichium humile	C1	C1	3C		
Peucedanum sandwicense	C2	C2	C2		
Phlegmariurus mannii	C1	C1	C1		
Phyllostegia mannii			C1		

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE.—Continued

Species	FEDERAL REGISTER notice of review				
	1980	1985	1990	1993	1996
Phyllostegia mollis	C1	C1	C1		
Phyllostegia parvilfora	C1	C1	C1		
Plantago princeps	C2	C2	C1		
Platanthera holochila	C1	C1	C1	C2	
Pteris lidgatei	C1	C1	C1		
Remya mauiensis	C1	C1			
Sanicula purpurea			C1		
Schiedea haleakalensis		C1	C1		
Schiedea hookeri				C2	
Schiedea nuttallii				C2	
Sesbania tomentosa	C1*	C1*	C1		
Solanum incompletum	C1*	C1*	C1		
Spermolepis hawaiiensis			C1		
Tetramolopium arenarium	C1*	C1*	3A		
Tetramolopium capillare	C1*	C1*	C1*		
Tetramolopium remyi	C1	C1	C1		
Vigna o-wahuensis	C1	C1	C1		
Zanthoxylum hawaiiense	C1	C1	C1		

Key:
C: Candidates: Species for which we have in file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened.
C1: Taxa for which the Service has on file enough substantial information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.
C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.
C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.
3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.
3C: Taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat.
FEDERAL REGISTER Notice of Review—1980: 45 FR 82479, 1985: 50 FR 39525, 1990: 55 FR 6183, 1993: 58 FR 51144, 1996: 61 FR 7596

TABLE 4(b).—SUMMARY OF LISTING ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE

Species	Federal status	Proposed rule		Final Rule		Proposed critical habitat	
		Date	**Federal Register**	Date	**Federal Register**	Date	**Federal Register**
Acaena exigua	E	05/24/91	56 FR 23842	05/15/92	57 FR 20787	12/18/00	65 FR 79192
Adenophorus periens	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/29/00	65 FR 66808, 65 FR 83157
Alectryon macrococcus	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	11/07/00, 12/18/00, 12/29/00	65 FR 66808, 65 FR 79192, 65 FR 83157
Argyroxiphium sandwicense ssp. *macrocephalum*.	T	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Asplenium fragile var. *insulare*	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025		
Bidens micrantha ssp. *kalealaha*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Bonamia menziesii	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/27/00	65 FR 66808, 65 FR 79192, 65 FR 82086
Brighamia rockii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83157
Cenchrus agrimonioides	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00	65 FR 79192
Centaurium sebaeoides	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	11/07/00, 12/18/00, 12/27/00, 12/29/00	65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83157
Clermontia lindseyana	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/18/00	65 FR 79192
Clermontia oblongifolia ssp. *mauiensis*.	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00, 12/27/00	65 FR 79192, 65 FR 82086
Clermontia peleana	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305		
Clermontia samuelii	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/18/00	65 FR 79192
Colubrina oppositifolia	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/18/00	65 FR 79192
Ctenitis squamigera	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00, 12/27/00, 12/29/00	65 FR 79192, 65 FR 79192, 65 FR 83157
Cyanea copelandii ssp. *haleakalaensis*.	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/18/00	65 FR 79192
Cyanea glabra	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/18/00	65 FR 79192
Cyanea grimesiana spp. *grimesiana*	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00, 12/29/00, 12/27/00	65 FR 79192, 65 FR 83157, 65 FR 82086

TABLE 4(b).—SUMMARY OF LISTING ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species	Federal status	Proposed rule		Final Rule		Proposed critical habitat	
		Date	**Federal Register**	Date	**Federal Register**	Date	**Federal Register**
Cyanea hamatiflora spp. *hamatiflora*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/18/00	65 FR 79192
Cyanea lobata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Cyanea mceldowneyi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Cyrtandra munroi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00, 12/27/00	65 FR 79192, 65 FR 82086
Delissea undulata	E	06/27/94	59 FR 32946	10/10/96	61 FR 53124	11/07/00	65 FR 66808
Diellia erecta	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00, 12/29/00	65 FR 79192, 65 FR 83157
Diplazium molokaiense	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00	65 FR 66808
Dubautia plantaginea spp. *humilis*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/18/00	65 FR 79192
Flueggea neowawraea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00	65 FR 66808, 65 FR 79192
Geranium arboreum	E	01/23/91	56 FR 2490	05/13/92	57 FR 20589	12/18/00	65 FR 79192
Geranium multiflorum	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Gouania vitifolia	E	12/14/92	57 FR 39066	06/27/94	59 FR 32932		
Hedyotis coriacea	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Hedyotis mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/18/00, 12/27/00, 12/29/00	65 FR 79192, 65 FR 82086, 65 FR 83157
Hesperomannia arborescens	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482	12/18/00, 12/29/00	65 FR 79192, 65 FR 83157
Hesperomannia arbuscula	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	12/18/00	65 FR 79192
Hibiscus brackenridgei	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00, 12/27/00	65 FR 79192, 65 FR 82086
Ischaemum byrone	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/18/00, 12/29/00	65 FR 79192, 65 FR 83157
Isodendrion pyrifolium	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305		
Kanaloa kahoolawensis	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/18/00	65 FR 79192
Lipochaeta kamolensis	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Lysimachia lydgatei	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Mariscus pennatiformis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192
Melicope adscendens	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346	12/18/00	65 FR 79192
Melicope balloui	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346	12/18/00	65 FR 79192
Melicope knudsenii	E	10/30/91	56 FR 5562	02/25/94	59 FR 09304	11/07/00, 12/18/00	65 FR 66808, 65 FR 79192
Melicope mucronulata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00, 12/29/00	65 FR 79192, 65 FR 83157
Melicope ovalis	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346	12/18/00	65 FR 79192
Neraudia sericea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00, 12/29/00	65 FR 79192, 65 FR 83157
Nototrichium humile	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089	NA	NA
Peucedanum sandwicense	T	10/30/91	56 FR 5562	02/25/94	59 FR 09304	11/07/00, 12/18/00, 12/29/00	65 FR 66808, 65 FR 79192, 65 FR 83157
Phlegmariurus mannii	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Phyllostegia mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83157
Phyllostegia mollis	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	12/18/00	65 FR 79192
Phyllostegia parvilfora	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108		
Plantago princeps	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/29/00	65 FR 66808, 65 FR 79192, 65 FR 83157
Platanthera holochila	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00, 12/18/00, 12/29/00	65 FR 66808, 65 FR 79192, 65 FR 83157
Pteris lidgatei	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00	65 FR 79192
Remya mauiensis	E	10/02/89	54 FR 40447	01/14/91	56 FR 1450	12/18/00	65 FR 79192
Sanicula purpurea	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00	65 FR 79192
Schiedea haleakalensis	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Schiedea hookeri	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108		
Schiedea nuttallii	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00, 12/29/00	65 FR 66808,
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00,	65 FR 66808, 65 FR 79192,
Solanum incompletum	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333		
Spermolepis hawaiiensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/27/00	65 FR 66808, 65 FR 79192, 65 FR 82086,
Tetramolopium arenarium	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305		
Tetramolopium capillare	E	03/25/93	58 FR 16164	09/30/94	59 FR 49860	12/18/00	65 FR 79192

TABLE 4(b).—SUMMARY OF LISTING ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species	Federal status	Proposed rule		Final Rule		Proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
Tetramolopium remyi	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686		
Vigna o-wahuensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00, 12/27/00, 12/29/00	65 FR 79192, 65 FR 82086, 65 FR 83157
Zanthoxylum hawaiiense	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	11/07/00, 12/18/00, 12/29/00	65 FR 66808, 65 FR 79192, 66 FR 83157

Key: E= Endangered T= Threatened

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was prudent for six of these plants (*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis, and Kanaloa kahoolawensis*) and not prudent for the other 64 plants because it would not benefit the plant or would increase the degree of threat to the species.

The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii, directed us to review the prudency determinations for 245 listed plant species in Hawaii, including 64 of the 70 species reported from Maui and Kahoolawe. Among other things, the court held that, in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a ''uniform protection plan'' prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public, State, and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public, State, and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002. *Conservation Council for Hawaii* v. *Babbitt,* 24 F. Supp. 2d 1074 (D. Haw. 1998).

At the time we listed *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis* (64 FR 48307) we determined that designation of critical habitat was prudent and that we would develop critical habitat designations for these six taxa, along with four others, at the same time we developed designations for the 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt,* Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed that it was reasonable for us to integrate these ten Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, but ordered us to publish proposed critical habitat designations for the 10 Maui Nui species with the first 100 plants from the group of 245 by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, nonprofit organizations, the State Division of Forestry and Wildlife (DOFAW), county governments, and Federal agencies (U.S. Department of Defense-Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, discourage cooperative projects, polarize

relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On December 29, 1999, we mailed letters to more than 130 landowners on the islands of Maui and Kahoolawe requesting any information considered germane to the management of any of the 70 plants on his/her property, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the species that may be on his/her property, and a handout containing general information on critical habitat. We received 20 written responses to our landowner mailing with varying types of information on their current land management activities. These responses included information on the following: the presence of fences or locked gates to restrict public access; access to the respondent's property by hunters or whether hunting is allowed on the property; ongoing weeding and rat control programs; and the propagation and/or planting of native plants. Some respondents stated that the plants of concern were not on her/his property. Only a few respondents expressed support for the designation of critical habitat. We held two open houses on the island of Maui, at the Lahaina Civic Center and the Wailuku Community Center on January 11 and 12, 2000, respectively, to meet one-on-one with local landowners and other interested members of the public. A total of 30 people attended the two open houses. In addition, we met with Maui County Division of Forestry and Wildlife staff to discuss their management activities on Maui.

On December 18, 2000, we published the second of the court-ordered prudency determinations and proposed critical habitat designations or non-designations for Maui and Kahoolawe plants (65 FR 79192). The prudency determinations and proposed critical habitat designations for Kauai and Niihau plants were published on November 7, 2000 (65 FR 66808), for Lanai plants on December 27, 2000 (65 FR 82086), and for Molokai plants on December 29, 2000 (65 FR 83157). All of these proposed rules had been sent to the **Federal Register** by or on November 30, 2000, as required by the court orders. In those proposals, we determined that critical habitat was prudent and proposed designation of critical habitat for 61 species (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Delissea undulata, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Schiedea nuttallii, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) that are reported from Maui and Kahoolawe as well as on Kauai, Niihau, Lanai, and Molokai. Critical habitat is proposed for 59 of these species on Maui and/or Kahoolawe at this time. Critical habitat is not proposed for *Adenophorus periens* and *Schiedea nuttallii* on Maui and Kahoolawe because we are have not identified habitat essential to their conservation on these islands.

In the December 18, 2000, proposal we determined that it was prudent to designate approximately 13,574 ha (33,614 ac) of lands on the island of Maui and approximately 207 ha (512 ac) of lands on the island of Kahoolawe as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which closed on February 16, 2001. On February 22, 2001, we published a notice (66 FR 11131) announcing the reopening of the comment period until April 2, 2001, on the proposal to designate critical habitat for 50 plants from Maui and Kahoolawe and a notice of a public hearing. On March 20, 2001, we held a public hearing at the Renaissance Wailea Beach Resort, Maui.

On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. On January 28, 2002, we determined that designation of critical habitat was prudent for *Solanum incompletum* (67 FR 3940), a species reported from Maui as well as Kauai, Molokai, and Lanai. Designation of critical habitat is not proposed for this species on Maui because we have not identified habitat essential to its conservation on this island. Publication of this revised proposal for plants from Maui and Kahoolawe is consistent with the court-ordered stipulation.

Summary of Comments and Recommendations

In the December 18, 2000, proposed rule (65 FR 79192), we requested all interested parties to submit comments on the specifics of the proposal, including information, policy, and proposed critical habitat boundaries as provided in the proposed rule. The first comment period closed on February 16, 2001. We reopened the comment period from February 22, 2001, to April 2, 2001 (66 FR 11131), to accept comments on the proposed designations and to hold a public hearing on March 20, 2001, in Wailea, Maui.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers: the *Honolulu Advertiser* on December 28, 2000, and the *Maui News* on January 2, 2000. We received one request for a public hearing. We announced the date and time of the public hearing in letters mailed to all interested parties, appropriate State and Federal agencies, county governments, and elected officials, and in notices published in the

Honolulu Advertiser and in the *Maui News* newspapers on March 1, 2001. A transcript of the hearing held in Wailea, Maui on March 20, 2001, is available for inspection (see **ADDRESSES** section).

We requested three botanists who have familiarity with Maui and Kahoolawe plants to peer review the proposed critical habitat designations. All three peer reviewers submitted comments on the proposed critical habitat designations. Two of the peer reviewers supported the designation of critical habitat for the Maui and Kahoolawe plants while the third peer reviewer says we did a very ambitious and credible attempt but does not support or oppose the designation. Two of the peer reviewers did not support the methodology we used to identify critical habitat, i.e. identifying only occupied habitat for these species. The third reviewer thought that focusing on known locations was appropriate to meet the court orders. Two of the reviewers did not agree with the exclusion of areas from critical habitat designation due to on-going land management. One peer reviewer opined that recovery of the plants would also entail the establishment of new populations in addition to the currently existing populations. All three peer reviewers also provided updated biological information, critical review, and editorial comments.

We received a total of 5 oral comments, 18 written comments, and 6 comments both in written and oral form during the two comment periods. These included responses from two Federal agencies, seven State offices, and 22 private organizations or individuals. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Maui and Kahoolawe plants. Of the 29 comments we received, 7 supported designation, 9 were opposed to it, and 13 provided information or declined to oppose or support the designation. Similar comments were grouped into eight general issues relating specifically to the proposed critical habitat designations. These are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment:* The designation of critical habitat in unoccupied habitat is particularly important, since this may be the only mechanism available to ensure that Federal actions do not eliminate the habitat needed for the survival and recovery of extremely endangered species.

Our Response: We agree. Our recovery plans for these species (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001) identify the need to expand existing populations and reestablish wild populations within historic range. We have revised the December 18, 2000, proposal to designate critical habitat for 50 plants from Maui and Kahoolawe to incorporate new information and address comments and new information received during the comment periods, including information on areas of potentially suitable unoccupied habitat for 61 plants from Maui and Kahoolawe.

(2) *Comment:* The data cited in the critical habitat proposal documenting the habitat losses and threats is questionable. We do not agree with the threats to the species as described in the proposed rule.

Our Response: In the December 18, 2000, proposal to designate critical habitat for 50 plants from Maui and Kahoolawe, we provided information on the status of and threats to the Maui and Kahoolawe plants. The threats to these species, and the species status, were documented in the listing rules for the Maui and Kahoolawe plants (56 FR 1450, 56 FR 47686, 56 FR 55770, 57 FR 20589, 57 FR 20772, 57 FR 20787, 57 FR 46325, 59 FR 9304, 59 FR 10305, 59 FR 14482, 59 FR 32932, 59 FR 49025, 59 FR 49860, 59 FR 56333, 59 FR 63436, 61 FR 53089, 61 FR 53108, 61 FR 53124, and 64 FR 48307), and in the recovery plans for these species (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001), and in the supporting documentation in the files at the Pacific Islands Office (See ADDRESSES section).

(3a) *Comment:* The proposal provides very limited information on the criteria and data used to determine the areas proposed as critical habitat. (3b) *Comment:* For example, failure to utilize recent collections at the herbaria of the B.P. Bishop Museum and the National Tropical Botanical Garden may result in incomplete knowledge of current known distributions and subsequently inadequate analysis for critical habitat designations. (3c) *Comment:* In situations where few species locations are currently known, pre-1970 locations may be used to identify suitable habitat for the species.

Our Response: When developing the December 18, 2000, proposal to designate critical habitat for 50 plants from Maui and Kahoolawe, we used the best scientific and commercial data available at the time, including but not limited to, information from the known locations, site-specific species information from the HINHP database, which includes information from collections housed at the herbarium of B.P. Bishop Museum and the National Tropical Botanical Garden, and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; the final listing rules for these species; information received at the two informational open houses held on Maui at the Lahaina Civic Center and the Wailuku Community Center on January 11 and 12, 2000, respectively; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the islands of Maui and Kahoolawe; discussions with botanical experts; and recommendations from the Hawaii Pacific Plants Recovery Coordinating Committee (HPPRCC)(Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; HPPRCC 1998; HINHP Database 2000, CPC *in litt.* 1999).

We have revised the proposed designations to incorporate new information and address comments and new information received during the comment periods. This additional information includes Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, land ownership); completed recovery plans; information received during the public comment periods and the public hearing, including information on recent plant collections housed at the B.P. Bishop Museum herbarium and the National Tropical Botanical Garden; and site-specific information from historical (pre-1970) collections (H. Oppenheimer, pers. comm., 2001; F. Duvall, pers. comm., 2001; M. Buck, *in litt.* 2001; 66 FR 11131).

(4a) *Comment:* We received comments that the proposed critical habitat designations were not specific enough, and were overly broad, and therefore, failed to comply with Congressional intent to restrict critical habitat to those areas ''essential to the conservation of the species.'' (4b) *Comment:* The designation was not inclusive enough and failed to include areas that Maui and Kahoolawe plants have used and are necessary for recovery of the species.

Our Response: We used the best scientific information available to develop the December 18, 2000, proposal to designate critical habitat for 50 Maui and Kahoolawe plants. This information is detailed above in our response to Comment (3). Based on the information described above, we believe

we have identified those areas essential to the conservation of the Maui and Kahoolawe plant species at issue in this proposed rule.

(5) *Comment:* Some commenters were concerned that developed infrastructure (i.e., roads, buildings, etc.) on their property is within proposed critical habitat boundaries, even though it does not contain any habitat for listed plants.

Our Response: In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of these species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, railroads, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, lawns, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of the proposed regulation. Therefore, unless a Federal action related to such features or structures indirectly affected nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat.

(6a) *Comment:* The presence of non-native plants makes habitat unsuitable and inappropriate for designation as critical habitat. (6b) *Comment:* Expansion of plant populations in highly degraded ecosystems may be biologically impossible due to the lack of the habitat components needed for survival.

Our Response: The presence of non-native plant competitors does not preclude designation of an area as critical habitat, if the area contains the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. We used the best available information, including expert scientific opinion, to identify the physical and biological features (type of plant community, associated species, and locale information such as rocky cliffs, talus slopes, stream banks) essential to the conservation of each species, and to identify potentially suitable habitat within the known historic range of each species. Of the area identified as potentially suitable habitat for a species, only those areas within the least disturbed suitable habitat were proposed as critical habitat for the species. In addition, habitat restoration projects are underway in some of the areas proposed as critical habitat for one or more species, such as at Ulupalakua Ranch on the island of Maui. At this location, non-native plants are being removed and replaced with native species, some of which are endangered or threatened.

We invite comments from the public that provide information on potentially suitable habitat within the known historic range of each species and whether lands within the proposed critical habitat provide for the conservation of one or more of the species.

(7) *Comment:* The Service should propose critical habitat on Maui and Kahoolawe for 14 plants historically, but not currently, found there.

Our Response: Fourteen species (*Adenophorous periens, Brighamia rockii, Clermontia peleana, Delissea undulata, Gouania vitifolia, Isodendrion pyrifolium, Nototrichium humile, Phyllostegia mannii, Phyllostegia parvilfora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum, Tetramolopium arenarium,* and *Tetramolopium remyi*) are known only from historical records on the islands of Maui or Kahoolawe. Critical habitat is proposed for six of these species (*Brighamia rockii, Gouania vitifolia, Isodendrion pyrifolium, Nototrichium humile, Phyllostegia mannii,* and *Tetramolopium remyi*) for which we have identified the physical and biological features that are considered essential to their conservation on the island of Maui. We also will consider proposing designation of critical habitat for these six species within their historical range on other Hawaiian islands. Critical habitat is not proposed for eight species (*Adenophorous periens, Clermontia peleana, Delissea undulata, Phyllostegia parviflora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum,* or *Tetramolopium arenarium*) which no longer occur on the islands of Maui or Kahoolawe, and for which we did not identify habitat essential to their conservation on these islands. All areas proposed as critical habitat are within the historical range of one or more of the 61 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of one or more of the species.

Critical habitat is proposed for *Asplenium fragile* var. *insulare,* which has been recently rediscovered on Maui. Critical habitat is proposed at this time for *Asplenium fragile* var. *insulare* on Maui based on new information and information received during the comment periods on the December 18, 2000, proposal.

Issue 2: Site-specific Biological Comments

(8a) *Comment:* Even though species are presumed to be extinct, given the frequency with which Hawaiian species are rediscovered, it is inappropriate not to designate critical habitat for any species addressed in this proposal. (8b) *Comment:* Critical habitat should be designated for *Acaena exigua* because habitats have not been adequately surveyed and this species may still be extant in the wild.

Our Response: We have revised the December 18, 2000, proposal to designate critical habitat for 61 plants from Maui and Kahoolawe to incorporate new information, and/or address comments and new information received during the comment periods.

Fourteen species (*Adenophorous periens, Brighamia rockii, Clermontia peleana, Delissea undulata, Gouania vitifolia, Isodendrion pyrifolium, Nototrichium humile, Phyllostegia mannii, Phyllostegia parvilfora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum, Tetramolopium remyi,* and *Tetramolopium arenarium*) are known only from historical records on the islands of Maui or Kahoolawe. Critical habitat is proposed for six of these species (*Brighamia rockii, Gouania vitifolia, Isodendrion pyrifolium, Nototrichium humile, Phyllostegia mannii,* and *Tetramolopium remyi*) for which we have identified the physical and biological features that are considered essential to their conservation on the island of Maui. Critical habitat is not proposed for eight species (*Adenophorous periens, Clermontia peleana, Delissea undulata, Phyllostegia parvilfora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum,* or *Tetramolopium arenarium*) which no longer occur on the islands of Maui or Kahoolawe and for which we have not identified habitat essential to their conservation on these islands.

No change is made here to the prudency determination for *Acaena exigua,* a species known only from Mt. Waialeale on Kauai and Puu Kukui on Maui, published in the December 18, 2000, proposal (65 FR 79192). *Acaena exigua* has not been seen on Kauai for over 100 years. This species was last

observed at Puu Kukui on Maui in 1999 and has not been observed in this area in subsequent surveys (H. Oppenheimer, pers. comm., 2001). In addition, this species is not known to be in storage or under propagation. Given these circumstances, we determined that designation of critical habitat for *Acaena exigua* was not prudent because such designation would be of no benefit to this species. If this species is rediscovered, we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. § 1532 (5) (B); 50 CFR 424.13(f)).

(9) *Comment:* One commenter requested that critical habitat designation skirt and not include any portion of the Hana or Kalaupapa Airports or any other airport.

Our Response: In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of these species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, railroads, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, lawns, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. We have revised the proposed designations published in the December 18, 2000, proposal for Maui and Kahoolawe plants to incorporate new information, and/or address comments and new information received during the comment periods. The Hana and Kalaupapa Airports were removed from the revised proposed critical habitat designations for Maui and Molokai.

(10) *Comment:* The State of Hawaii identified specific areas that they thought should not be designated as critical habitat.

Our Response: During the public comment periods for the December 18, 2000, proposal for plants from Maui and Kahoolawe, we received written comments and a map showing the DOFAW's vegetation classes and recommended critical habitat units. We have revised the December 18, 2000, proposed designations to incorporate new information, and address comments and new information received during the comment periods, including information received from DOFAW.

We evaluated DOFAW's comments on a species-by-species basis and incorporated information that was consistent with our methodology for identifying critical habitat as defined by the Act. DOFAW recommended deletion of some of the proposed critical habitat units on State lands as they do not believe these areas are suitable for the recovery of some species because they (DOFAW) would not be able to manage these areas with their limited staff and funding. Because DOFAW's basis for identifying areas for deletion was made on their ability to manage these areas, their mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act.

Issue 3: Legal Issues

(11) *Comment:* The Service failed to comply with court deadlines set forth in both *Conservation Council for Hawaii* v. *Babbitt*, 24 F. Supp. 1074 (D.Haw. 1998), and *Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 99–00283 (D.Haw Mar. 28, 2000)

Our Response: The proposed rules for plants from Kauai, Niihau, Maui, Kahoolawe, Lanai, and Molokai had been sent to the **Federal Register** by or on November 30, 2000, as required by the court orders. On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court orders for the final rules to designate critical habitat for plants from Kauai and Niihau, Maui and Kahoolawe, Lanai, and Molokai, citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. Publication of this revised proposal for plants from Maui and Kahoolawe is consistent with the court-ordered stipulation.

(12) *Comment:* Critical habitat designation is a duplicative regulatory environmental process of already-existing Federal and State environmental statutes such as the National Environmental Policy Act (NEPA) and Chapter 343 (Environmental Impact Statements), Hawaii Revised Statutes.

Our Response: Designation of critical habitat is not required by NEPA nor the Chapter 343 (Environmental Impact Statements), Hawaii Revised Statutes. We are required to designate critical habitat under section 4 of the Act. Section 7(a) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Issue 4: Section 7 Consultation Issues

(13) *Comment:* One commenter was concerned that using Federal funds to make improvements to the existing infrastructure and facilities at Waianapanapa State Park may require a section 7 consultation.

Our Response: Critical habitat designation does not affect activities on State or private lands unless some sort of Federal permit, license, or funding is involved. Therefore, unless a Federal action related to such features or structures indirectly affected nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat. The Federal agency providing the funds to make improvements to existing infrastructure and facilities at state parks would consult with us under section 7 of the Act to ensure that actions they fund are not likely to jeopardize the continued existence of any listed species or result in the destruction of adverse modification of critical habitat.

(14) *Comment:* Does section 7 apply to State and county agencies with permit authority such as the Hawaii Pollution Discharge Elimination system permit issued by the State of Hawaii and authorized by the Environmental Protection Agency, Special Management Area permits, and programs administered under the Natural Resources Conservation Service or the Coastal Zone Management Program?

Our Response: Section 7 of the Act requires each Federal agency to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species, or result in the destruction or adverse modification of critical habitat. Section 7 also requires that Federal agencies consult with us if their actions may affect a listed species. State or county agencies are not required to consult with us under section 7 of the Act if their programs are not authorized, permitted, or funded by a Federal agency.

The Environmental Protection Agency (EPA) may delegate the National Pollutant Discharge Elimination System (NPDES) permit authority to the State. Therefore, any individual permit that is issued by the State of Hawaii is not subject to section 7 consultation. Instead, procedures in the January 2001

Memorandum of Understanding between the Service and the EPA would apply. These procedures provide for us to notify EPA of any concerns we may have with individual permits, and the EPA would take corrective action if an individual permit has severe enough impacts on a listed species or designated critical habitat and the State fails to correct the problem. The Natural Resources Conservation Service (NRCS) does consult with us on projects and specific actions that they fund, authorize, or permit. The Coastal Zone Management Program (CZM Program) is administered by the National Oceanic and Atmospheric Administration (NOAA). NOAA has delegated implementation of the CZM Program in Hawaii to the State of Hawaii Department of Business, Economic Development, and Tourism (DBEDT). The individual decisions by the State's CZM Program are not subject to section 7 consultation. However, the State's CZM Program is not relieved of its responsibilities under section 9 of the Act.

(15) *Comment:* We are concerned that critical habitat designation will trigger additional compliance requirements under the State of Hawaii endangered species law.

Our Response: There is no State equivalent of critical habitat designation under the State of Hawaii's endangered species law. However, the Federal Endangered Species Act of 1973, as amended, is applicable to all States of the United States, including the State of Hawaii.

Issue 5: Mapping and Primary Constituent Elements

(16a) *Comment:* The designated areas are too large. (16b) *Comment:* The units are not large enough, and don't allow for changes that occur during known environmental processes. (16c) *Comment:* The 586-meter radius is arbitrary and may not work for all species, natural communities, and habitats. (16d) *Comment:* The highly irregular and fragmented shape of proposed units make it difficult to determine if projects are within critical habitat.

Our Response: We have revised the proposed designations published in the December 18, 2000, proposal for Maui and Kahoolawe plants to incorporate new information and address comments and new information received during the comment periods. Areas that contain habitat essential to conservation were identified and delineated on a species-by-species basis. When species units overlapped, we combined units for ease of mapping (see also Methods section). The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of 61 plant species from Maui and Kahoolawe.

(17) *Comment:* Requests were made to modify specific units in order to avoid areas where existing projects (*i.e.,* agricultural lands with irrigation infrastructure) are planned or may occur.

Our Response: In defining critical habitat boundaries in the revised proposal, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of these species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Therefore, unless a Federal action related to such features or structures indirectly affected nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat. We invite comments from the public that provide information on areas where existing and future projects are planned or may occur and how these projects may be affected by the designation of critical habitat.

(18) *Comment:* The discussion of each critical habitat unit should also indicate which species rely upon that unit for future reintroduction efforts.

Our Response: We have revised the December 18, 2000, proposal based on new information and information received during the comment periods. In this revised proposal, the description of each critical habitat unit (see *Descriptions of Critical Habitat Units*) includes information regarding species which rely upon that unit for recovery efforts, including future reintroduction efforts in currently unoccupied units.

(19) *Comment:* According to the **Federal Register**, *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Diellia erecta, Geranium arboreum, Lipochaeta kamolensis, Melicope mucronulata, Phlegmariurus mannii*, and *Phyllostegia mollis* are considered gulch dwelling species. One commenter recommended that map unit polygons be limited to the pali as part of the designation process in Units N, Nn, Oo, Qq, and Ss.

Our Response: In accordance with section 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection.

As described in the discussions for each of the 61 species for which we are proposing critical habitat, very little is known about the specific physical and biological requirements of these species. As such, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas the plant species are reported from, as described by the type of plant community, associated native plant species, locale information (*e.g.*, steep rocky cliffs, talus slopes, stream banks, gulches), and elevation. Locale information, such as gulch habitat, is only of one of the four factors used to describe primary constituent elements of each species.

In the revised proposed designation of critical habitat for plants on Maui proposed critical habitat for *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Diellia erecta, Geranium arboreum, Lipochaeta kamolensis, Melicope mucronulata, Phlegmariurus mannii*, and *Phyllostegia mollis* is included in critical habitat units which cover more than a single species (*i.e.*, multi-species units). These multi-species units are not homogenous or uniform in nature and may encompass a number of plant community types and locales, including gulches, pali, talus slopes, etc.

Issue 6: Definition of Critical Habitat

(20) *Comment:* Critical habitat is being designated in otherwise protected areas, such as State conservation lands, the island of Kahoolawe, and State parks. Managers should have the opportunity to implement management actions that would avoid the additional regulatory burden of critical habitat.

Our Response: In the December 18, 2000, proposal we examined all currently occupied sites containing one or more of the primary constituent elements considered essential to the conservation of the Maui and

Kahoolawe plant species to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; State of Hawaii, DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (*i.e.*, county, State, or Federal government holdings) and private landowner on the islands of Maui and Kahoolawe with a known occurrence of one of the plant species was contacted by mail. We reviewed all information received in response to our landowner mailing and open houses held at two locations (Lahaina and Wailuku) on the island of Maui on January 20 and 21, 2000, respectively. When clarification was required on the information provided to us, we followed up with a telephone contact. Because of the large amount of land on the island of Maui under State of Hawaii jurisdiction, we met with staff from Maui's DOFAW office to discuss their current management for the plants on their lands. And, we contacted the State's Department of Hawaiian Home Lands regarding management for the plants on lands under their jurisdiction. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

With regard to the areas newly proposed for designation in this revised proposal, we have also reviewed any management information available to us at this time. In addition, we are requesting information on management of these lands during the comment period.

Based upon review of the information available to us at this time, we have not been able to find that management on these State lands is adequate to preclude proposed designations of critical habitat. We are aware that the State of Hawaii and other private landowners are considering the development of land management plans or agreements that may promote the conservation of endangered and threatened plant species on the islands of Maui and Kahoolawe. We support these efforts, and we view such plans as important in helping meet species recovery goals, and ultimately can result in delisting of the species. We intend to work closely with any interested landowner or land manager in the development of conservation planning efforts for these, and other, endangered and threatened plants. If new information indicates any of these areas should not be included in the critical habitat designations because they no longer meet the definition of critical habitat, we may revise the proposed critical habitat designations in this proposal to exclude these areas. We agree that implementation of management actions for the conservation of these species should proceed; however, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available.

(21) *Comment:* Since critical habitat threats are being addressed, funding is available, and management plans are in place, the State Department of Hawaiian Homelands (DHHL) requests exclusion from designation in Units N, O, Oo, Qq, and Ww.

Our Response: In the December 18, 2000, proposal we examined all currently occupied sites containing one or more of the primary constituent elements considered essential to the conservation of the Maui and Kahoolawe plant species to determine if additional special management considerations or protection are required above those currently provided. As described above (see *Our Response* to *Comment* 20) we reviewed all available management information on these plants at these sites and all information received in response to our landowner mailing and two open houses. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

With regard to the areas proposed for designation by this revised proposal, we have also reviewed any management information available to us at this time. In addition, we are requesting information on management of these lands during the comment period.

Based upon review of the information available to us at this time, we have not been able to find that management on these State DHHL lands is adequate to preclude proposed designations of critical habitat. We are aware that the State of Hawaii and other private landowners are considering the development of land management plans or agreements that may promote the conservation of endangered and threatened plant species on the islands of Maui and Kahoolawe. We support these efforts, and we view such plans as important in helping meet species recovery goals, and ultimately can result in delisting of the species. We intend to work closely with any interested landowner or land manager in the development of conservation planning efforts for these, and other, endangered and threatened plants. If new information indicates any of these areas should not be included in the critical habitat designations because they no longer meet the definition of critical habitat, we may revise the proposed critical habitat designations in this proposal to exclude these areas.

(22) *Comment:* Additional layers of legal protection, in the case of Kahoolawe, are unnecessary. Hawaii State law has established Kahoolawe as a permanent natural and cultural reserve with habitat restoration as a key stated purpose (H.R.S. Chapter 6–K, H.A.R. Chapter 13–260, and Kahoolawe Archaeological District, listed March 18, 1981). Existing plans for Kahoolawe include a number of agreements, protocols, and management plans to guide protection and restoration of threatened and endangered species and native plant communities. Clean up of Kahoolawe by the Navy will continue through 2003, and could be detrimentally impacted by designation. Therefore, in consideration of the above, please exempt Kahoolawe from designation.

Our Response: In June 1998, the State of Hawaii Kahoolawe Island Reserve Commission developed an environmental restoration plan for Kahoolawe (Social Science Research Institute, University of Hawaii 1998). The plan, however, does not address specific management actions to protect and conserve endangered plant species, specifically *Kanaloa kahoolawensis, Hibiscus brackenridgei, Sesbania tomentosa*, and *Vigna o-wahuensis*, four species historically reported from Kahoolawe. While the island is isolated and remote, and access is restricted due to the presence of unexploded ordnance hazards, this action alone is not sufficient to indicate that additional special management is not required for the listed plant species, and areas on the island are included within the revised proposed critical habitat units for *Kanaloa kahoolawensis, Hibiscus brackenridgei, Sesbania tomentosa*, and *Vigna o-wahuensis.*

We invite comments from the public that provide information on how clean-up of Kahoolawe by the Navy could be detrimentally impacted by designation and information on management that promotes the conservation of endangered and threatened plants on Kahoolawe. If new information indicates any of the proposed areas should not be included in the critical habitat designations because they no

longer meet the definition of critical habitat (see *Our Response* to *Comment* 19), we may revise the proposed critical habitat designations in this proposal to exclude these areas.

(23) *Comment:* We urge the Service not to exclude managed areas, such as Waikamoi and Kapunakea Preserves, Puu Kukui Watershed Management Area, the upper area of Hanawi Natural Area Reserve, and Haleakala National Park, since doing so would violate the ESA.

Our Response: We have determined that the private lands within Waikamoi Preserve and Kapunakea Preserve do not meet the definition of critical habitat in the Act (§ 3(5)(A)), and we are not proposing designation of these lands as critical habitat in the revised proposal. Because the preserves and the continuing management plans being implemented for these plants and their habitats within the preserves provide a conservation benefit to the species and are permanently protected and managed, these lands meet the three criteria (described above in *Our Response* to *Comment* 19) for determining that an area is not in need of special management. However, should the status of either of these preserves change, for example by non-renewal of a partnership agreement or termination of Natural Area Partnership (NAP) funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time. 50 CFR 424.12(g).

In the December 18, 2000, proposal we determined that lands within the Puu Kukui Watershed Management Area on Maui were adequately managed for the conservation of the listed species that occur on those lands and were not in need of special management considerations or protection. Therefore, we determined that these lands did not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. However, during the comment periods on the December 18, 2000, proposal we received information from the Watershed Supervisor that funding for the conservation and management of the listed plant species on lands within Puu Kukui Watershed Management Area was not adequate nor assured. In the revised proposal we have determined that lands within Puu Kukui Watershed Management Area are in need of special management considerations or protection and thus meet the definition of critical habitat in the Act. Therefore, lands within Puu Kukui Watershed Management Area are included within the proposed designation of critical habitat on Maui for one or more species.

We have determined that the State land within the upper Hanawi Natural Area Reserve (NAR) does not meet the definition of critical habitat in the Act (§ 3(5)(A)), and we are not proposing designation of this land as critical habitat in the revised proposal. Because these plants and their habitats within the upper areas of Hanawi NAR (above 1,525 m (5,000 ft)) are permanently protected and managed and because the continued successful management of this area is assured, this area meets the three criteria (described above in *Our Response* to *Comment* 22) for determining that an area is not in need of special management or protection. Should the status of this reserve change, for example by revocation or modification of the NAR, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time. 50 CFR 424.12(g).

In the December 18, 2000, proposal we determined that lands within Haleakala National Park (Park) were adequately managed for the conservation of the listed species that occur on those lands and were not in need of special management considerations or protection. Therefore, we determined that these lands did not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. However, during the comment periods on the December 18, 2000, proposal we received information from the Park Superintendent that funding for the conservation and management of the listed plant species on lands within Haleakala National Park was not adequate nor assured. In the revised proposal we have determined that lands within the Park are in need of special management considerations or protection and thus meet the definition of critical habitat in the Act. Therefore, lands within the Park are included within the proposed designation of critical habitat on Maui for one or more species.

(24) *Comment:* All areas essential to the recovery of the species, regardless of management, should be designated as critical habitat.

Our Response: Pursuant to § 3(5)(A) of the Endangered Species Act the term ''critical habitat'' for a threatened and endangered species means—(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(25) *Comment:* Designation of critical habitat will provide additional benefit to managed lands when unoccupied habitat occurs on these lands, and when these lands are threatened by Federal actions.

Our Response: The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. The designation of unoccupied habitat may provide an additional benefit to the species by triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question. In the revised proposal we have proposed critical habitat in areas which are essential for the conservation of the species within its historical range though the species may not occur there currently. The proposed critical habitat includes lands under State, private, or Federal ownership or administration. A few of the species are reported from Federal lands or lands that are administered by a Federal agency (*e.g., Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis*, and *Schiedea haleakalensis* within Haleakala National Park) while most of the species are reported exclusively from non-federal lands with currently no known or limited Federal activities. However, there could be Federal actions affecting these lands in the future.

(26a) *Comment:* Designation of Haleakala National Park would further protect threatened and endangered plants from Federal actions inside the Park. (26b) *Comment:* Designating critical habitat would prevent Federal actions taking place outside managed areas from impacting habitat found within managed areas, such as the impacts of the proposed Kahului Airport expansion on Haleakala National Park.

Our Response: In the December 18, 2000, proposal we determined that lands within the Park were adequately managed for the conservation of the listed species that occur on those lands and were not in need of special

management considerations or protection. Therefore, we determined that these lands did not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. However, during the comment periods on the December 18, 2000, proposal we received information from the Park Superintendent that funding for the conservation and management of the listed plant species on lands within Haleakala National Park was not adequate nor assured. Therefore, we have determined that lands within Haleakala National Park are in need of special management considerations or protection and thus meet the definition of critical habitat in the Act.

The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. Federal agencies must consult with the Service to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the survival of a listed species or result in the destruction or adverse modification of critical habitat. By consulting with us, an agency can usually minimize or avoid any potential conflicts with listed species and their critical habitat, and the proposed project may be undertaken.

In the formal consultation for the Kahului Airport expansion project we concurred that the airport improvement project, which included a mandatory state of the art alien species interdiction facility, was not likely to jeopardize listed species nor adversely affect designated critical habitat for *Gouania hillebrandii* on the island of Maui. According to the local FAA office, the expansion project has been canceled mainly because of concerns of the local community, including the hotel industry, regarding the type of growth and development that characterizes Honolulu. There is no indication that the project has been canceled due to endangered species or critical habitat issues.

(27) *Comment:* The Service should not exclude from critical habitat any areas subject to conservation measures on non-Federal lands (*e.g.* Safe Harbor Agreements, Habitat Conservation Plans, etc.).

Our Response: Currently, there are no Habitat Conservation Plans (HCPs) or Safe Harbor Agreements (SHAs) that include any of the plant species at issue in this proposal as covered species, so no such areas have been excluded from this proposal.

Issue 7: Effects of Designation

(28a) *Comment:* Designation of critical habitat will result in restrictions on subsistence hunting and State hunting programs funded under the Federal Aid in Wildlife Restoration Program (Pittman-Robertson program). (28b) *Comment:* Hunting and recreational opportunities need to be considered when designating critical habitat. (28c) *Comment:* The designation of critical habitat will result in restrictions on subsistence hunting and access.

Our Response: The designation of critical habitat imposes no regulatory restrictions on actions occurring on State or other non-Federal lands, unless the action is undertaken, funded, or authorized by a Federal agency. Recreational, commercial, and subsistence activities, including hunting, on non-Federal lands are not regulated or restricted by this critical habitat designation. We believe that game bird and mammal hunting in Hawaii is an important recreational and cultural activity, and we support the continuation of this tradition. The designation of critical habitat would not impose restrictions on State hunting regulations except to the extent federal funding is involved. However, Federal agencies are required 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 us and includes funds distributed by the Service to the State through the Federal Aid in Wildlife Restoration Program (Pittman-Robertson Program). Under the Act, activities funded by us or other Federal agencies cannot result in jeopardy to listed species, and they cannot adversely modify or destroy critical habitat. It is well documented that game mammals affect listed plant and animal species. In such areas, we believe it is important to develop and implement sound land management programs that provide both for the conservation of listed species and for continued game hunting. We are committed to working closely with the State and other interested parties to ensure that game management programs that receive Federal funding are implemented consistent with this need.

(29) *Comment:* The designation of critical habitat will disrupt air service at Hana Airport and have detrimental effects on its residents.

Our Response: Hana Airport is not included in the proposed critical habitat designation in the revised proposal as it does not contain one or more of the primary constituent elements for the species at issue and thus is not essential for their conservation.

(30) *Comment:* Critical habitat could be the first step toward making the area a national park or refuge.

Our Response: Critical habitat designation does not in any way create a wilderness area, preserve, national park, or wildlife refuge, nor does it close an area to human access or use. Its regulatory implications apply only to activities sponsored at least in part by Federal agencies. Land uses such as logging, grazing, and recreation that would not be affected if they do no involve Federal permitting or funding. Critical habitat designations do not constitute land management plans.

(31a) *Comment:* The designation of critical habitat constitutes an encumbrance, results in ''downzoning'' of the property, and will allow lawsuits by environmental groups. Therefore, critical habitat will have a negative economic impact and cause a decrease in land values, and is a tactic often used as a prelude to ''taking'.

Our Response: The majority of this land (77 percent) and all of the land on Kahoolawe is within the State Conservation District where State land-use controls already severely limited development and most activities. Approximately 23 percent of this land is within the State Agricultural District where only activities such as crops, livestock, grazing, and accessory structures and farmhouses are allowed. While the potential exists for a decrease in property values for privately owned agricultural land suitable for eventual development if a perception develops that a critical habitat designation will restrict future land use, we believe this potential decrease in value is purely speculative and to our knowledge has never occurred in Hawaii or the continental U.S.

Because current zoning limits land use activities within the proposed critical habitat areas and only activities with a Federal involvement that will destroy or adversely modify critical habitat will be affected and in such cases we must identify reasonable and prudent alternatives, we don't believe this is a prelude to a ''taking.'' In addition, we will conduct an economic analysis and in the final rule, we may exclude areas from critical habitat if the impact of designation outweighs the benefit of designation.

We expect that this situation will rarely be reached because the Act provides mechanisms, through section 7 consultation, to resolve apparent conflicts between proposed Federal actions, including Federal funding or permitting of actions on private land,

and the requirement that destruction or adverse modification of critical habitat be avoided. Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives, which by definition must be economically feasible and within the scope of authority of the Federal agency involved in consultation.

Issue 8: Economic Issues

(32) *Comment:* We should have been directly contacted for our opinions on the economic impacts of critical habitat designation.

Our Response: We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the draft economic analysis and proposed rule at that time. We will mail letters to landowners and other interested parties and publish a notice in the *Maui News* newspaper announcing the availability of and seeking public comment on the draft economic analysis and proposed rule. We encourage anyone who has information or opinions concerning the economic impacts of this proposal to provide them to us.

(33) *Comment:* The Service failed to properly consider the economic (e.g., costs associated with section 7 consultation, project delays, etc.) and other impacts (special management protections on private lands) of designating particular areas as critical habitat.

Our Response: We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the draft economic analysis and proposed rule at that time (see response to *Comment 23*, above).

Summary of Changes From the Previous Proposal

We originally determined that designation of critical habitat was prudent for 37 plants from the islands of Maui and Kahoolawe on December 18, 2000. In a previous proposal, published on November 7, 2000, we determined that designation of critical habitat was prudent for 11 plants that are reported from Maui and Kahoolawe as well as from Kauai and Niihau. In addition, at the time we listed *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis*, and *Kanaloa kahoolawensis*, on September 3, 1999, we determined that designation of critical habitat was prudent for these six taxa from Maui and Kahoolawe. No change is made to these 54 prudency determinations in this revised proposal and they are hereby incorporated by reference (64 FR 48307; 65 FR 66808; 65 FR 79192).

In the December 18, 2000, proposal, we determined that critical habitat was not prudent for *Acaena exigua*, a species endemic to Maui, because it had not been seen recently in the wild, and no viable genetic material of this species was known to exist. No change is made here to the December 18, 2000, prudency determination for this species and it is hereby incorporated by reference (65 FR 79192).

In the December 18, 2000, proposal we proposed designation of critical habitat for 50 plants from the islands of Maui and Kahoolawe. These species are: *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Vigna o-wahuensis, and Zanthoxylum hawaiiense.* In this proposal, we have revised the proposed designations for these 50 plants based on new information received during the comment periods. In addition, we incorporate new information, and address comments and new information received during the comment periods on the December 18, 2000, proposal.

In the December 18, 2000, proposal, we did not propose critical habitat for four species (*Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis*, and *Schiedea haleakalensis*) found only in Waikamoi Preserve and/or Haleakala National Park. We determined that these lands did not meet the definition of critical habitat in the Act. However, during the comment periods on the December 18, 2000, proposal, we received information from the Park Superintendent that funding for the conservation and management of the listed plant species on lands within Haleakala National Park was not adequate nor assured. Therefore, we have determined that lands within Haleakala National Park are in need of special management considerations or protection and thus meet the definition of critical habitat in the Act, and we have proposed designation of critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis*, and *Schiedea haleakalensis* within Haleakala National Park.

In the December 18, 2000, proposal, we did not propose designation of critical habitat for 14 species that no longer occur on Maui and Kahoolawe but are reported from one or more other islands. We determined that critical habitat was prudent for eight of these species (*Adenophorus periens, Brighamia rockii, Delissea undulata, Isodendrion pyrifolium, Phyllostegia mannii, Schiedea nuttallii, Solanum incompletum*, and *Tetramolopium remyi*) in other proposed rules published on November 7, 2000 (Kauai), December 27, 2000 (Lanai), December 29, 2000 (Molokai), and January 28, 2002 (Kauai revised proposal). No change is made to these prudency determinations for these eight species in this proposal and they are hereby incorporated by reference (65 FR 79192; 65 FR 82086; 65 FR 83158; and 67 FR 3940). In this proposal, we propose designation of critical habitat for *Brighamia rockii, Isodendrion pyrifolium, Phyllostegia mannii*, and *Tetramolopium remyi* on the island of Maui, based on new information and information received during the comment periods on the December 18, 2000, proposal. Critical habitat is not proposed for *Adenophorus periens, Delissea undulata, Schiedea nuttallii*, and *Solanum incompletum* on the

islands of Maui and Kahoolawe because we did not identify habitat essential to their conservation on these islands.

In this proposal, we determine that critical habitat is prudent for *Asplenium fragile* var. *insulare*, a species recently rediscovered on Maui and for which a prudency determination has not been made previously. Critical habitat is proposed at this time for *Asplenium fragile* var. *insulare* on Maui based on new information and information received during the comment periods on the December 18, 2000, proposal.

In this proposal, we determine that critical habitat is prudent for six other species (*Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri*, and *Tetramolopium arenarium*) for which prudency determinations have not been made previously, and that no longer occur on Maui but are reported from one or more other islands. These six plants were listed as endangered species under the Endangered Species Act of 1973, as amended (Act) between 1994 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. In this proposal, we determine that designation of critical habitat is prudent for these six species because we believe that such designation would be beneficial to these species. Critical habitat is proposed at this time for *Gouania vitifolia* and *Nototrichium humile*, on Maui based on new information and information received during the comment periods on the December 18, 2000, proposal. Critical habitat is not proposed for *Clermontia peleana, Phyllostegia parviflora, Schiedea hookeri*, and *Tetramolopium arenarium* on the island of Maui because we did not identify habitat essential to their conservation on this island.

In this proposal, we propose designation of critical habitat for 61 species: *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis*, and *Zanthoxylum hawaiiense* on the islands of Maui and Kahoolawe, based on new information and information received during the comment period on the December 18, 2000, proposal. Critical habitat is not proposed for 8 species: *Adenophorus periens, Clermontia peleana, Delissea undulata, Phyllostegia parviflora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum*, and *Tetramolopium arenarium* on the islands of Maui or Kahoolawe because we did not identify habitat essential to their conservation on these islands. Critical habitat is not proposed for *Acaena exigua*, for which we determined, on December 18, 2000, that critical habitat designation is not prudent because this species has not been seen recently in the wild, and no viable genetic material of this species is known. No change is made to that determination here.

Based on a review of new biological information and public comments received, we have revised our December 18, 2000, proposal to incorporate the following changes in addition to those described above: changes in our approach to delineate proposed critical habitat (see *Criteria Used to Identify Critical Habitat*); adjustment and refinement of previously identified critical habitat units to more accurately follow the natural topographic features and to avoid inessential landscape features (agricultural crops, urban or rural development) without primary constituent elements; and, inclusion of new areas within the proposed critical habitat units that are essential for the conservation of one or more of the 61 plant species, including portions of Federal land within Haleakala National Park.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified to help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must

first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Section 4 requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Redeterminations

We originally determined that designation of critical habitat was prudent for 37 plants from the islands of Maui and Kahoolawe on December 18, 2000. These species are: *Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Cenchrus agriminoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Lipochaeta kamolensis, Lysmachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Phlegmariurus mannii, Phyllostegia mollis, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Tetramolopium capillare,* and *Vigna o-wahuensis*. In a previous proposal, published on November 7, 2000, we determined that designation of critical habitat was prudent for 11 plants (*Alectryon macrococcus, Bonamia menziesii, Centaurium sebaeoides, Flueggea neowawrae, Melicope knudsenii, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Sesbania tomentosa, Spermolepis hawaiiensis, Zanthoxlum hawaiiense*) that are reported from Maui and Kahoolawe as well as from Kauai and Niihau. In addition, at the time we listed *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis*, on September 3, 1999, we determined that designation of critical habitat was prudent for these six taxa from Maui and Kahoolawe. No change is made to these 54 prudency determinations in this revised proposal and they are hereby incorporated by reference (64 FR 48307; 65 FR 66808; 65 FR 79192).

No change is made here to the prudency determination for *Acaena exigua*, a species known only from Mt. Waialeale on Kauai and Puu Kukui on Maui, published in the December 18, 2000, proposal and hereby incorporated by reference (65 FR 79192). *Acaena exigua* has not been seen on Kauai for over 100 years. This species was last observed at Puu Kukui on Maui in 1999 and has not been observed in this area in subsequent surveys (H. Oppenheimer, pers. comm., 2001). In addition, this species is not known to be in storage or under propagation. Given these circumstances, we determined that designation of critical habitat for *Acaena exigua* was not prudent because such designation would be of no benefit to this species. If this species is rediscovered, we may revise this proposal to incorporate or address new information as new data becomes available (See 16 U.S.C. 1532 (5) (B); 50 CFR 424.13(f)).

In the December 18, 2000, proposal we did not determine prudency nor propose designation of critical habitat for 14 species that we believed no longer occurred on Maui and Kahoolawe but were reported from one or more other islands. We determined that critical habitat was prudent for eight of these species (*Adenophorus periens, Brighamia rockii, Delissea undulata, Isodendrion pyrifolium, Phyllostegia mannii, Schiedea nuttallii, Solanum incompletum,* and *Tetramolopium remyi*) in other proposed rules published on November 7, 2000 (Kauai), December 27, 2000 (Lanai), December 29, 2000 (Molokai), and January 28, 2002 (Kauai revised proposal). No change is made to these prudency determinations for these eight species in this proposal and they are hereby incorporated by reference (65 FR 66808, 65 FR 82086, 65 FR 83158, and 67 FR 3940). In this proposal, we propose designation of critical habitat for *Brighamia rockii, Isodendrion pyrifolium, Phyllostegia mannii,* and *Tetramolopium remyi* on the island of Maui, based on new information and information received during the

comment periods on the December 18, 2000, proposal. Critical habitat is not proposed for *Adenophorus periens, Delissea undulata, Schiedea nuttallii,* and *Solanum incompletum* on the islands of Maui and Kahoolawe because we did not identify habitat essential to their conservation on these islands.

To determine whether critical habitat would be prudent for *Asplenium fragile* var. *insulare,* a species recently rediscovered on Maui and for which a new prudency determination has not yet been made, we analyzed the potential threats and benefits for this species in accordance with the court orders. This plant was listed as an endangered species under the Act in 1994. At the time *Asplenium fragile* var. *insulare* was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We examined the evidence available for this species and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of this species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Asplenium fragile* var. *insulare* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that this species is currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of *Asplenium fragile* var. *insulare*, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. *Asplenium fragile* var. *insulare* is reported from private, State, and Federal lands on Maui and Hawaii (Federal lands include Haleakala National Park on Maui, and Hawaii Volcanoes National Park and the U.S. Army's Pohakuloa Training Area on the island of Hawaii). While a critical habitat designation for habitat currently occupied by *Asplenium fragile* var. *insulare* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultations would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of this species and dissemination of information regarding its essential habitat requirements. Therefore, we propose that designation of critical habitat is prudent for *Asplenium fragile* var. *insulare*.

To determine whether critical habitat would be prudent for six other species (*Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium*) for which prudency determinations have not been made previously, and that no longer occur on Maui but are reported from one or more other islands, we analyzed the potential threats and benefits for these species in accordance with the court's order. These six plants were listed as endangered species under the Act between 1994 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species or would not benefit the plant. We examined the evidence now available for these six species and have not, as this time, found specific evidence of taking, vandalism, collection, or trade of these species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of *Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium,* there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. Three of these species, *Nototrichium humile, Schiedea hookeri,* and *Tetramolopium arenarium,* are reported from Federal lands or lands that are administered by a Federal agency on other islands (*Nototrichium humile* and *Schiedea hookeri* are reported from the U.S. Army's Makua Military Reservation and Schofield Barracks Military Reservation, and the U.S. Navy's Lualualei Naval Magazine on the island of Oahu; *Tetramolopium arenarium* is reported from the U.S. Army's Pohakuloa Training Area on the island of Hawaii) where actions are subject to section 7 consultation. Although *Gouania vitifolia* and *Phyllostegia parviflora* are located exclusively on non-Federal lands with limited Federal activities on the islands of Hawaii and/or Oahu, there could be Federal actions affecting these lands in the future. *Clermontia peleana* was observed in the wild as recently as 1998 on the island of Hawaii on Federal (Hakalau National Wildlife Refuge) and State lands. This species was not relocated in surveys conducted in 1999; however, viable genetic material is in propagation at the State's Volcano Rare Plant Facility on the island of Hawaii, and recovery objectives for this species include propagation and outplanting of propagated individuals within its historic range (Service 1996a). While a critical habitat designation for habitat currently occupied by *Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultations would be triggered only if critical habitat were designated. Critical habitat

may also trigger section 7 consultations for *Clermontia peleana* that would not otherwise occur. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements. Therefore, we propose that designation of critical habitat is prudent for *Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium.*

B. Methods

As required by the Act (section 4(b)(2)) and regulations at 50 CFR 424.12, we used the best scientific data available to determine areas that are essential to conserve *Adenophorus periens, Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia peleana, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Delissea undulata, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Schiedea hookeri, Schiedea nuttallii, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense.* This information included the known locations; site-specific species information from the HINHP database and our own rare plant database; species information from the CPC's rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide GIS coverages (*e.g.* vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 69 species; the December 18, 2000, proposal; information received during the public comment periods and the public hearing; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the islands of Maui and Kahoolawe; discussions with botanical experts; and recommendations from the HPPRCC (see also the discussion below) (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; HPPRCC 1998; HINHP Database 2000, CPC *in litt.* 1999; 65 FR 79192; R. Hobdy *et al., in litt.* 2001; J. Lau, *in litt.* 2001).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999).

The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research finding may also lead to additional refinements of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plant species and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data has been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species and species of concern) while we have only delineated areas that are essential for the conservation of the 61 listed species at issue. As a result, the proposed critical habitat designations in this proposed rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

In the December 18, 2000, proposal, we determined that the designation of critical habitat was prudent for 37 plant species known currently from the islands of Maui or Kahoolawe and in that proposal we identified the physical and biological features that are considered essential to the conservation of the 37 species on the islands of Maui or Kahoolawe (65 FR 79192). In a previous proposal, published on November 7, 2000, we determined that designation of critical habitat was prudent for 11 plants *(Alectryon macrococcus, Bonamia menziesii, Centaurium sebaeoides, Flueggea neowawrae, Melicope knudsenii, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Sesbania tomentosa, Spermolepis hawaiiensis, Zanthoxlum hawaiiense)* that are reported from Maui and Kahoolawe as well as from Kauai and Niihau. In the December 18, 2000, proposal, we identified the physical and biological features that are considered essential to the conservation of these 11 species on the islands of Maui or Kahoolawe (65 FR 79192). In addition, at the time we listed *Clermontia samuelii, Cyanea copelandii* ssp.

haleakalaensis, Cyanea glabra, Cyanea hamatiflora ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis,* and *Kanaloa kahoolawensis,* on September 3, 1999, we determined that designation of critical habitat was prudent for these six taxa from Maui and Kahoolawe. In the December 18, 2000, proposal, we identified the physical and biological features that are considered essential to the conservation of these six species on the islands of Maui or Kahoolawe (65 FR 79192). Based on new information and information received regarding the physical and biological features that are considered essential to the conservation of these 54 species during the comment periods on the December 18, 2000, proposal, we have revised the physical and biological features that are considered essential to the conservation of these 54 plant species on the islands of Maui and Kahoolawe.

In other proposals published on December 27, 2000, December 29, 2000, or on January 28, 2002, we determined that the designation of critical habitat was prudent for eight species *(Adenophorus periens, Brighamia rockii, Delissea undulata, Isodendrion pyrifolium, Phyllostegia mannii, Schiedea nuttallii, Solanum incompletum, and Tetramolopium remyi)* that no longer occur on Maui and Kahoolawe but are reported from one or more other islands. Based on new information and information received during the comment periods on the December 18, 2000, proposal regarding the physical and biological features (*i.e.* locale information, elevation, vegetation, and associated species) that are considered essential to the conservation of four of these eight species, we have identified the physical and biological features that are considered essential to the conservation of *Brighamia rockii, Isodendrion pyrifolium, Phyllostegia mannii,* and *Tetramolopium remyi* on the island of Maui. We are unable to identify these features for *Adenophorus periens, Delissea undulata, Schiedea nuttallii,* and *Solanum incompletum* on the island of Maui because information on these features for these species on Maui is not available at this time. Therefore, we were not able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of *Adenophorus periens, Delissea undulata, Schiedea nuttallii,* and *Solanum incompletum* on the island of Maui. However, proposed critical habitat designations for *Adenophorus periens, Delissea undulata,* and *Schiedea nuttallii* were included in proposals published on November 7, 2000, or December 29, 2000 (65 FR 66808; 65 FR 83158). In addition, we will consider proposing designation of critical habitat for *Adenophorus periens, Delissea undulata, Schiedea nuttallii,* and *Solanum incompletum* within the historic range for each species on other Hawaiian Islands.

In this proposal, we determine that the designation of critical habitat is prudent for *Asplenium fragile* var. *insulare,* a species recently rediscovered on Maui and for which a prudency determination has not been made previously. Based on new information received on the rediscovered population in Kalialinui regarding the physical and biological features (such as locale information, vegetation type, elevational range, and associated species) that are considered essential to the conservation of *Asplenium fragile* var. *insulare* we have identified the physical and biological features that are considered essential to the conservation of *Asplenium fragile* var. *insulare* on the island of Maui.

In this proposal, we determine that the designation of critical habitat is prudent for six species *(Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium)* for which prudency determinations have not been made previously, and that no longer occur on Maui but are reported from one or more other islands. Based on new information and information received regarding the physical and biological features that are considered essential to the conservation of *Gouania vitifolia* and *Nototrichium humile* during the comment periods on the December 18, 2000, proposal, we have identified the physical and biological features that are considered essential to the conservation of these two species on the island of Maui. These features include locale information, elevational range, vegetation type, and associated species for both *Gouania vitifolia* and *Nototrichium humile.* Information on the locale, elevational range, vegetation type, and associated species for *Clermontia peleana, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* is not available at this time and thus we are unable to identify these features for *Clermontia peleana, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* on the island of Maui. Therefore, we were not able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of *Clermontia peleana, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* on the island of Maui. However, we will consider proposing designation of critical habitat for *Clermontia peleana, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium* within the historic range for each species on other Hawaiian Islands.

All areas proposed as critical habitat are within the historical range of one or more of the 61 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of one or more of the species.

As described in the discussions for each of the 61 species for which we are proposing critical habitat, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community, associated native plant species, locale information (*e.g.,* steep rocky cliffs, talus slopes, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicates specific microclimate conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale provides information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the *Supplementary Information: Discussion of the Plant Taxa* section above, constitute the primary constituent elements for these species on the islands of Maui and Kahoolawe.

D. Criteria Used to Identify Critical Habitat

In the December 18, 2000, proposal we defined the primary constituent elements based on the general habitat features of the areas in which the plants currently occur such as the type of plant community the plants are growing in, their physical location (e.g., steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we proposed to designate as critical habitat provided some or all of the habitat components essential for the conservation of the 61

plant species. Specific details regarding the delineation of the proposed critical habitat units were given in the December 18, 2000, proposal (65 FR 79192). In that proposal, we did not include potentially suitable unoccupied habitat that is important to the recovery of the 61 species due to our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species) and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species.

However, following publication of the December 18, 2000 (65 FR 79192), proposal we received new information regarding the physical and biological features, such as locale information, elevational range, vegetation type, and associated species that are considered essential for the conservation of many of these 61 species and information on potentially suitable habitat within the historical range for many of these species. Based on a review of this new biological information and public comments received following publication of the other three proposals to designate critical habitat for Hawaiian plants on Kauai and Niihau (65 FR 66808), Lanai (65 FR 82086), and Molokai (65 FR 83158), we have reevaluated the manner in which we delineated proposed critical habitat. In addition, we met with members of the HPPRCC and State, Federal, and private entities to discuss criteria and methods to delineate critical habitat units for these Hawaiian plants.

While the lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.,* population viability analysis (NRC 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995), at this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, we used available information, including expert scientific opinion, to identify potentially suitable habitat within the known historic range of each species.

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these 61 species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes the following components: (1) stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species' biology and ecology (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature individuals per population for long-lived perennial species, 300 individuals per population for short-lived perennial species, and 500 mature individuals per population for annual species. There are some specific exceptions to this general recovery goal of 8 to 10 populations for species that are believed to historically have occurred as one large, scattered population (*e.g., Argyroxiphium sandwicense* ssp. *macrocephalum* (Service 1997)), and the proposed critical habitat designations reflect this exception for this species. To be considered recovered, each population of a species endemic to the islands of Maui or Kahoolawe should occur on the island to which it is endemic, and likewise the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated, influenced by the same small-scale events (such as landslides), and containing 100, 300, or 500 individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual.

By adopting these specific recovery objectives enumerated here, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes, or tsunamis, that could destroy a large percentage of the species at any one time may be reduced (Menges 1990; Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2000; Menges 1990; Murphy *et al.* 1900; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life-history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

The long-term objectives, as reviewed by Pavlik (1996), require from 50 to 2,500 individuals per population, based largely on research and theoretical modeling on endangered animals, since much less research has been done on endangered plants. Many aspects of a species life history are typically considered to determine guidelines for species interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed duration, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of these characteristics that can be uniformly applied to all Hawaiian plant species is longevity (*i.e.,* long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature individuals per population for long-lived perennial species, 300 individuals per population for short-lived perennial

species, and 500 individuals per population for annual species.

For *Argyroxiphium sandwicense* ssp. *macrocephalum,* the recovery goal is one population of greater than 50,000 individuals. This is based on the best scientific judgment of Hawaiian botanical experts, including HPPRCC members, who developed the recovery plan for this species, that this species probably occurred historically as one single population (Service 1997). The large number of total individuals is based on the more detailed knowledge available on the life history of this species, including the fact that it is a monocarpic species (only flowering once before dying), requires 15 to 50 years to mature, and must be cross-pollinated from a genetically different plant to produce viable seeds (Loope and Medeiros 1994, Carr *et al.* 1986). All of these characteristics indicate the need for more individuals in order to maintain a genetically diverse, viable population (Pavlik 1996).

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. However, as explained above, the recovery goal for *Argyroxiphium sandwicense* ssp. *macrocephalum* is one population, rather than 8 to 10 populations, of greater than 50,000 individuals. Although absent the detailed information inherent to the types of PVA models described above (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species—(1) creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the whole listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2000; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1996). This basic conservation principle of redundancy applies to Hawaiian plant species. By maintaining 8 to 10 viable populations in the several proposed critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and conservation. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of non-native plants and animals. Establishing and conserving 8 to10 viable plant populations on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as hurricanes which occurred in 1982 and 1992 on Kauai, fires, and alien plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential to give the species a reasonable likelihood of long-term survival and recovery, based on currently available information.

In summary, the long-term survival and recovery requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species except *Argyroxiphium sandwicense* ssp. *macrocephalum* as explained above. Some of this habitat is currently not known to be occupied by these species. To recover the species, it will be necessary to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (e.g., hurricanes, fire, and non-native species introductions) (Pimm *et al.* 1998; Stacey and Taper 1992; Mangel and Tier 1994).

In this proposal, we have defined the primary constituent elements based on the general habitat features of the areas from which the plants are reported, from such as the type of plant community the plants are reported from, the associated native plant species, the physical location (*e.g.,* steep rocky cliffs, talus slopes, streambanks), and elevation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 61 plant species.

Changes in our approach to delineate proposed critical habitat units were incorporated in the following manner:

1. We focused on designing units representative of the known current and historical geographic and elevational range of each species;

2. Proposed critical habitat units would allow for expansion of existing wild populations and reestablishment of wild populations within historic range, as recommended by the recovery plans for each species; and

3. Critical habitat boundaries were delineated in such a way that areas with overlapping occupied or suitable unoccupied habitat could be depicted clearly (multi-species units).

We began by creating rough units for each species by screen digitizing polygons (map units) using ArcView (ESRI), a computer GIS program. The polygons were created by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

The resulting shape files (delineating historic range and potential, suitable habitat) were then evaluated. Elevation ranges were further refined, and land areas identified as not suitable for a particular species (*i.e.*, not containing the primary constituent elements) were avoided. The resulting shape files for each species then were considered to define all suitable habitat on the island, including occupied and unoccupied habitat.

These shape files of suitable habitat were further evaluated. Several factors were then used to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for conservation would be available within the critical habitat units identified as containing the appropriate primary constituent elements for each species. For multi-island species multiple populations of each taxon were identified on islands where they now occur or occurred historically. Because of the need to propose critical habitat on an island by island basis for multi-island species we evaluated the historical distribution of each multi-island species throughout Hawaii, to the best of our ability. We expect to refine proposed areas for these multi-island species once all the proposed rules for the Hawaiian Islands are published. This refinement will be

based on an evaluation on what is essential to the species on these islands throughout its historical distribution. Of the areas identified as potentially suitable habitat, only those areas within the least-disturbed suitable habitat and that were determined were proposed as critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,281 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; M.H. Schierup and F.B. Christiansen 1996).

Using the above criteria, we delineated the proposed critical habitat for each species. When species units overlapped, we combined units for ease of mapping. Such critical habitat units encompass a number of plant communities. Using satellite imagery and parcel data, we then eliminated areas that did not contain the appropriate vegetation, associated native plant species, or elevations such as cultivated agriculture fields, housing developments, or other areas that are unlikely to contribute to the conservation of one or more of the 61 plant species. Geographic features (ridge lines, valleys, streams, coastlines, etc.) or man-made features (roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries. We also used watershed delineations to dissect very large proposed critical habitat units in order to simplify the unit mapping and their descriptions.

Within the critical habitat boundaries, section 7 consultation is necessary and adverse modification could occur if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of the 61 species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

In summary, for most of these species we utilized the approved recovery plan guidance to identify appropriately sized land units containing suitable occupied and unoccupied habitat. Based on the best available information, we believe these areas constitute the habitat necessary to provide for the conservation of these 61 species.

E. Managed Lands

Currently occupied and historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 61 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (*i.e.*, county, State, or Federal government holdings) and private landowner on the islands of Maui and Kahoolawe with a known occurrence of one of the 61 species was contacted by mail. We reviewed all information received in response to our landowner mailing and open houses held at two locations (the Lahaina Civic Center and the Wailuku Community Center) on the island of Maui on January 11 and 12, 2000, respectively. When clarification was required on the information provided to us, we followed up with a telephone contact. Because of the large amount of land on the island of Maui under State of Hawaii jurisdiction, we met with staff from the DOFAW office in Maui to discuss their current management for the plants on their lands. We also contacted the State's DHHL regarding management for the plants on lands under their jurisdiction (any species of aquatic life, wildlife, or plant that is federally listed as endangered or threatened is State listed as well). In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require ''special management considerations or protections.'' Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and (3) provides assurances the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive non-native plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Smith 1985; Howarth 1985; Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Vitousek 1992; Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Loope 1998).

Current threats to these species include non-native grass and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including goats, deer, and

pigs); direct and indirect effects of non-native plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and non-native insect pollinators for food, and predation of native insect pollinators by non-native hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be stifled by fruit- and flower-eating pests such as non-native arthropods, mollusks, and rats, and photosynthesis and water transport affected by non-native insects, pathogens, and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include non-native plant invasions altering wildfire regimes, feral ungulates vectoring weeds and disturbing vegetation and soils, thereby facilitating dispersal and establishment of non-native plants, and numerous non-native insects feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Cuddihy and Stone 1990; Mack 1992; Scott *et al.* 1986; Howarth 1985, Smith 1985; D'Antonio and Vitousek 1992, Tunison *et al.* 1992; Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Bruegmann *et al.* 2001).

(2) The recommendations from the HPPRCC in their 1998 report to us (''Habitat Essential to the Recovery of Hawaiian Plants''). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of non-native species threats, wildfire, and land use changes.

(3) The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in our recovery plans for these 61 species (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001), in the 1998 HPPRCC report to the Service (HPPRCC 1998), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1990; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) non-native plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plant species; (7) propagation, reintroduction, or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants; feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, or augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access.

As shown in Table 3, the proposed critical habitat designations for 61 species of plants are found on Federal, State, and private lands on the islands of Maui and Kahoolawe. In response to our public notices; letters to landowners; open houses; meetings; the December 18, 2000, proposal; public comment periods; and the March 20, 2001, public hearing along with information in our files, we received varying amounts and various types of information on the conservation management actions occurring on these lands. Some landowners reported that they are not conducting conservation management actions on their lands while others provided information on various activities such as fencing, weeding, ungulate control, hunting, control of human access, scientific research, fire control, and propagation and planting of native plants.

Federal Lands

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) a current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

One species, *Sesbania tomentosa,* occurs on Kanaio Training Area (Hawaii Army National Guard) lands on the island of Maui, and we believe this land is essential for the conservation of this species. In 1998, funds were provided for protective fencing and monitoring of *Sesbania tomentosa* on this land. Since then, however, these management activities for *Sesbania tomentosa* have been curtailed due to a lack of funding (Lt. Col. Richard Young, Hawaii Army National Guard, *in litt.* 2000). Because appropriate conservation management strategies has not been adequately funded or effectively implemented for *Sesbania tomentosa* on this land, we cannot at this time find that management of this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat. However, if an INRMP or other endangered species management plan that addresses the maintenance and improvement of the essential elements for *Sesbania tomentosa,* and provides for its long-term conservation and assurances that the conservation

management strategies will be effective and implemented, we will reassess the critical habitat boundaries in light of these management plans. Also, we may exclude these military lands under section 4(b)(2) of the Act if benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species. Therefore, this area has been included within the proposed critical habitat units.

Contractors for the U.S. Navy are clearing the State-owned island of Kahoolawe of military ordinance utilizing Congressional funding that expires in 2003. The Navy has consulted with the Service under section 7 of the Act to ensure protection of threatened and endangered species during the clearance activities. In June 1998, the State of Hawaii Kahoolawe Island Reserve Commission developed an environmental restoration plan for Kahoolawe (Social Science Research Institute, University of Hawaii 1998). The plan, however, does not address specific management actions to protect and conserve endangered plant species. While the island is isolated and remote, and access is restricted due to the presence of unexploded ordnance hazards, this action alone is not sufficient to indicate that additional special management is not required for the listed plant species, and areas on the island are included within the proposed critical habitat units for *Kanaloa kahoolawensis, Hibiscus brackenridgei, Sesbania tomentosa,* and *Vigna o-wahuensis.*

Protective fencing and monitoring of the endangered plant Sesbania tomentosa on the leased U.S. military lands (Hawaii Army National Guard) at Kanaio Training Area, Maui, were initially funded in 1998. Since then, however, these management activities for *Sesbania tomentosa* have been curtailed due to a lack of funding (Lt. Col. Richard Young, Hawaii Army National Guard, *in litt.* 2000). Therefore, this area has been included within the proposed critical habitat units.

Twelve species (*Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Geranium arboreum, Geranium multiflorum, Melicope balloui, Melicope ovalis, Plantago princeps,* and *Schiedea haleakalaensis*) are reported from U.S. National Park lands at Haleakala National Park, Maui (GDSI 2000; HINHP 2000). In the December 18, 2000, proposal we determined that lands within the Park were adequately managed for the conservation of the listed species that occur on those lands and were not in need of special management considerations or protection. Therefore, we determined that these lands did not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. However, during the comment periods on the December 18, 2000, proposal we received information from the Park Superintendent that funding for the conservation and management of the listed plant species on lands within Haleakala National Park may not be adequate nor sufficiently certain every year to support a determination that these lands do not meet the definition of critical habitat. Thus, lands within the Haleakala National Park are included in this proposal.

State of Hawaii Lands

Two plant species, *Geranium multiflorum* and *Clermontia samuelii* ssp. *hanaensis*, are reported from the upper areas of Hanawi Natural Area Reserve (HNAR) (GDSI 2000; HINHP Database 2000). The HNAR was established in 1986, and comprises 3,035 ha (7,500 ac) of diverse native ecosystems and endangered forest bird habitats. Natural Area Reserves are managed by the Department of Land and Natural Resources (DLNR), except that any use must be specifically approved by the Natural Area Reserve System Commission. Natural Area Reserves are held in trust by the State and may not be alienated except upon a finding by the DLNR of an imperative and unavoidable necessity. DLNR must provide public notice and conduct public hearings before revoking or modifying an executive order that sets aside lands for the reserve system (Haw. Rev. Stat. §§ 195–1—195–11). The primary goals of the HNAR are to: (1) Protect the upper areas of the reserve by fencing smaller manageable units to restrict pig movements; (2) prevent degradation of native forest by reducing feral ungulate damage; and (3) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants.

Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing of smaller manageable units, and staff hunting. Currently, the upper 809 ha (2,000 ac) has been fenced and pigs removed. Fences are constructed along the western boundaries of the HNAR, along the 1,585 m (5,200 ft) contour to the east up to the Haleakala National Park boundary on State land. The Haleakala National Park fence serves as the upper fence boundary for HNAR. Additionally, fences have been constructed to separate three distinct management units: Puu Alaea Unit, Poouli Unit, and Kuhiwai/Waieleele Unit. Since the removal of pigs in these upper forest units of the HNAR, vegetation monitoring has been implemented to determine recovery of native plant species. Currently, a fence is being constructed along the 1,100 m (3,600 ft) contour of the HNAR which will comprise the ''middle forest unit'' (B. Evanson, pers. comm., 1999).

The non-native plant control program within HNAR focuses on habitat-modifying non-native plants (weeds). A weed priority list has been compiled for HNAR, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or through a combination of both. Monitoring transects help locate developing populations of other priority weed species and, if necessary, removal of these populations is conducted (DLNR 1989).

Because these plants and their habitats within the upper areas of Hanawi NAR (above 1,525 m (5,000 ft)) are permanently protected and managed by State law and because the continued successful management of this area is assured by State funding, this area is not in need of special management considerations or protection. Therefore, we have determined that the State land within the upper areas of Hanawi NAR does not meet the definition of critical habitat in the Act, and we are not proposing designation of this area as critical habitat. Should the status of this reserve change, for example by revocation or modification of the NAR, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time. 50 CFR 424.12(g).

Private Lands

Ten species (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Ctenitis squamigera, Cyanea lobata, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum*, and *Platanthera holochila*) are reported from The Nature Conservancy's Waikamoi and Kapunakea Preserves which are located on the northeast slopes of Haleakala and in the West Maui mountains, respectively (The Nature Conservancy of Hawaii (TNCH) 1997, 1998; GDSI 2000; HINHP Database 2000). Both preserves were established by grants of perpetual

conservation easements from the private landowners to TNCH and are included in the State's Natural Area Partnership (NAP) program, which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 1997, 1998).

Under the NAP program, the State of Hawaii provides matching funds on a two-for-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the 6-year partnership agreement between the State and the managing entity is automatically renewed each year so that there are always 6 years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every 6 years. By April 1 of any year, the managing partner may notify the State that it does not intend to renew the agreement; however, in such case the partnership agreement remains in effect for the balance of the existing 6-year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if State funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the Department of Land and Natural Resources (DLNR) and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat. §§ 195–1—195–11; Hawaii Administrative Rules § 13–210.

Management programs within the preserves are documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plants and their habitats within the preserves and in adjacent areas (TNCH 1997, 1998, 1999). These management measures address factors which led to the listing of the 12 species including control of non-native species of ungulates, rodents, and weeds. In addition, habitat restoration and monitoring are also included in these plans.

The primary management goals for both Kapunakea and Waikamoi Preserves are to (1) prevent degradation of native forest by reducing feral ungulate damage; (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants; (3) increase the understanding of threats posed by small mammals and reduce their negative impact, where possible; (4) prevent extinction of rare species in the preserve; (5) track the biological and physical resources in the preserves and to evaluate changes in these resources over time; (6) identify new threats to the preserves before they become established pests; and (7) build public understanding and support for the preservation of natural areas, and to enlist volunteer assistance for preserve management (TNCH 1997, 1998).

The goal of the ungulate program is to bring pig populations to zero as rapidly as possible. Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing (fences placed in proximity to natural barriers such as cliffs), annual monitoring of ungulate presence transects, and trained staff and volunteer hunting. Since axis deer may also pose a threat to the preserves, TNCH is a member of the Maui Axis Deer Group (MADG) and staff meet regularly with other MADG members to seek solutions. In Waikamoi Preserve, the management actions also include working with community hunters in conjunction with the East Maui Watershed Partnership (EMWP). In Kapunakea Preserve, a system of transects extend the length of the preserve to monitor resource threats, including ungulate presence. By monitoring ungulate activity within the preserve, the staff is able to assess the success of the hunting program. If increased hunting pressure does not reduce feral ungulate activity in the preserves, the preserve staff work with the hunting group to identify and implement alternative methods (TNCH 1997, 1998).

The non-native plant control program within both preserves focuses on controlling habitat-modifying non-native plants (weeds) in intact native communities and preventing the introduction of additional alien plants. Based on the degree of threat to native ecosystems, a weed priority list has been compiled for the preserves, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or through a combination of both. Preventative measures (prevention protocol) are required by all (volunteers, riders, and hiking participants) who enter the preserves. This protocol includes such things as brushing footgear before entering the preserves to remove seeds of non-native plants. Weeds are monitored along transects annually, weed priority maps are maintained, staff participate as members of the Melastome Action Committee and the Maui Invasive Species Committee (MISC), and cooperate with the Division of Conservation and Resources Enforcement (DOCARE) in marijuana control, as needed.

The effects of non-native invertebrates and small mammals on native Hawaiian ecosystems is poorly understood. Initial control measures such as anti-coagulant diphacinone bait stations are being used to control rats in areas of suspected impact; however, valid conclusions from data gathered have not been drawn. Adaptive management will be applied when new information becomes available (TNCH 1997, 1998).

Natural resource monitoring and research address the need to track the biological and physical resources of the preserves and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserves to document long term ecological changes, and rare plant species are monitored to assess population status. Cuttings of endangered plants are taken to the University of Hawaii's tissue culture lab at Lyon Arboretum for propagation. In addition, the preserve staff provides logistical support to scientists and others who are conducting research within the preserves.

Kapunakea Preserve is adjacent to two areas that are also managed to protect natural resources: Puu Kukui Watershed Management Area (WMA) and the Honokowai section of the State West Maui NAR. The Conservancy currently acts as a consultant to Maui Land and Pineapple Co., managers of Puu Kukui WMA, and has a Master Cooperative Agreement with the State DOFAW. These agreements are used to coordinate management and sharing of staff and equipment, and expertise to maximize management efficiency.

Waikamoi Preserve is adjacent to three other large areas that are also managed to protect natural resources: Haleakala National Park, the State's Koolau Forest Reserve, and the State Hanawi NAR. An agreement between the Division of Land and Natural Resources (DLNR), East Maui Irrigation Co., Keola Hana Maui Inc., Haleakala Ranch Company, County of Maui, The Nature Conservancy, and Haleakala

National Park implementing a joint management plan (East Maui Watershed Partnership Plan) for the entire East Maui Watershed. Management efforts at Waikamoi will, as much as possible, complement the objectives of the plan. The partnership agreement will be used to coordinate management and sharing of staff and equipment, and expertise to maximize management efficiency (TNCH 1998).

Because the preserves and the continuing management plans being implemented for these plants and their habitats within the preserves provided a conservation benefit to the species and are permanently protected and managed, these lands meet the three criteria for determining that an area is not in need of special management. Therefore, we have determined that the private lands within Waikamoi Preserve and Kapunakea Preserve do not meet the definition of critical habitat in the Act, and we are not proposing designation of these lands as critical habitat. Should the status of any of these reserves change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time (50 CFR 424.12(g)).

Eight species (*Ctenitis squamigera, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Cyrtandra munroi, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila*, and *Sanicula purpurea*) are reported from the Maui Pineapple Company's Puu Kukui Watershed Management Area (Puu Kukui WMA), located in the West Maui mountains (GDSI 2000; HINHP Database 2000; Maui Land and Pineapple Co., Ltd. undated). In the December 18, 2000, proposal we determined that lands within the Puu Kukui Watershed Management Area were adequately managed for the conservation of the listed species that occur on those lands and were not in need of special management considerations or protection. Therefore, we determined that these lands did not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. However, during the comment periods on the December 18, 2000, proposal we received information from the Watershed Supervisor that funding for the conservation and management of the listed plant species on lands within Puu Kukui Watershed Management Area was not adequate nor assured. Therefore, we have determined that lands within Puu Kukui Watershed Management Area are in need of special management considerations or protection and thus meet the definition of critical habitat in the Act.

In summary, we believe that the habitat within Waikamoi and Kapunakea Preserves, and the upper area (above 1,525 m (5,000 ft)) of Hanawí Natural Area Reserve, are being adequately managed for the conservation of the listed species that occur within these areas and are not in need of special management considerations or protection. Therefore, we have determined that these lands do not meet the definition of critical habitat in the Act, and we are not proposing designation of these lands as critical habitat. However, we are specifically soliciting comments on the appropriateness of this approach.

As described above, we are aware that other private landowners and the State of Hawaii are considering the development of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the islands of Maui and Kahoolawe. We support these efforts and provide technical assistance whenever possible. We are soliciting comments on whether future development and approval of conservation measures (*e.g.*, Conservation Agreements, Safe Harbor Agreements) should trigger revision of designated critical habitat to exclude such lands, and if so, by what mechanism.

The proposed critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of the 61 plant species, and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We put forward this proposal acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from the public hearing will provide us with additional information to use in our decision making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat by landownership or jurisdiction are shown in Table 5.

Proposed critical habitat includes habitat for 61 species under private, State, and Federal jurisdiction (owned and leased lands), with Federal lands including lands managed by the National Park Service and the Department of Defense. Lands proposed as critical habitat have been divided into 13 units (Maui A through Maui M) on the island of Maui, and two units on the island of Kahoolawe (Kahoolawe A through B). A brief description of each unit is presented below.

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII.[1]

Unit name	State/local	Private	Federal	Total
Maui A	1,298 ha (3,208 ac)	2,586 ha (6,390 ac)		3,884 ha (9,598 ac)
Maui B1	1,177 ha (2,909 ac)	3,197 ha (7,899 ac)		4,374 ha (10,808 ac) [1]
Maui B2	4 ha (9 ac)	358 ha (884 ac)		362 ha (893 ac)
Maui C1		23 ha (56 ac)		23 ha (56 ac)
Maui C2		10 ha (24 ac)		10 ha (24 ac)
Maui C3	78 ha (192 ac)	85 ha (209 ac)		162 ha [1] (400 ac) [1]
Maui C4	88 ha (216 ac)	74 ha (184 ac)		162 ha (400 ac)
Maui D1	3,191 ha (7,885 ac)	3,759 ha (9,289 ac)		6,950 ha (17,175 ac) [1]
Maui D2		212 ha (523 ac)		212 ha (523 ac)
Maui E	830 ha (2,051 ac)	559 ha (1,380 ac)		1,389 ha (3,432 ac) [1]
Maui F	144 ha (357 ac)			144 ha (357 ac)
Maui G1	<1 ha (<1 ac)	4 ha (10 ac)		4 ha 1 (10 ac) [1]
Maui G2	1 ha (2 ac)			1 ha (2 ac)

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII.[1]—Continued

Unit name	State/local	Private	Federal	Total
Maui G3	7 ha (16 ac)			7 ha (16 ac)
Maui G4	5 ha (13 ac)	16 ha (37 ac)		22 ha [1] (53 ac) [1]
Maui G5	16 ha (41 ac)	15 ha (37 ac)		31 ha (77 ac) [1]
Maui G6	11 ha (27 ac)			11 ha (27 ac) [1]
Maui H	10,254 ha (25,340 ac)	3,586 ha (8,862 ac)	259 ha (641 ac)	14,101 ha [1] (34,843 ac)
Maui I1	678 ha (1,678 ac)	621 ha (1,534 ac)	563 ha (1,391 ac)	1,862 ha (4,601 ac)
Maui I2	177 ha (437 ac)	503 ha (1,243 ac)		680 ha (1,680 ac)
Maui I3	282 ha (697 ac)	170 ha (420 ac)		452 ha (1,117 ac)
Maui I4	98 ha (239 ac)	399 ha (986 ac)		497 ha (1,227 ac) [1]
Maui J		8 ha (21 ac)	5,782 ha (14,287 ac)	5,790 ha (14,308 ac)
Maui K	3,375 ha (8,339 ac)		2,089 ha (5,163 ac)	5,464 ha (13,502 ac)
Maui L	1,562 ha (3,860 ac)	2,927 ha (7,234 ac)	122 ha (302 ac)	4,612 ha [1] (11,396 ac)
Maui M	2 ha (6 ac)			2 ha (6 ac)
Maui Total	23,278 ha (57,522 ac)	19,112 ha (47,225 ac)	8,815 ha (21,784 ac)	51,208 ha [1] (126,531 ac) [1]
Kahoolawe A	713 ha (1,762 ac)			713 ha (1,762 ac)
Kahoolawe B	<1 ha (1 ac)			<1 ha (1 ac)
Grand Total	23,991 ha (59,285 ac)	19,112 ha (47,225 ac)	8,815 ha (21,784 ac)	51,921 ha [1] (128,294 ac)

[1] Area differences due to digital mapping discrepancies between TMK data (GDSI 2000) and USGS coastline, or difference due to rounding.

Descriptions of Critical Habitat Units

Maui A

The proposed unit Maui A provides occupied habitat for 7 species: *Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Cyrtandra munroi, Remya mauiensis,* and *Sanicula purpurea.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Colubrina oppositifolia,* or 300 mature individuals per population for *Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea lobata, Cyrtandra munroi, Remya mauiensis,* and *Sanicula purpurea* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for 9 species: *Alectryon macrococcus, Cyanea glabra, Gouania vitifolia, Hedyotis mannii, Hesperomannia arbuscula, Phlegmariurus mannii, Platanthera holochila, Plantago princeps,* and *Pteris lidgatei.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Alectryon macrococcus* and *Hesperomannia arbuscula,* or 300 mature individuals per population for *Cyanea glabra, Hedyotis mannii, Phlegmariurus mannii, Platanthera holochila, Plantago princeps,* and *Pteris lydgatei* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui A).

The unit contains a total of 3,884 ha (9,598 ac) on State and privately owned lands. It is bounded on the north by Honolua watershed and on the south by Kahoma watershed and includes portions of Honokahua, Honokohau, Honokowai, Iao, Kahana, Kauaula, Wahikuli watersheds. It contains all of the Honokowai Section West Maui Natural Area Reserve and portions of the West Maui Forest Reserve, Puu Kukui Watershed Management and Panaewa Section West Maui Natural Area Reserve and surrounds the Kapunakea Preserve. The natural features of this unit include Amalu Stream, Kapaloa Stream, Kaulalewelewe (summit), Kekaalaau (summit), Puu Kaeo, Puu Makina, and Violet Lake.

Key for tables Maui A–M and Kahoolawe A–B.

1. This unit is needed to meet the recovery plan objectives of 8 to 10 viable populations (self perpetuating and sustaining for at least 5 years) with 100 to 500 mature, reproducing individuals per species throughout its historical range as specified in the recovery plans.

2. Island endemic.

3. Multi-island species with current locations on other islands.

4. Multi-island species with no current locations on other islands.

5. Current locations do not necessarily represent viable populations with the required number of mature individuals.

6. Several current locations may be affected by one naturally occurring, catastrophic event.

7. Species with variable habitat requirements, usually over wide areas. Wide ranging species require more space per individual over more land area to provide needed primary constituent elements to maintain healthy population size.

8. Not all currently occupied habitat was determined to be essential to the recovery of the species.

9. Life history, long-lived perennial—100 mature, reproducing individuals per population.

10. Life history, short-lived perennial—300 mature, reproducing individuals per population.

11. Life history, annual—500 mature, reproducing individuals per population.

12. Narrow endemic, the species probably never naturally occurred in more than a single or a few populations.

13. Species has extremely restricted, specific habitat requirements.

14. Hybridization is possible so distinct populations of related species should not overlap, requiring more land area.

‡Species that are wide ranging require more land than species with more discrete ranges. Not all suitable habitat is designated, only those areas essential for the conservation of the species.

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Table for Maui A

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction.	7. Species with variable habitats.	8. Not all occupied habitat needed	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Alectryon macrococcus	X*	X	X		X	X		X	X					X	*Species is wide ranging.‡
Clermontia oblongifolia ssp. mauiensis	X		X		X	X				X			X*		Sides of ridges and ridge tops in Metrosideros polymorpha dominated montane forest.
Colubrina oppositifolia	X*		X		X	X	X		X						*Species is wide ranging.‡
Ctenitis squamigera	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Cyanea glabra	X	X			X	X				X			X*		* Soil and rock stream banks in wet lowland forest.

Cyanea lobata	X			X	X	X		X		X			X*		*Steep stream banks in deep shade in wet forest.
Cyrtandra munroi	X		X		X	X		X		X			X*		*Moist to wet, moderately steep talus slopes.
Gouania vitifolia	X*		X**		X		X			X					*Species is wide ranging.‡ **Historic on Maui.
Hedyotis mannii	X		X		X	X				X			X*		*Basalt cliffs along stream banks in Metrosideros polymorpha-Dicranopteris linearis montane wet forest.
Hesperomannia arbuscula	X*		X		X	X	X	X	X						*Species is wide ranging.‡
Phlegmariurus mannii	X*			X	X	X	X**	X		X			X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Plantago princeps	X		X		X	X				X			X*		*Basalt cliffs that are windblown with little vegetation.
Platanthera holochila	X		X		X	X	X	X		X					

Pteris lidgatei	X*		X		X	X				X			X**		*Species is wide ranging.‡ **Steep stream banks in wet Metrosideros polymorpha-Dicranopteris linearis montane forest.
Remya mauiensis	X	X			X	X				X			X*		*Steep, north or northeast-facing slopes in mixed mesophytic forests or Metrosideros polymorpha montane wet forests.
Sanicula purpurea	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Open Metrosideros polymorpha mixed montane bogs.

Maui B

The proposed unit Maui B (units B1 and B2) provides occupied habitat for 7 species: *Cyanea lobata, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila, Plantago princeps, Pteris lydgatei,* and *Sanicula purpurea.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Hesperomannia arborescens,* or 300 mature individuals per population *Cyanea lobata, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila, Plantago princeps, Pteris lydgatei,* and *Sanicula purpurea* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for 4 species: *Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyrtandra munroi,* and *Diplazium molokaiense.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations and 300 mature individuals per population for *Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyrtandra munroi,* and *Diplazium molokaiense* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui B).

This unit cluster contains a total of 4,736 ha (11,701 ac) on State and privately owned lands. It is bounded on the west by Honokohau watershed and on the east by Waiehu watershed and contains portions of the Anakaluahine, Honanana, Honokowai, Kahakuloa, Kahana, Makamakaole, Poelua, Waihee, and Waipili watersheds. It contains portions of the Puu Kukui Watershed Management reserve, West Maui Forest Reserve, and Kahakuloa Section West Maui Natural Area Reserve. The natural features include: unit B1, Mauna Alani, Eke Crater, Keahialoa (summit), Keahikauo (summit), Lanilili (summit), Mananole Stream, and Kane, Puu o Kaupo; and unit B2, Anakaluahine Gulch and a small portion of Honkohau Stream.

Table for Maui B

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Clermontia oblongifolia ssp. mauiensis	X		X		X	X				X			X*		*Sides of ridges and ridge tops in Met pol dominated montane forest.
Ctenitis squamigera	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Cyanea lobata	X			X	X	X		X		X			X*		*Steep stream banks in deep shade in wet forest.
Cyrtandra munroi	X		X		X	X		X		X			X*		*Moist to wet, moderately steep talus slopes.

Diplazium molokaiense	X*			X	X	X		X		X			X**		*Species is wide ranging.‡ **Near water courses often in proximity to waterfalls in lowland or montane mesic. forests.
Hesperomannia arborescens	X*		X		X	X	X	X	X						*Species is wide ranging.‡
Phlegmariurus mannii	X*			X	X	X	X**	X		X			X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Plantago princeps	X		X		X	X		X		X			X*		*Basalt cliffs that are windblown with little vegetation.
Platanthera holochila	X		X		X	X	X	X		X					
Pteris lidgatei	X*		X		X	X				X			X**		*Species is wide ranging.‡ *Steep stream banks in wet Metrosideros polymorpha-Dicranopteris linearis montane forest.
Sanicula purpurea	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Open Metrosideros polymorpha mixed montane bogs.

Maui C

The proposed unit Maui C (units C1 through C4) provides occupied habitat for two species: *Centaurium sebaeoides* and *Sesbania tomentosa.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Sesbania tomentosa,* or 500 mature individuals per population for *Centaurium sebaeoides* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for one species. *Brighamia rockii.* Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Maui and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 100 mature individuals per population, throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui C).

This unit cluster contains a total of 357 ha (880 ac) on State, county, and privately owned lands. It is bounded by the coast line and in the west by Honolua watershed and in the east by Waihee watershed and contains portions of Anakaluahine, Honanana, Honokohau, Kahakuloa, Makamakaole, Poelua, Waiolai, and Waipili watersheds. The geographic features include: unit C1, Keonehelelee (beach) and Pohakupule Gulch; unit C2, Punaha Gulch; unit C3, Anakaluahine Gulch, Honanana Gulch, Kanounou Point, Keawalua (beach), Mokolea Point, Nakalele Point, Owaluhi Gulch, Papanahoa Gulch, Poelua Gulch, and Waikeakua Gulch; and unit C4, Hakuhee Point, Kaemi (cape), Kahakuloa Head, Kupaa Gulch, Makalina Ravine, Puu Kahulianapa, Puu Koae, Puu Makawana, Wailena Gulch, Waiokila Gulch, Waiolai Gulch, and Waipili Gulch.

Table for Maui C

Species	1. 8–10 pop. guidelines	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction	7. Species with variable habitats.	8. Not all occupied habitat needed	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements	14. Hybridization is possible.	Notes
Brighamia rockii	X		X*						X				X**		*Historic on Maui **Rock crevices on steep sea cliffs, often within the spray zone.
Centaurium sebaeoides	X*		X		X	X					X		X**		*Species is wide ranging.‡ **Volcanic or clay soils or on cliffs in windward coastal areas with native associates.
Sesbania tomentosa	X*		X		X	X	X	X		X					*Species is wide ranging.‡

Maui D

The proposed unit Maui D (units D1 and D2) provides occupied habitat for 18 species: *Ctenitis squamigera, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Diellia erecta, Dubautia plantaginea* ssp. *humilis, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arbuscula, Hibiscus brackenridgei, Lysimachia lydgatei, Neraudia sericea, Phlegmariurus mannii, Platanthera holochila, Pteris lydgatei, Remya mauiensis, Spermolepis hawaiiensis,* and *Tetramolopium capillare.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Hesperomannia arbuscula,* or 300 mature individuals per population for *Ctenitis squamigera, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Diellia erecta, Dubautia plantaginea* ssp. *humilis, Hedyotis coriacea, Hedyotis mannii, Hibiscus brackenridgei, Lysimachia lydgatei, Neraudia sericea, Phlegmariurus mannii, Platanthera holochila, Pteris lydgatei, Remya mauiensis,* and *Tetramolopium capillare,* or 500 mature individuals per population for *Spermolepis hawaiiensis* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for 10 species: *Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Cyrtandra munroi, Diplazium molokaiense, Gouania vitifolia, Isodendrion pyrifolium, Peucedanum sandwicense, Plantago princeps, Sanicula purpurea,* and *Tetramolopium remyi.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Colubrina oppositifolia,* or 300 mature individuals for *Clermontia oblongifolia* ssp. *mauiensis, Cyrtandra munroi, Plantago princeps,* and *Sanicula purpurea* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui D).

The unit cluster contains a total of 7,162 ha (17,698 ac) on State and privately owned lands. It contains portions of the Iao, Kahoma, Kauaula, Launiupoko, Olowalu, Papalaua, Pohakea, Ukumehame, Waiehu, Waihee, and Waikapu watersheds. This unit also contains the Lihau Section West Maui NAR and the Manawainui Plant Sanctuary and portions of the Panaewa Section West Maui Natural Area Reserve and the West Maui Forest Reserve. The natural features of this unit include: unit D1, Halepohaku (summit), Helu (summit), Hokuula (summit), Kahoolewa Ridge, Kapilau Ridge, Koai (summit), Lihau (summit), Luakoi (summit), Luakoi Ridge, Nakalaloa Stream, The Needle (summit), Paupau (summit), Poohahoahoa Stream, Puu Hipa, Puu Kukui, Puu Lio, and Ulaula (summit); and unit D2, Kaonohua Gulch, Kaunoahua Ridge, and Paleaahu Gulch.

Table for Maui D

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Cenchrus agrimonioides	X*		X		X	X	X			X					*Species is wide ranging.‡
Clermontia oblongifolia ssp. mauiensis	X		X		X	X				X			X*		*Sides of ridges and ridge tops in Met pol dominated montane forest.
Colubrina oppositifolia	X*		X		X	X	X		X						*Species is wide ranging.‡
Ctenitis squamigera	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Cyanea glabra	X	X			X	X				X			X*		* Soil and rock stream banks in wet lowland forest.

Cyanea grimesiana ssp. grimesiana	X*		X		X					X			X**		*Species is wide ranging.‡ **Rocky or steep slopes of stream banks in wet forest gulch bottoms.
Cyanea lobata	X			X	X	X		X		X			X*		*Steep stream banks in deep shade in wet forest.
Cyrtandra munroi	X		X		X	X		X		X			X*		*Moist to wet, moderately steep talus slopes.
Diellia erecta	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Steep slopes or gulch sides in deep shade.
Diplazium molokaiense	X*			X	X	X		X		X			X**		*Species is wide ranging.‡ **Near water courses often in proximity to waterfalls in lowland or montane mesic. forests.
Dubautia plantaginea ssp. humilis	X	X			X	X				X			X*		*Wet, barren, steep, rocky, wind-blown cliffs.
Gouania vitifolia	X*		X**		X		X			X					*Species is wide ranging.‡ **Historic on Maui
Hedyotis coriacea	X		X		X	X				X			X*		*Steep, rocky, slopes.
Hedyotis mannii	X		X		X	X				X			X*		*Basalt cliffs along stream banks in Metrosideros polymorpha-Dicranopteris linearis montane wet forest.

Hesperomannia arbuscula	X*		X		X	X	X	X	X						*Species is wide ranging.‡
Hibiscus brackenridgei	X*		X		X	X	X			X		X			*Species is wide ranging.‡
Isodendrion pyrifolium	X		X*				X			X					*Historic on Maui
Lysimachia lydgatei	X	X			X	X	X	X		X					
Neraudia sericea	X		X		X	X	X			X					
Peucedanum sandwicense	X		X		X	X				X			X*		*Cliffs.
Phlegmariurus mannii	X*			X	X	X	X**	X		X			X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Plantago princeps	X		X		X	X		X		X			X*		*Basalt cliffs that are windblown with little vegetation.
Platanthera holochila	X		X		X	X	X	X		X					

Pteris lidgatei	X*		X		X	X				X			X**		*Species is wide ranging.‡ **Steep stream banks in wet Metrosideros polymorpha-Dicranopteris linearis montane forest.
Remya mauiensis	X	X			X	X				X			X*		*Steep, north or northeast-facing slopes in mixed mesophytic forests or Metrosideros polymorpha montane wet forests.
Sanicula purpurea	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Open Metrosideros polymorpha mixed montane bogs.
Spermolepis hawaiiensis	X*		X		X	X	X				X				*Species is wide ranging.‡
Tetramolopium capillare	X	X			X	X				X			X*		*Rocky substrates in Heteropogon contortus lowland dry forest.
Tetramolopium remyi	X		X		X	X		X		X			X*		*Dry, exposed ridges or flats.

Maui E

The proposed unit Maui E provides occupied habitat for two species: *Bonamia menziesii* and *Hibiscus brackenridgei*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Bonamia menziesii* and *Hibiscus brackenridgei* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Maui E).

The unit contains a total of 1,398 ha (3,432 ac) on State and privately owned lands. It is contained in the north in the Hapapa watershed and in the south by the Wailea watershed. The natural features include Kekuawahaulaula (summit) and Nawawaeoalika (summit).

Table for Maui E

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Bonamia menziesii	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Hibiscus brackenridgei	X		X		X	X	X			X					

Maui F

The proposed unit Maui F provides occupied habitat for one species, *Vigna o-wahuensis.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Vigna o-wahuensis* throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D, and in the table for Maui F).

The unit contains a total of 144 ha (357 ac) on State owned land. It is in the Kanaio watershed and has no named natural features but it is on the shore between Kamanamana Cape in the west and Pohakueaea Point in the east.

Table for Maui F

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Vigna o-wahuensis	X*		X		X	X	X			X					*Species is wide ranging.‡

Maui G

The proposed unit Maui G (units G1 through G6) provides occupied habitat for one species: *Ischaemum byrone.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population, throughout its known historical range considered by the recovery plan to be necessary for the conservation of the species. This unit also provides unoccupied habitat for three species: *Brighamia rockii, Mariscus pennatiformis,* and *Peucedanum sandwicense.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Brighamia rockii, Mariscus pennatiformis,* and *Peucedanum sandwicense,* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui G).

This unit cluster contains a total of 76 ha (185 ac) on State and privately owned lands. It is bounded on the west by Wahinepee watershed and on the east by Honomaele watershed and contains portions of the East Wailuaiki, Haipuaena, Hanawi, Kapaula, Kopiliula, Ohia, Paakea, Punalau, Puohokamoa, Waiaaka, Waiohue, and Waiokamilo watersheds. Unit G6 contains a portion of the Waianapanapa State Park. The natural features of this unit cluster include: unit G1, Wahinepee Stream; unit G2, is all of Keopuka Rock, an offshore islet; unit G3, Haipuaena Stream and Moiki Point; unit G4, Manahoa Rock, Paepaemoana Point, Pauwalu Point, Waiokamilo Stream, and Waiokilo; unit G5, Hanawi Stream, Kapaula Gulch, Paakea Gulch, and Papiha Point; unit G6, Keawaiki Cape and Pukaulua Point.

Table for Maui G

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Brighamia rockii	X		X*						X				X**		*Historic on Maui **Rock crevices on steep sea cliffs, often within the spray zone.
Ischaemum byrone	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **In close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland.
Mariscus pennatiformis	X		X		X	X				X			X*		*Cliffs with brown soil and talus within reach of ocean spray.
Peucedanum sandwicense	X		X		X	X				X			X*		*Cliffs.

BILLING CODE 4310–55–C

Maui H

The proposed unit Maui H provides occupied habitat for 15 species: *Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Flueggea neowawraea, Geranium arboreum, Lipochaeta kamolensis, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, Neraudia sericea, Phlegmariurus mannii, Sesbania tomentosa, Spermolepis hawaiiensis,* and *Zanthoxylum hawaiiense.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Alectryon macrococcus, Flueggea neowawraea, Geranium arboreum, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, and Zanthoxylum hawaiiense,* or 300 individuals per population for *Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Lipochaeta kamolensis, Neraudia sericea, Phlegmariurus mannii,* and *Sesbania tomentosa,* or 500 individuals per population for *Spermolepis hawaiiensis* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for 10 species: *Argyroxiphium sandwicense* ssp. *macrocephalum, Clermontia lindseyana, Colubrina oppositifolia, Diellia erecta, Diplazium molokaiense, Geranium multiflorum, Nototrichium humile, Phyllostegia mollis, Plantago princeps* and *Schiedea haleakalensis.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for *Clermontia lindseyana, Colubrina oppositifolia, Diellia erecta, Diplazium molokaiense, Geranium multiflorum, Nototrichium humile, Phyllostegia mollis, Plantago princeps* and *Schiedea haleakalensis* and 100 mature individuals per population for *Colubrina oppositifolia* and *Geranium multiflorum,* or 300 mature individuals for *Clermontia lindseyana, Diellia erecta, Diplazium molokaiense, Nototrichium humile, Phyllostegia mollis, Plantago princeps* and *Schiedea haleakalensis,* or greater than 50,000 individuals of *Argyroxiphium sandwicense* ssp. *macrocephalum,* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Maui H).

The unit contains a total of 14,101 ha (34,843 ac) on Federal, State, and privately owned lands. It is bounded on the west by Kanaio watershed and on the east by Nuu watershed and contains portions of the Hapapa, Kaupo, Kipapa, Manawainui Gulch, Pahihi, Piinaau, Poopoo, Waiakoa, Wailea, Waiopai watersheds. This unit contains all of the Kanaio Natural Area Reserve and portions of the Haleakala National Park, Kahikinui Forest Reserve, and Kula Forest Reserve. The natural features include Hokukano (summit), Kahua (summit), Kamole Gulch, Keonehunehune (summit), Kolekole (summit), Lualailua Hills, Magnetic Peak, Manukani (summit), Nawini (summit), Pimoe (summit), Pohakea (summit), Polipoli (summit), Pukai Gulch, Puu Kao, Puu Ouli, Puu Pane, Red Hill, Uma (summit), and Wailaulau Gulch.

BILLING CODE 4310–55–P

Table for Maui H

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Alectryon macrococcus	X*		X		X	X		X	X					X	*Species is wide ranging.‡

Argyroxiphium sandwicense ssp. macrocephalum	X*	X				X			X**				X***	X	*Species is wide ranging, only 1 population.‡ **>50,000 needed for recovery according to recovery plan, due to extreme longevity, monocarpic life history, and self-incompatibility. ** Lava flows with almost no soil development and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones subject to frequent formation of ice at night and extreme heating during cloudless days with an annual precipitation of approximately 75 to 250 cm (29.6 to 98.4 in).
Bidens micrantha ssp. kalealaha	X			X		X				X			X*		*Blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy montane shrubland.
Bonamia menziesii	X*		X		X	X	X	X		X					*Species is wide ranging.‡(may have been a couple of meta-populations on each island).
Cenchrus agrimonioides	X*		X		X	X	X			X					*Species is wide ranging.‡

Clermontia lindseyana	X		X		X	X	X			X					
Colubrina oppositifolia	X*		X		X	X	X		X						*Species is wide ranging.‡
Diellia erecta	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Steep slopes or gulch sides in deep shade.
Diplazium molokaiense	X*			X	X	X		X		X			X**		*Species is wide ranging.‡ **Near water courses often in proximity to waterfalls in lowland or montane mesic. forests.
Flueggea neowawraea	X*		X		X	X	X	X	X						*Species is wide ranging.‡
Geranium arboreum	X	X			X	X		X	X				X*		*Steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams.
Geranium multiflorum	X*	X			X	X	X	X	X						*Species is wide ranging.‡
Lipochaeta kamolensis	X*	X			X	X	X			X		X			*Species is wide ranging.‡
Melicope adscendens	X*	X			X	X		X	X			X	X*		*Species is wide ranging.‡ **Aa lava.
Melicope knudsenii	X		X		X	X	X	X	X						
Melicope mucronulata	X*		X		X	X	X		X						*Not enough suitable habitat exists for 8 to 10 populations at this time.
Neraudia sericea	X		X		X	X	X			X					

Nototrichium humile	X		X*							X			X**		*Historic on Maui. **Old cinder cones.
Phlegmariurus mannii	X*			X**	X	X	X**	X		X			X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Phyllostegia mollis	X		X		X	X	X			X					
Plantago princeps	X		X		X	X		X		X			X*		*Basalt cliffs that are windblown with little vegetation.
Schiedea haleakalensis	X*	X			X	X		X		X		X	X**		*Species is wide ranging.‡ **Rock cracks on sheer cliffs adjacent to barren lava and subalpine shrublands and grasslands with cinder, weathered volcanic ash, or bare lava substrate with little or no soil development and periodic freezing temperatures.
Sesbania tomentosa	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Spermolepis hawaiiensis	X*		X		X	X	X				X				*Species is wide ranging.‡
Zanthoxylum hawaiiense	X*		X		X	X	X		X						*Species is wide ranging.‡

Maui I

The proposed unit Maui I (I1 through I4) provides occupied habitat for three species: *Diellia erecta, Diplazium molokaiense,* and *Geranium arboreum*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Geranium arboreum,* or 300 mature individuals per population for *Diellia erecta,* and *Diplazium molokaiense* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for eight species: *Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Phlegmariurus mannii, Phyllostegia mollis, Plantago princeps.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for *Asplenium fragile* var. *insulare, Bidens micrantha ssp. kalealaha, Clermontia lindseyana, Geranium multiflorum, Phlegmariurus mannii, Phyllostegia mollis, and Plantago princeps* and 100 mature individuals per population for *Geranium multiflorum,* or 300 mature individuals per population for *Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Clermontia lindseyana, Phlegmariurus mannii, Phyllostegia mollis,* and *Plantago princeps,* or greater than 50,000 individuals of *Argyroxiphium sandwicense* ssp. *macrocephalum,* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui I).

The unit cluster contains a total of 1,629 ha (4,024 ac) on Federal, State and privately owned lands. It is in portions of the Hapapa, Honomanu, Kalialinui, Kanaio, Kipapa, Manawainui Gulch, Piinaau, Wahinepee, Waiakoa, and Wailea watersheds. This unit contains portions of Haleakala National Park, Haleakala Ranch, Kahikinui Forest Reserve, Kula Forest Reserve, and Waikamoi Preserve. The natural features include Kalepeamoa (summit), Kanahau (summit), Puu Makua, and Waihou Spring.

Table for Maui I

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Argyroxiphium sandwicense ssp. macrocephalum	X*	X				X			X**				X***	X	*Species is wide ranging, only 1 population.‡ **>100,000 needed for recovery according to recovery plan, due to extreme longevity, monocarpic life history, and self-incompatibility. ** *Lava flows with almost no soil development and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones subject to frequent formation of ice at night and extreme heating during cloudless

															days with an annual precipitation of approximately 75 to 250 cm (29.6 to 98.4 in).
Asplenium fragile var. insulare	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Streamside hollows and grottos in gulches.
Bidens micrantha ssp. kalealaha	X*			X		X				X			X**		*Species is wide ranging.‡ **Blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy montane shrubland.
Clermontia lindseyana	X		X		X	X	X			X					
Diellia erecta	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Steep slopes or gulch sides in deep shade.
Diplazium molokaiense	X*			X	X	X		X		X			X**		*Species is wide ranging.‡ **Near water courses often in proximity to waterfalls in lowland or montane mesic. forests.
Geranium arboreum	X	X			X	X		X	X				X*		*Steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams.
Geranium multiflorum	X*	X			X	X	X	X	X						*Species is wide ranging.‡

Phlegmariurus mannii	X*			X	X	X	X**	X		X	·		X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Phyllostegia mollis	X		X		X	X	X			X					
Plantago princeps	X		X		X	X		X		X			X*		*Basalt cliffs that are windblown with little vegetation.

Maui J

The Proposed unit Maui J provides occupied habitat for five species: *Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Geranium multiflorum, Plantago princeps, and Schiedea haleakalensis.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations for *Bidens micrantha* ssp. *kalealaha, Geranium multiflorum, Plantago princeps,* and *Schiedea haleakalensis* and 100 mature individuals per population for *Geranium multiflorum,* or 300 mature individuals per population for *Bidens micrantha* ssp. *kalealaha, Plantago princeps,* and *Schiedea haleakalensis,* or greater than 50,000 individuals of *Argyroxiphium sandwicense* ssp. *macrocephalum* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for three species: *Asplenium fragile* var. *insulare, Clermontia samuelii,* and *Platanthera holochila.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 300 mature individuals per population, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui J).

The unit contains a total of 5,790 ha (14,308 ac) on Federal and privately owned lands. It is in the East Wailuaiki, Hanawi, Heleleikeoha, Honomanu, Kaupo, Kopiliula, Koukouai, Kuhiwa, Manawainui, Manawainui Gulch, Nuu, Oheo, Pahihi, Piinaau, West Wailuaiki, Wailuanui, and Waiopai watersheds. This unit contains a portion of Haleakala National Park. The natural features in this unit include Wai Anapanapa (lake), Halalii (summit), Haleakala (summit), Haleakala Crater, Hanakauhi (summit), Haupaakea Peak, Mauna Hina, Honokahua (summit), Ka Moa o Pele (summit), Kalahaku Pali, Kalapawili Ridge, Kalua Awa (summit), Kaluaiki (crater), Kaluanui (crater), Kaluu o ka Oo (crater), Kamaolii (summit), Keoneheehee (ridge), Kilohana (summit), Koolau Gap, Kuiki (summit), Kumuiilahi (summit), Laie Cave, Laie Puu, Lauulu (summit), Leleiwi Pali, Namana o ke Akua (summit), Oili Puu, Pakaoao (White Hill), Pohaku Palaha (summit), Puu Kauaua, Puu Kumu, Puu Maile, Puu Mamane, Puu Naue, Puu Nole, Puu o Maui, and Puu o Pele.

Table for Maui J

Species	1. 8–10 pop. guidelines	2. Island endemic.	3. Multi-island/current other	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction	7. Species with variable habitats.	8. Not all occupied habitat needed	9. Long-lived perennial–100/pop.	10. Short-lived	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements	14. Hybridization is possible.	Notes
Argyroxiphium sandwicense ssp. macrocephalum	X*	X				X			X**				X** *	X	*Species is wide ranging, only 1 population.‡ ** >100,000 needed for recovery according to recovery plan, due to extreme longevity, monocarpic life history, and self-incompatibility. *** Lava flows with almost no soil development and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones subject to frequent formation of ice at night and extreme heating during cloudless days with an annual precipitation of approximately 75 to 250 cm

															(29.6 to 98.4 in).
Asplenium fragile var. insulare	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Streamside hollows and grottos in gulches.
Bidens micrantha ssp. kalealaha	X*			X		X				X			X*		*Species is wide ranging.‡ **Blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy montane shrubland.
Clermontia samuelii	X*	X			X	X	X			X					*Not enough suitable habitat exists for 8 to 10 populations at this time.
Geranium multiflorum	X*	X			X	X	X	X	X						*Species is wide ranging.‡
Plantago princeps	X		X		X	X		X		X			X*		*Basalt cliffs that are windblown with little vegetation.
Platanthera holochila	X		X		X	X	X	X		X					
Schiedea haleakalensis	X*	X			X	X		X		X		X	X**		*Species is wide ranging.‡ **Rock cracks on sheer cliffs adjacent to barren lava and subalpine shrublands and grasslands with cinder, weathered volcanic ash, or bare lava substrate with little or no soil development and periodic freezing temperatures.

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Maui K

The proposed unit Maui K provides occupied habitat for seven species: *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Melicope balloui, Melicope ovalis, Phlegmariurus mannii,* and *Plantago princeps.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Melicope balloui,* and *Melicope ovalis,* or 300 mature individuals per population for *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Phlegmariurus mannii,* and *Plantago princeps* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for four species: *Alectryon macrococcus, Cyanea glabra, Geranium multiflorum,* and *Platanthera holochila.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Alectryon macrococcus* and *Geranium multiflorum,* or 300 mature individuals per population for *Cyanea glabra* and *Platanthera holochila,* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui K).

The unit contains a total of 5,464 ha (13,502 ac) on Federal, State, and privately owned lands. It is bounded on the Alelele, Hahalawe, Heleleikeoha, Honolewa, Honomaele, Kaapahu, Kahawaihapapa, Kakiweka, Kalena, Kalepa, Kapia, Kawaipapa, Kawakoe, Keaaiki, Koukouai, Lelekea, Manawainui, Nuanuaaloa, Oheo, Opelu, Waieli, Waihole, Wailua, Waiohonu, and Waioni watersheds. It contains portions of Haleakala National Park, Hana Forest Reserve, Hanawi Natural Area Reserve, Kipahulu Forest Reserve, and Koolau Forest Reserve. The natural features include Kaumakani (summit), Kipahulu Valley, Puu Ahulili, and Puu Kue.

BILLING CODE 4310–55–P

Table for Maui K

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Alectryon macrococcus	X*		X		X	X		X	X					X	*Species is wide ranging.‡
Clermontia samuelii	X*	X			X	X	X			X					*Not enough suitable habitat exists for 8 to 10 populations at this time.
Cyanea copelandii ssp. haleakalaensis	X*	X			X			X		X			X**		*Not enough suitable habitat exists for 8 to 10 populations at this time. **Stream banks and wet talus slopes.
Cyanea glabra	X	X			X	X				X			X*		* Soil and rock stream banks in wet lowland forest.
Cyanea hamatiflora ssp. hamatiflora	X	X			X	X	X	X		X					

Geranium multiflorum	X*	X			X	X	X	X	X						*Species is wide ranging.‡
Melicope balloui	X*	X			X		X		X						*Not enough suitable habitat exists for 8 to 10 populations at this time.
Melicope ovalis	X*	X			X	X			X			X	X**		*Species is wide ranging.‡ **Montane wet forests along streams.
Phlegmariurus mannii	X*			X	X	X	X**	X		X			X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Plantago princeps	X		X		X	X		X		X			X*		*Basalt cliffs that are windblown with little vegetation.
Platanthera holochila	X		X		X	X	X	X		X					

BILLING CODE 4310–55–C

Maui L

The proposed unit Maui L provides occupied habitat for seven species: *Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea mceldowneyi, Geranium multiflorum, Melicope balloui, Phlegmariurus mannii,* and *Zanthoxylum hawaiiense.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Geranium multiflorum, Melicope balloui,* and *Zanthoxylum hawaiiense,* or 300 mature individuals per population for *Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea mceldowneyi, Phlegmariurus mannii,* and *Platanthera holochila,* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species. This unit also provides unoccupied habitat for nine species: *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Clermontia samuelii, Cyanea glabra, Diplazium molokaiense, Phyllostegia mannii, Phyllostegia mollis,* and *Platanthera holochila.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for *Alectryon macrococcus, Asplenium fragile* var. *insulare, Clermontia samuelii, Cyanea glabra, Diplazium molokaiense, Phyllostegia mannii, Phyllostegia mollis,* and *Platanthera holochila* and 100 mature individuals per population for *Alectryon macrococcus,* or 300 mature individuals per population for *Asplenium fragile* var. *insulare, Clermontia samuelii, Cyanea glabra, Diplazium molokaiense, Phyllostegia mannii, Phyllostegia mollis,* and *Platanthera holochila,* or greater than 50,000 individuals of *Argyroxiphium sandwicense* ssp. *macrocephalum,* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Maui L).

The unit contains a total of 4,612 ha (11,396 ac) on Federal, State, and privately owned lands. It is in portions of the East Wailuaiki, Haipuaena, Hanawi, Heleleikeoha, Honomanu, Hoolawa, Kaaiea, Kailua, Kakipi, Kaupo, Kopiliula, Kuhiwa, Maliko, Nailiilihaele, Oheo, Piinaau, Puohokamoa, West Wailuaiki, Wahinepee, Wailuanui, and Waiokamilo watersheds. This unit contains portions of Haleakala National Park, Koolau Forest Reserve, and Makawao Forest Reserve. The natural features include East Wiluaiki Stream, Honomanu Stream, Kano Stream, Opana Gulch, Puu Alaea, Waikamoi Stream, Waiohiwi Gulch, and West Wailuanui Stream.

Table for Maui L

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Alectryon macrococcus	X*		X		X	X		X	X					X	*Species is wide ranging.‡
Asplenium fragile var. insulare	X*		X		X	X		X		X			X**		*Species is wide ranging.‡ **Streamside hollows and grottos in gulches.

Argyroxiphium sandwicense ssp. macrocephalum	X*	X				X			X**				X**	X	*Species is wide ranging, only 1 population.‡ ** >100,000 needed for recovery according to recovery plan, due to extreme longevity, monocarpic life history, and self-incompatibility. *** Lava flows with almost no soil development and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones subject to frequent formation of ice at night and extreme heating during cloudless days with an annual precipitation of approximately 75 to 250 cm (29.6 to 98.4 in).
Clermontia samuelii	X*	X			X	X	X			X					*Not enough suitable habitat exists for 8 to 10 populations at this time.
Cyanea copelandii ssp. haleakalaensis	X*	X			X			X		X			X**		*Not enough suitable habitat exists for 8 to 10 populations at this time. **Stream banks and wet talus slopes.
Cyanea glabra	X	X			X	X				X			X*		* Soil and rock stream banks in wet lowland forest.

Cyanea hamatiflora ssp. hamatiflora	X	X			X	X	X	X		X					
Cyanea mceldowneyi	X*	X			X	X	X	X		X					*Not enough suitable habitat exists for 8 to 10 populations at this time.
Diplazium molokaiense	X*			X	X	X		X		X			X**		*Species is wide ranging.‡ **Near water courses often in proximity to waterfalls in lowland or montane mesic. forests.
Geranium multiflorum	X*	X			X	X	X	X	X						*Species is wide ranging.‡
Melicope balloui	X*	X			X		X		X						*Not enough suitable habitat exists for 8 to 10 populations at this time.
Phlegmariurus mannii	X*			X	X	X	X**	X		X			X***		*Species is wide ranging.‡ **Not enough suitable habitat for 8 to 10 (not done on other islands) ***Very specific, variable habitat requirements, i.e. Epiphytic on Metrosideros polymorpha, Dodonaea viscosa and Acacia koa trees in moist protected gulches or on mossy tussocks in mesic to wet montane forests.
Phyllostegia mannii	X		X*				X			X					*Historic on Maui.
Phyllostegia mollis	X		X		X	X	X			X					
Platanthera holochila	X		X		X	X	X	X		X					
Zanthoxylum hawaiiense	X*		X		X	X	X		X						*Species is wide ranging.‡

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Maui M

The proposed unit Maui M provides occupied habitat for *Spermolepis hawaiiense.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 500 mature individuals per population for *Spermolepis hawaiiense* throughout its known historical range considered by the recovery plans to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D, and in the table for Maui M).

The unit contains a total of 2 ha (6 ac) on State owned land. It is in the Kauaula watershed and has no named natural features but lies east of Lahaina luna High School and north-east of Piilani Ditch.

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Table for Maui M

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Spermolepis hawaiiensis	X*		X		X	X	X				X				*Species is wide ranging.‡

Kahoolawe A

The proposed unit Kahoolawe A provides occupied habitat for *Vigna o-wahuensis.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 500 mature individuals per population for *Vigna o-wahuensis* throughout its known historical range considered by the recovery plans to be necessary for the conservation of this species. This unit provides unoccupied habitat for three species: *Hibiscus brackenridgei, Kanaloa kahoolawensis, and Sesbania tomentosa.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for these species of 8 to 10 populations and 100 mature individuals per population for *Hibiscus brackenridgei* and *Kanaloa kahoolawensis*, or 300 mature individuals per population for *Sesbania tomentosa* throughout their known historical range considered by the recovery plans to be necessary for the conservation of these species (see the discussion of conservation requirements in Section D, and in the table for Kahoolawe A).

The unit contains a total of 713 ha (1,762 ac) on State owned land. It is in portions of the Ahupuiki Gulch, Aleale, Heiau, Lae O Kaka, Kalama, Kanaloa Gulch, Kaukamoku Gulch, Kaulana, Lae o Kealaikahiki, Kealialuna, Lua, Kohe O Hala, Lae o Kuakaiwa, Lae o Kuikui, Makaalae, Papakanui Gulch, and Tank Ahupu Gulch.

Table for Kahoolawe A

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Hibiscus brackenridgei	X		X*				X			X					*Historic on Kahoolawe.
Sesbania tomentosa	X*		X		X	X	X			X					*Species is wide ranging.‡
Vigna o-wahuensis	X*		X		X	X	X			X					*Species is wide ranging.‡

Kahoolawe B

The proposed unit Kahoolawe B provides occupied habitat for two species, *Kanaloa kahoolawensis* and *Sesbania tomentosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Maui, and provides habitat to support one or more of the 8 to 10 populations and 100 mature individuals per population for *Kanaloa kahoolawensis*, or 300 mature individuals per population for *Sesbania tomentosa* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Kahoolawe B).

The unit contains a total of .5 ha (1 ac) on State owned land on Puu Koae Island.

Table for Kahoolawe B

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction.	7. Species with variable habitats.	8. Not all occupied habitat needed	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Kanaloa kahoolawensis	X*	X			X	X			X				X**		*Species is wide ranging.‡ **Steep rocky talus slopes.

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Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect critical habitat of one or more of the 61 plant species will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), or a section 10(a)(1)(B) permit from us, or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA)), permits from the Department of Housing and Urban Development, activities funded by the EPA, Department of Energy, or any other Federal agency; regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communication Commission will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock or horses that degrades watershed values;

(3) Rural residential construction that include concrete pads for foundations and the installation of septic systems where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;

(6) Introducing or encouraging the spread of non-native plant species into critical habitat units; and

(7) Importation of non-native species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the listed species and the primary constituent elements of their habitat.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Relationship to Habitat Conservation Plans

Currently, there are no HCPs that include any of the plant species discussed in this proposal as covered species. In the event that future HCPs covering any of the discussed plant species are developed within the boundaries of designated critical habitat, we will work with applicants to encourage them to provide for protection and management of habitat areas essential to the conservation of the species. This could be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular areas by these plant species.

Economic and Other Relevant Impacts

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of

specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat in light of this new proposal and in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.,* 248 F.3d 1277 (10th Cir. 2001) prior to a final determination. The economic analysis will include detailed information on the baseline costs and benefits attributable to listing these 61 plant species, where such estimates are available. This information on the baseline will allow a fuller appreciation of the economic impacts associated with listing and with critical habitat designation. When completed, we will announce the availability of the revised draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the revised draft economic analysis and reopen the comment period on the proposed rule at that time.

We will utilize the final economic analysis, and take into consideration all comments and information regarding economic or other impacts submitted during the public comment period and the public hearing, to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

We invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this revised proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

We are soliciting comment in this revised proposed rule on whether current land management plans or practices applied within areas proposed as critical habitat adequately address the threat to these listed species.

We are aware that the State of Hawaii and some private landowners are considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the islands of Maui and Kahoolawe. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat provide for the conservation of the species by adequately addressing the threats. We are also soliciting comments on whether future development and approval of conservation measures (*e.g.*, HCPs, Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including those species for which prudency determinations have been published in previous proposed rules and which have been incorporated by reference;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532(5));

(3) Specific information on the amount, distribution, and quality of habitat for the 61 species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities or families;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values,'' and reductions in administrative costs);

(7) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat; and

(8) The effects of critical habitat designation on military lands, and how it would affect military activities, particularly military activities at the Kanaio Training Area on the island of Maui; whether there will be a significant impact on military readiness or national security if we designate critical habitat on this facility, and whether this facility should be excluded from the designation under section 4(b)(2) of the Act.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES** section).

The comment period closes on June 3, 2002. Written comments should be submitted to the Service Office listed in the **ADDRESSES** section. We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. For additional information on public hearings see the **ADDRESSES** section.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this revised proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Please send any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

Taxonomic Changes

At the time we listed *Clermontia peleana, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Delissea undulata, Mariscus pennatiformis, Phyllostegia parviflora,* and *Phyllostegia mollis,* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the*

Flowering Plants of Hawaii. For *Phlegmariurus mannii* we used the ''Revised Checklist of Hawaiian Pteridophytes'' (Wagner and Wagner 1994). Subsequent to the final listing, we became aware of new taxonomic treatments of these species. Due to the court-ordered deadlines, we are required to publish this proposal to designate critical habitat on Maui and Kahoolawe before we can prepare and publish a notice of taxonomic changes for these eight species. We propose to publish a taxonomic change notice to these eight species after we have published the final critical habitat designations on Maui and Kahoolawe. At that time we will evaluate the critical habitat designations on Maui and Kahoolawe for these eight species in light of any changes that may result from taxonomic changes in each species' current and historical range and primary constituent elements.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing an economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas identified as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comment.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local governments or communities. Therefore, at this time, we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required. We will revisit this if the economic analysis indicates greater impacts than currently anticipated.

The dates for which the 61 plant species were listed as threatened or endangered can be found in Table 4(b). Consequently, and as needed, we will conduct formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of these species. Under the Act, critical habitat may not be adversely modified by a Federal agency action. Critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 6).

TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 61 PLANTS FROM THE ISLANDS OF MAUI AND KAHOOLAWE

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation
Federal Activities Potentially Affected [2].	Activities the Federal Government (*e.g.,* Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of the Interior) carries out or that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (*e.g.,* overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, fragmentation of habitat) .	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy in habitat for these plants by mechanical, chemical, or other means (*e.g.,* overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, fragmentation of habitat) .	These same activities carried out designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based on our experience with these species and their needs, we conclude that most Federal or federally-authorized actions that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act in areas occupied by the species because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. Accordingly, we do not expect the designation of currently occupied areas as critical habitat to have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding.

The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation (that is, in areas currently unoccupied by the these listed species) may have impacts that are not attributable to the species listing on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons who do not have a Federal nexus with their actions are not restricted by the designation of critical habitat.

(b) We do not expect this rule to create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the 61 plant species since their listing between 1991 and 1999. For the reasons discussed above, the prohibition against adverse modification of critical habitat would be expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. However, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the

potential for impacts on other Federal agencies' activities, we will continue to review this proposed action for any inconsistencies with other Federal agencies' actions.

(c) We do not expect this proposed rule, if made final, to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation will have any incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan program. We will evaluate any impact of designating areas where section 7 consultation would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on a substantial number of small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant economic impact on a substantial number of small entities. However, should our economic analysis provide a contrary indication, we will revisit this determination at that time. The following discussion explains our rationale.

According to the Small Business Association, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*. If these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species is present, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species (all of the proposed critical habitat areas are occupied by at least one species), and the duty to avoid adverse modification of critical habitat likely would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. However, there will be little additional impact on State and local governments and their activities because all of the proposed critical habitat areas are occupied by at least one species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since these 61 plant species were listed (between 1991 and 1999), on the island of Maui we have conducted only one formal consultation, and 14 informal consultations, in addition to consultations on Federal grants to State wildlife programs, which do not affect small entity. Three informal consultations were conducted with the U.S. Air Force, for the Maui Space Surveillance Site, who requested we review their final draft ''Environmental Assessment,'' ''Integrated Natural Resources Management Plan for the Maui Space Surveillance Complex,'' and the effects of the construction of the surveillance site on listed and proposed endangered and threatened species. One of the 61 species, *Argyroxiphium sandwicense* ssp. *macrocephalum*, was reported from the project area. Three informal consultations were conducted with Haleakala National Park, regarding a collecting permit for two of the 61 species, *Geranium arboreum* and *Geranium multiflorum*; review of the ''Environmental Assessment for Replacement of the Summit Comfort Station and Utilities Systems;'' and review of a park highway resurfacing project. One of the 61 species, *Argyroxiphium sandwicense* ssp. *macrocephalum*, was reported from the comfort station project area and in close proximity to the highway resurfacing project area. One informal consultation was conducted with the Service's Ecological Services Program, for the effects of fencing and replanting on listed endangered and threatened species within the Auwahi Partnership Project area. Four of the 61 species, *Bidens micrantha* ssp. *kalealaha, Geranium arboreum, Clermontia lindseyana*, and *Zanthoxylum hawaiiense*, were reported from the project area. One informal consultation was conducted with the Service's Ecological Services Program, for the effects of fencing and hunting on listed endangered and threatened species within the Kahikinui Partnership Project area. Four of the 61 species, *Bidens micrantha* ssp. *kalealaha, Clermontia lindseyana, Diellia erecta,* and *Diplazium molokaiense*, were reported from the project area. One informal

consultation was conducted with the Service's Ecological Services Program, for the effects of fencing and outplanting on listed endangered and threatened species within the Puu Makua Partnership Project area. Two of the 61 species, *Bidens micrantha* ssp. *kalealaha* and *Geranium arboreum* were reported from the project area. One informal consultation was conducted with the Service, for the effects of ungulate exclusion on listed endangered and threatened species within the Puu Kukui Partnership Project area. Two of the 61 species, *Cyanea mucronulata,* and *Ctenitis squamigera*, were reported from the project area. One informal consultation was conducted with the Department of Defense, for review of the effects of the Kanaio National Guard Training Area on listed endangered and threatened species and review of ''Natural Resources Management Plan: Kanaio Guard Training Area.'' One of the 61 species, *Sesbania tomentosa*, was reported from the training area. Two informal consultations were conducted with the Department of Transportation, for review of the effects of the proposed Kihei-Upcountry Highway on listed endangered and threatened species. Two of the 61 species, *Hibiscus brackenridgei* and *Bonamia menziesii,* were reported from the vicinity of the project area. One informal consultations was conducted with the U.S. Department of Agriculture, for review of the effect of feral pig removal on listed endangered and threatened species within Waikamoi and Kapunakea Preserves. Twelve of the 61 species, *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Bonamia menziesii, Colubrina oppositifolia, Ctenitis squamigera, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Melicope balloui, Plantago princeps, Platanthera holochila,* and *Sanicula purpurea,* are known to occur within the preserves. One formal consultation was conducted with the Federal Aviation Administration (FAA), for the review of the ''Final Environmental Impact Statement, Kahului Airport Improvements''. While only one of the 61 species, *Nothocestrum breviflorum*, was reported in the vicinity of the project area, the effects of the Airport Improvement Project were evaluated for all listed species and the designated critical habitat for *Gouania hillebrandii* on the island of Maui.

None of these consultations affected or concerned small entities. In all 14 informal consultations, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species. For the formal consultation, we determined that the airport improvement project, which included a mandatory state-of-the-art alien species interdiction facility, was not likely to jeopardize listed species nor adversely affect designated critical habitat for *Gouania hillebrandii* on the island of Maui. In addition, only the FAA's proposed airport improvement project is ongoing. The FAA is not a small entity. Therefore, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Maui.

There has been one informal consultation on the island of Kahoolawe. The consultation was conducted on behalf of the Department of the Navy, for the effects of ordinance cleanup on listed endangered and threatened species. Three of the 61 species, *Kanaloa kahoolawensis, Sesbania tomentosa,* and *Vigna o-wahuensis,* were reported from the project area. The Department of the Navy is not a small entity, therefore this consultation did not affect or concern small entities. In this case, we concurred with the agency's determination that the project as proposed was not likely to adversely affect listed species. Although this project is ongoing, it does not affect nor concern small entities, so the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Kahoolawe.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, that would otherwise not be required. We are aware of relatively few activities in the proposed critical habitat areas for these 61 plants that have Federal involvement would require consultation or reinitiation of already-completed consultations for ongoing projects. As mentioned above, we have only conducted 15 informal consultations and 1 formal consultation under section 7 involving any of the species. As a result, we cannot, at this time, easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

On Maui, approximately 17 percent of the proposed designations are on Federal lands, 45 percent are on State lands, and 37 percent are on private lands. Nearly all of the land within the critical habitat units is unsuitable for development, land uses, and activities. This is due to their remote locations, lack of access, and rugged terrain. The majority of this land (77 percent) and all of the land on Kahoolawe is within the State Conservation District where State land-use controls severely limit development and most activities. Approximately 23 percent of this land is within the State Agricultural District where only activities such as crops, livestock, grazing, and accessory structures and farmhouses are allowed. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. Activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these proposed designations consist of improvements in State parks and communications and tracking facilities; ranching; road improvements; recreational use such as hiking, camping, picnicking, game hunting, and fishing; botanical gardens; and, crop farming. With the exception of communications and tracking facilities improvements by the Federal Aviation Administration or the Federal Communications Commission, these activities are unlikely to have Federal involvement. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps, and watershed management and restoration projects sponsored by NRCS. However the NRCS restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are rare, and would likely affect only a small percentage of the small entities within these proposed critical habitat designations. We are not aware of any commercial activities on the Federal lands included in these proposed critical habitat designations. Therefore, we conclude that this proposed designation of critical habitat on the island of Maui would not affect a substantial number of small entities.

The entire island of Kahoolawe is under State ownership and within the State Conservation District. The current and projected land uses on Kahoolawe are land restoration and ordinance removal (DAHI 2001). For these reasons we conclude that the proposed rule would not affect a substantial number of small entities on the island of Kahoolawe.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a limited consultation history for these 61 species from Maui and Kahoolawe, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of these species and the threats they face, especially as described in the final listing rules and in this proposed critical habitat designation, as well as our experience with similar listed plants in Hawaii. In addition, all of these species are protected under the State of Hawaii's Endangered Species Act (Hawaii Revised Statutes, Chap. 195D–4). Therefore, we have also considered the kinds of actions required under the State licensing process for these species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, propagation, outplanting and augmentation of existing populations, construction of protective fencing, and periodic monitoring. These measures are not likely to result in a significant economic impact to a substantial number of small entities because any measures included as a reasonable and prudent alternative would have to be economically feasible to the individual landowner, and because as discussed above, we do not believe there will be a substantial number of small entities affected.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed

critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. Approximately 45 percent of the lands proposed as critical habitat are on State of Hawaii lands. The State of Hawaii is not a small entity. Approximately 37 percent of the lands proposed as critical habitat are on private lands. Many of these parcels are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, most of the private and State parcels within the proposed designation are currently being used for recreational and agricultural purposes and, therefore, are not likely to require any Federal authorization. In the remaining areas, section 7 application, the only trigger for regulatory impact under this rule, would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for informal consultations on federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by NRCS. These consultations would likely occur on only a subset of the total number of parcels and therefore not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the proposed designation of critical habitat for the following species: *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the economic analysis of this rule indicate otherwise, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 ***et seq.***):

a. We believe this rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

b. This rule, as proposed, will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no direct obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the 61 species from Maui and Kahoolawe in a preliminary takings implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in areas currently occupied by one or more of the 61 plant species imposes no additional restrictions to those currently in place, and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require section 7 consultation on non-Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. However, there will be little additional impact on State and local governments and their activities because all of the proposed critical habitat areas are occupied by at least one species. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 61 plant species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a)

of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) E.O. 13175 and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of these 61 plant species. Therefore, designation of critical habitat for these 61 species has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Christa Russell, Marigold Zoll, Michelle Stephens, and Gregory Koob (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entries for *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* under ''FLOWERING PLANTS'' and *Asplenium fragile* var. *insulare, Ctenitis squamigera, Diellia erecta, Diplazium molokaiense, Phlegmariurus (=Lycopodium,=Huperzia) mannii,* and *Pteris lidgatei,* under ''FERNS AND ALLIES'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

SPECIES		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Alectryon macrococcus.	Mahoe	U.S.A. (HI)	Sapindaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Argyroxiphium sandwicense ssp. *macrocephalum*.	Ahinahina	U.S.A. (HI)	Asteraceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Bidens micrantha ssp. *kalealaha*.	Kookoolau	U.S.A. (HI)	Asteraceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Bonamia menziesii	None	U.S.A. (HI)	Convolvulaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Brighamia rockii	Pua ala	U.S.A. (HI)	Campanulaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Cenchrus agrimonioides.	Kamanomano (=Sandbur, agrimony).	U.S.A. (HI)	Poaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Centaurium sebaeoides.	Awiwi	U.S.A. (HI)	Gentianaceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Clermontia lindseyana	Oha wai	U.S.A. (HI)	Campanulaceae	E	532	17.96(a)	NA

SPECIES		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Clermontia oblongifolia ssp. *mauiensis*.	Oha wai	U.S.A. (HI)	Campanulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Clermontia samuelii	Oha wai	U.S.A. (HI)	Campanulaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Colubrina oppositifolia	Kauila	U.S.A. (HI)	Rhamnaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea copelandii ssp. *haleakalaensis*.	Haha	U.S.A. (HI)	Campanulaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea glabra	Haha	U.S.A. (HI)	Campanulaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea grimesiana ssp. *grimesiana*.	Haha	U.S.A.(HI)	Campanulaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea hamatiflora ssp. *hamatiflora*.	Haha	U.S.A. (HI)	Campanulaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea lobata	Haha	U.S.A. (HI)	Campanulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Cyanea mceldowneyi	Haha	U.S.A. (HI)	Campanulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Cyrtandra munroi	Haiwale	U.S.A. (HI)	Gesneriaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Dubautia plantaginea ssp. *humilis*.	Naenae	U.S.A. (HI)	Asteraceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Flueggea neowawraea.	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Geranium arboreum	Hawaiian red-flowered geranium.	U.S.A. (HI)	Geraniaceae	E	465	17.96(a)	NA
*	*	*	*	*	*		*
Geranium multiflorum	Nohoanu	U.S.A. (HI)	Geraniaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Gouania vitifolia	None	U.S.A. (HI)	Rhamnaceae	E	541	17.96(a)	NA
*	*	*	*	*	*		*
Hedyotis coriacea	Kioele	U.S.A. (HI)	Rubiaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Hedyotis mannii	Pilo	U.S.A. (HI)	Rubiaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Hesperomannia arborescens.	None	U.S.A. (HI)	Asteraceae	E	536	17.96(a)	NA
*	*	*	*	*	*		*
Hesperomannia arbuscula.	None	U.S.A. (HI)	Asteraceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Hibiscus brackenridgei.	Mao hau hele	U.S.A. (HI)	Malvaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Ischaemum byrone	Hilo ischaemum	U.S.A. (HI)	Poaceae	E	532	17.96(a)	NA

SPECIES		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Isodendrion pyrifolium	Wahine noho kula	U.S.A. (HI)	Violaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
Kanaloa kahoolawensis.	Kohe malama malama o Kanaloa.	U.S.A. (HI)	Fabaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Lipochaeta kamolensis.	Nehe	U.S.A. (HI)	Asteraceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Lysimachia lydgatei	None	U.S.A. (HI)	Primulaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Mariscus pennatiformis.	None	U.S.A. (HI)	Cyperaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Melicope adscendens	Alani	U.S.A. (HI)	Rutaceae	E	565	17.96(a)	NA
*	*	*	*	*	*		*
Melicope balloui	Alani	U.S.A. (HI)	Rutaceae	E	565	17.96(a)	NA
*	*	*	*	*	*		*
Melicope knudsenii	Alani	U.S.A. (HI)	Rutaceae	E	530	17.96(a)	NA
*	*	*	*	*	*		*
Melicope (= *Pelea*) *mucronulata*.	Alani	U.S.A. (HI)	Rutaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Melicope ovalis	Alani	U.S.A. (HI)	Rutaceae	E	565	17.96(a)	NA
*	*	*	*	*	*		*
Neraudia sericea	None	U.S.A. (HI)	Urticaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Nototrichium humile	Kului	U.S.A. (HI)	Amaranthaceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Peucedanum sandwicense.	Makou	U.S.A. (HI)	Apiaceae	E	530	17.96(a)	NA
*	*	*	*	*	*		*
Phyllostegia mannii	None	U.S.A. (HI)	Lamiaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Phyllostegia mollis	None	U.S.A. (HI)	Lamiaceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Plantago princeps	Laukahi kuahiwi	U.S.A. (HI)	Plantaginaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Platanthera holochila	None	U.S.A. (HI)	Orchidaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Remya mauiensis	Maui remya	U.S.A. (HI)	Asteraceae	E	413	17.96(a)	NA
*	*	*	*	*	*		*
Sanicula purpurea	None	U.S.A. (HI)	Apiaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Schiedea haleakalensis.	None	U.S.A. (HI)	Caryophyllaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Spermolepis hawaiiensis.	None	U.S.A. (HI)	Apiaceae	E	559	17.96(a)	NA

SPECIES		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Tetramolopium capillare.	Pamakani	U.S.A. (HI)	Asteraceae	E	555	17.96(a)	NA
*	*	*	*	*	*		*
Tetramolopium remyi	None	U.S.A. (HI)	Asteraceae	E	435	17.96(a)	NA
*	*	*	*	*	*		*
Vigna o-wahuensis	None	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Zanthoxylum hawaiiense.	Ae	U.S.A. (HI)	Rutaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
FERNS AND ALLIES							
*	*	*	*	*	*		*
Asplenium fragile var. *insulare*.	None	U.S.A. (HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Ctenitis squamigera	Pauoa	U.S.A. (HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Diellia erecta	Asplenium-leaved diellia.	U.S.A. (HI)	Aspleniaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Diplazium molokaiense.	None	U.S.A. (HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Phlegmariurus (=*Lycopodium*, =*Huperzia*) *mannii*.	Wawaeiole	U.S.A. (HI)	Lycopodiaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Pteris lidgatei	None	U.S.A. (HI)	Adiantaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*

3. In Section 17.96, as proposed to be amended at 65 FR 66865 (November 7, 2000), 65 FR 79192 (December 18, 2000), 65 FR 82086 (December 27, 2000), 65 FR 83193 (December 29, 2000), 67 FR 4072 (January 28, 2002) and 67 FR 9806 (March 4, 2002), is proposed to be further amended as follows:

a. Revise introductory text of paragraph (a)(1)(i);

b. Add paragraphs (a)(1)(i)(C); and (a)(1)(i)(D): and

c. Revise paragraph (a)(1)(ii).

The revised text reads as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

(1) * * *

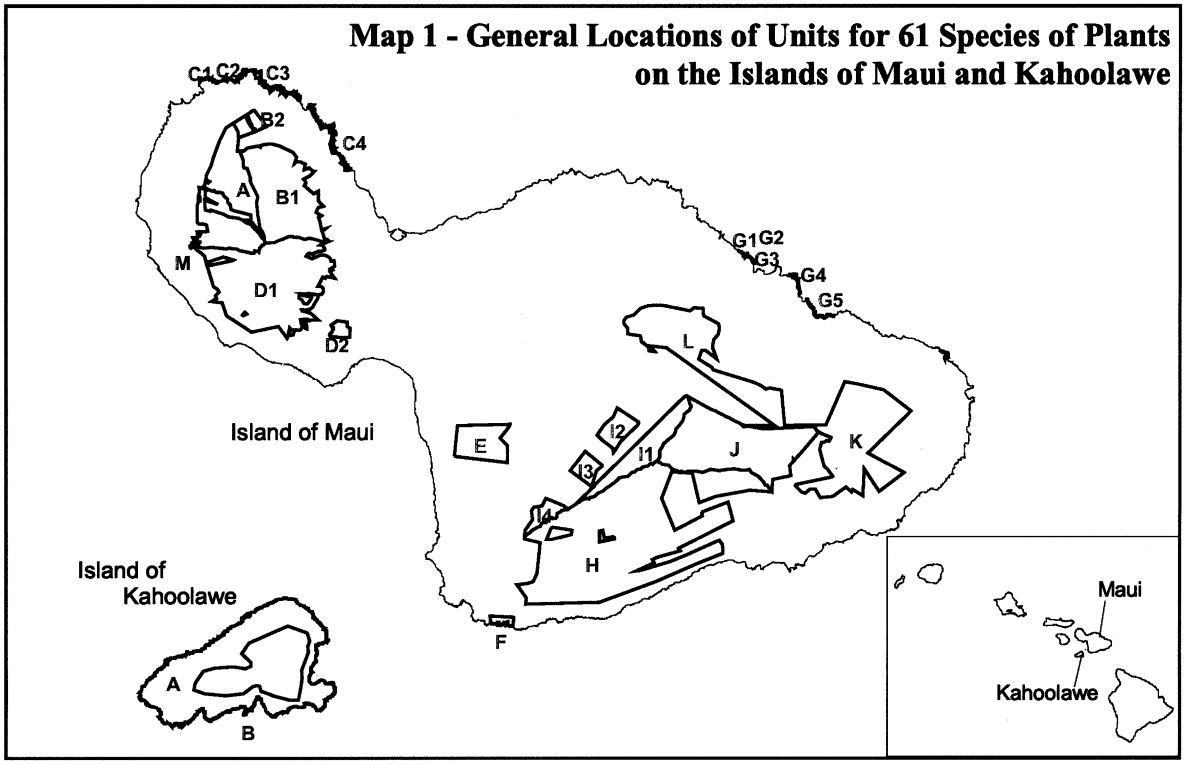
(i) *Maps and critical habitat unit descriptions.* The following sections contain the legal descriptions of the critical habitat units designated for each of the Hawaiian Islands. Existing manmade features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, railroads, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, lawns, and other rural residential landscaped areas do not contain one or more of the primary constituent elements described for each species in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section and are not included in the critical habitat designation.

* * * * *

(C) *Maui.* 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 13 critical habitats units designated on the island of Maui.

(*1*) **Note:** Map 1—Index map follows:

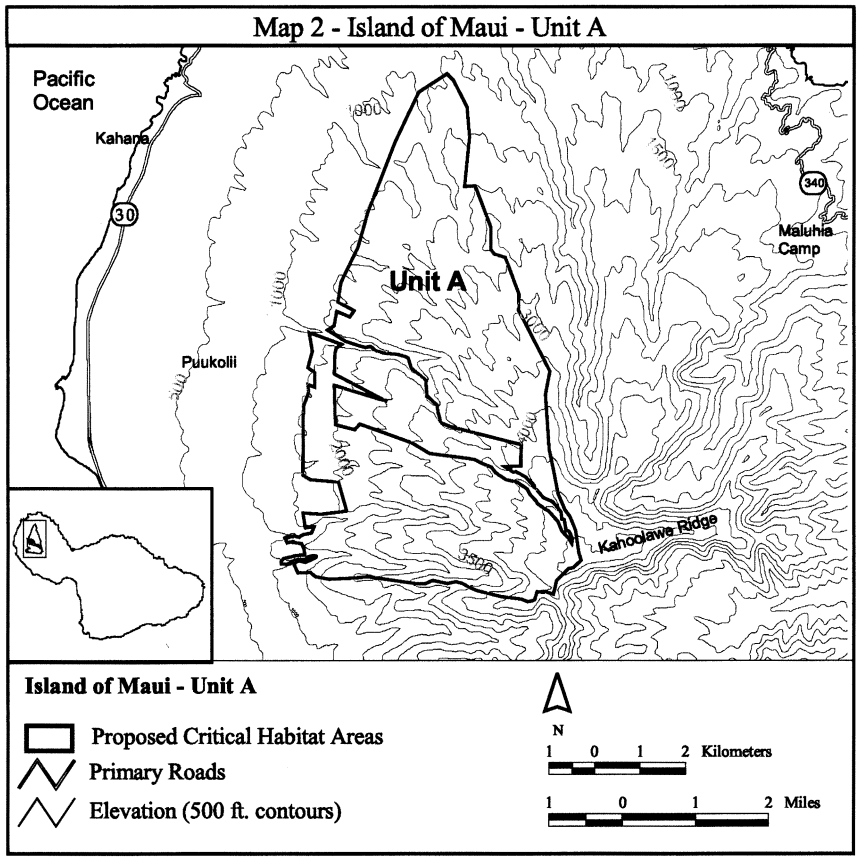
BILLING CODE 4310–55–P



(*2*) Maui A (3,884 ha; 9,598 ac).

(*i*) Unit consists of the following 187 boundary points: 745646, 2316064; 746803, 2315452; 745637, 2315818; 745665, 2314941; 746096, 2314837; 746206, 2314955; 747360, 2314536; 747736, 2314302; 748610, 2314192; 748747, 2314163; 748895, 2314089; 749112, 2314006; 749212, 2313881; 749432, 2313730; 749677, 2313678; 749902, 2313524; 749954, 2313416; 750110, 2313242; 750118, 2313199; 750119, 2313198; 750307, 2313068; 750359, 2313038; 750360, 2313038; 750569, 2312799; 750662, 2312593; 750805, 2312435; 750878, 2312325; 750885, 2312412; 750817, 2312575; 750798, 2312594; 750748, 2312588; 750710, 2312845; 750652, 2312855; 750635, 2313002; 750564, 2313116; 750450, 2313241; 750253, 2313328; 749863, 2313784; 749654, 2313910; 749594, 2313898; 749400, 2314013; 749762, 2314025; 749764, 2314245; 749767, 2314498; 748195, 2314901; 747995, 2314988; 747953, 2315158; 747952, 2315160; 747941, 2315192; 747901, 2315370; 747687, 2315584; 747662, 2315928; 747336, 2316180; 747266, 2316401; 747236, 2316433; 747031, 2316482; 746735, 2316514; 746560, 2316570; 746447, 2316671; 746334, 2316643; 746188, 2316678; 745896, 2316785; 745484, 2317026; 745643, 2317128; 745694, 2317441; 745981, 2317323; 746078, 2317462; 745728, 2317647; 745798, 2318077; 746162, 2318852; 746391, 2319637; 746984, 2321175; 747501, 2322278; 748133, 2322670; 748262, 2322541; 748568, 2321950; 748627, 2321290; 748509, 2320188; 748746, 2320208; 749101, 2319292; 749101, 2318793; 749178, 2318693; 749408, 2318624; 749723, 2317818; 749700, 2317464; 750392, 2316121; 750302, 2315611; 750386, 2314410; 750482, 2313931; 750575, 2313421; 750722, 2313061; 750842, 2312911; 750962, 2312611; 751022, 2312131; 751082, 2311951; 750911, 2311782; 750812, 2311771; 750542, 2311501; 750482, 2311201; 750440, 2311216; 750386, 2311230; 750328, 2311242; 750279, 2311249; 750263, 2311247; 750252, 2311240; 750122, 2311261; 750063, 2311077; 749987, 2311042; 749908, 2311040; 749769, 2311083; 749324, 2311150; 748999, 2311226; 748784, 2311284; 748564, 2311384; 748472, 2311441; 748322, 2311471; 748142, 2311441; 747812, 2311501; 747662, 2311441; 747422, 2311441; 746372, 2311591; 746132, 2311561; 745532, 2311531; 745232, 2311591; 745112, 2311681; 744848, 2311671; 744757, 2311853; 744803, 2311913; 744873, 2311930; 745003, 2311908; 745103, 2311941; 745246, 2312013; 745237, 2312047; 745184, 2312054; 745082, 2312024; 744998, 2311962; 744940, 2311972; 744855, 2311959; 744843, 2311979; 744786, 2311969; 744644, 2311877; 744574, 2311856; 744542, 2311859; 744531, 2311866; 744526, 2311860; 744465, 2311866; 744468, 2311918; 744523, 2311989; 744820, 2312059; 744992, 2312075; 744984, 2312177; 744929, 2312317; 744736, 2312339; 744734, 2312365; 744653, 2312345; 744609, 2312328; 744558, 2312437; 744633, 2312480; 744722, 2312477; 744785, 2312485; 744871, 2312454; 744945, 2312517; 745143, 2312557; 745200, 2312689; 745157, 2312692; 745009, 2312661; 744946, 2312990; 745348, 2312974; 745916, 2313043; 745773, 2313571; 745745, 2313671; 745113, 2313721; 744946, 2313827; 744964, 2315341; 745081, 2315642; 745066, 2315830; 745211, 2315767; 745220, 2316095; 745062, 2316193; 745156, 2316554; 745095, 2316969; 745815, 2316715; 745688, 2316626; 745682, 2316625; 745668, 2316564; 745660, 2316498; 745662, 2316487.

(*ii*) **Note:** Map 2 follows:



BILLING CODE 4310–55–C

(*3*) Maui B1 (4,374 ha; 10,808 ac).

(*i*) Unit consists of the following 84 boundary points: 756585, 2312074; 756481, 2312051; 756356, 2312094; 756039, 2312114; 755355, 2312353; 755012, 2312431; 754622, 2312281; 754412, 2312371; 754172, 2312491; 753872, 2312521; 753812, 2312461; 753632, 2312461; 753542, 2312551; 753182, 2312581; 752556, 2312292; 752222, 2312191; 751892, 2312011; 751082, 2311951; 751022, 2312131; 750962, 2312611; 750842, 2312911; 750722, 2313061; 750575, 2313421; 750482, 2313931; 750386, 2314410; 750302, 2315611; 750392, 2316121; 749700, 2317464; 749723, 2317818; 749408, 2318624; 749178, 2318693; 749101, 2318793; 749101, 2319292; 748746, 2320208; 749105, 2320225; 749490, 2320492; 749492, 2320495; 749509, 2320507; 750442, 2320667; 750595, 2320522; 750652, 2320703; 750913, 2320748; 751322, 2320818; 751504, 2320850; 751662, 2320812; 752336, 2320652; 752694, 2320488; 753547, 2320078; 753884, 2319664; 753684, 2319160; 753794, 2319238; 753831, 2319264; 754230, 2319264; 754437, 2319134; 754628, 2319014; 754566, 2318549; 754986, 2318675; 755406, 2318356; 755428, 2318339; 755028, 2317961; 754461, 2317666; 754650, 2317540; 754692, 2317372; 754543, 2317112; 755365, 2316415; 755848, 2316599; 755848, 2316598; 755848, 2315712; 756262, 2315298; 755831, 2315154; 755624, 2314782; 755582, 2314690; 756114, 2314411; 755852, 2314267; 755926, 2313985; 756109, 2313151; 756469, 2313228; 756146, 2313006; 756382, 2312300; 756646, 2312281; 756765, 2312104; 756687, 2312072; 756684, 2312072; 756585, 2312074.

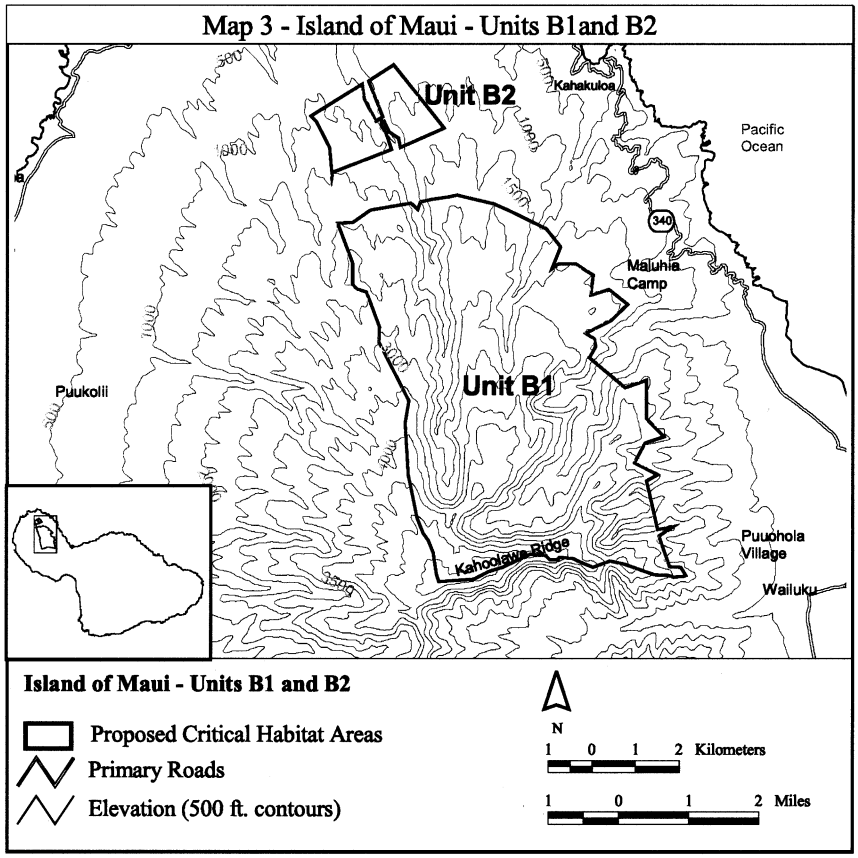
(*ii*) **Note:** See Map 3:

(*4*) Maui B2 (362 ha; 893 ac).

(*i*) Unit consists of the following 26 boundary points: 748262, 2322541; 748133, 2322670; 749321, 2323406; 749364, 2323069; 749536, 2322742; 749536, 2322742; 749537, 2322740; 749637, 2322549; 749783, 2322650; 749455, 2323474; 750016, 2323841; 750018, 2323839; 750033, 2323848; 751197, 2322401; 750188, 2321953; 750152, 2322162; 749940, 2322307; 749812, 2322559; 749759, 2322545; 749742, 2322463; 749858, 2322275; 749993, 2321907; 748635, 2321367; 748627, 2321290; 748568, 2321950; 748262, 2322541.

(*ii*) **Note:** Map 3 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(*5*) Maui C1 (23 ha; 56 ac).

(*i*) Unit consists of the following 20 boundary points: coastline; 747250, 2326499; 747257, 2326478; 747007, 2326430; 746884, 2326397; 746799, 2326342; 746739, 2326262; 746652, 2326280; 746642, 2326406; 746544, 2326446; 746341, 2326386; 746294, 2326499; 746180, 2326580; 745984, 2326637; 745796, 2326602; 745709, 2326596; 745622, 2326620; 745300, 2326566; 745260, 2326492; 745179, 2326343; 745158, 2326345; coastline.

(*ii*) **Note:** See Map 4:

(*6*) Maui C2 (10 ha; 24 ac).

(*i*) Unit consists of the following 14 boundary points: coastline; 747287, 2326549; 748409, 2326346; 748368, 2326302; 748229, 2326384; 748109, 2326548; 747979, 2326564; 747917, 2326610; 747839, 2326650; 747684, 2326547; 747619, 2326463; 747536, 2326537; 747403, 2326505; 747381, 2326532; 747287, 2326549; coastline.

(*ii*) **Note:** See Map 4:

(*7*) Maui C3 (162 ha; 400 ac).

(*i*) Unit consists of the following 96 boundary: coastline; 754099, 2324756; 754053, 2324754; 753955, 2324768; 753953, 2324779; 753930, 2324862; 753759, 2325028; 753669, 2325092; 753524, 2325277; 753446, 2325286; 753388, 2325342; 753325, 2325353; 753252, 2325321; 753085, 2325303; 753034, 2325242; 752911, 2325108; 752865, 2325227; 752886, 2325361; 752879, 2325424; 752841, 2325439; 752828, 2325443; 752732, 2325363; 752722, 2325261; 752662, 2325341; 752615, 2325470; 752535, 2325474; 752438, 2325416; 752516, 2325578; 752501, 2325617; 752373, 2325646; 752189, 2325668; 752167, 2325700; 752138, 2325733; 751990, 2325840; 751898, 2325842; 751835, 2325769; 751804, 2325709; 751734, 2325826; 751714, 2325826; 751630, 2325733; 751547, 2325578; 751562, 2325516; 751525, 2325510; 751492, 2325530; 751475, 2325549; 751455, 2325734; 751461, 2325837; 751273, 2325927; 751251, 2325921; 751203, 2325906; 751187, 2325954; 751123, 2325981; 751071, 2325948; 751040, 2325902; 751010, 2325866; 750988, 2325906; 750957, 2325952; 750990, 2326027; 750973, 2326051; 750852, 2326051; 750801, 2326107; 750821, 2326193; 750779, 2326281; 750598, 2326312; 750549, 2326248; 750486, 2326298; 750482, 2326366; 750526, 2326443; 750607, 2326484; 750622, 2326624; 750617, 2326668; 750334, 2326780; 750225, 2326707; 750174, 2326716; 750157, 2326750; 750156, 2326762; 750143, 2326932; 750116, 2326995; 749976, 2327272; 749806, 2327368; 749392, 2327324; 749324, 2327133; 749250, 2327018; 749018, 2327093; 748987, 2327015; 748913, 2327003; 748859, 2326865; 748906, 2326824; 748978, 2326817; 748990, 2326759; 748786, 2326666; 748648, 2326684; 748567, 2326639; 748572, 2326561; 748637, 2326459; 748673, 2326373; 748516, 2326423; coastline.

(*ii*) **Note:** Map 4:

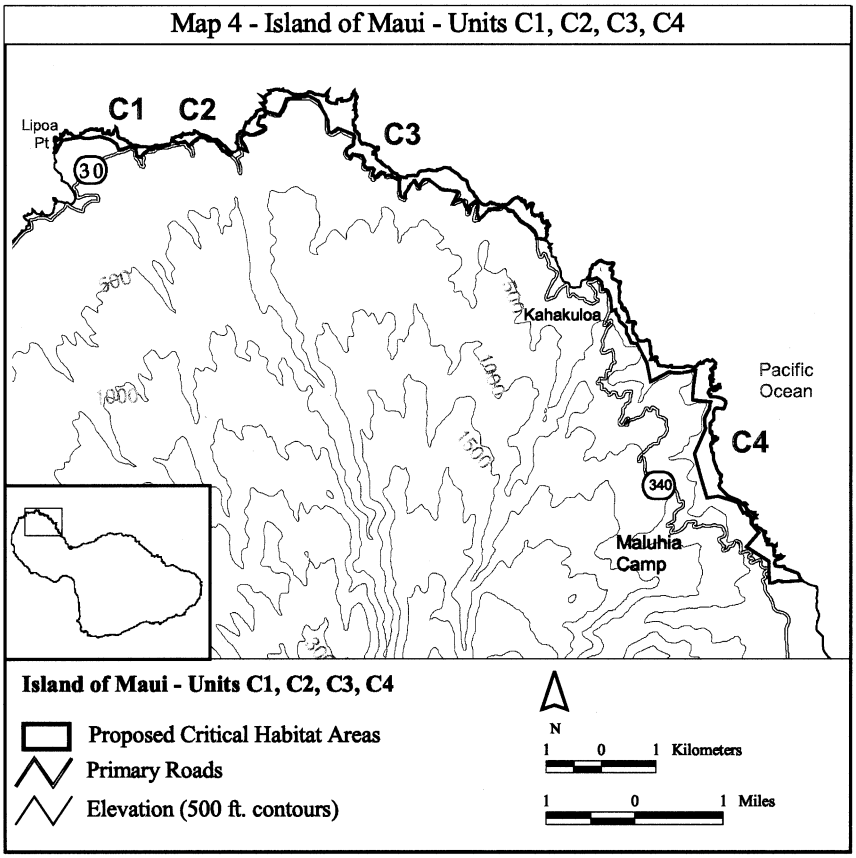
(*8*) Maui C4 (162 ha; 400 ac).

(*i*) Unit consists of the following 64 boundary points: coastline; 758803, 2318519; 758442, 2318485; 758421, 2318506; 758366, 2318516; 758267, 2318469; 758209, 2318463; 758200, 2318729; 758196, 2318869; 757790, 2319126; 758013, 2319396; 757861, 2319563; 757862, 2319690; 757794, 2319720; 757771, 2319757; 757734, 2319748; 757626, 2319942; 757267, 2320057; 757061, 2320021; 756963, 2320372; 756833, 2320832; 757033, 2321273; 757038, 2321301; 757031, 2321316; 757019, 2321449; 757019, 2321491; 757069, 2321583; 757108, 2321658; 757128, 2321761; 757132, 2321784; 757130, 2321785; 756805, 2321814; 756813, 2322040; 756862, 2322355; 756815, 2322353; 756814, 2322353; 756730, 2322336; 756575, 2322315; 756442, 2322315; 756382, 2322329; 756036, 2322156; 755962, 2322490; 755784, 2322847; 755781, 2322847; 755680, 2322859; 755664,

2322913; 755630, 2322976; 755592, 2323043; 755592, 2323144; 755551, 2323181; 755467, 2323256; 755454, 2323349; 755417, 2323374; 755396, 2323441; 755393, 2323463; 755322, 2323443; 755306, 2323674; 755295, 2323702; 755254, 2323811; 755229, 2323833; 755153, 2323833; 755144, 2323974; 755056, 2324045; 754981, 2324021; 754880, 2324041; coastline.

(*ii*) Note: Map 4 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(*9*) Maui D1 (6,950 ha; 17,175 ac).

(*i*) Unit consists of the following 180 boundary points: 754826, 2304297; 754770, 2304254; 754643, 2304333; 754542, 2304415; 754486, 2304579; 754439, 2304653; 754437, 2304765; 754349, 2304956; 754319, 2305108; 754214, 2305093; 754258, 2304902; 754278, 2304785; 754351, 2304474; 754255, 2304192; 754171, 2304150; 754065, 2304164; 753825, 2304139; 753832, 2304195; 753675, 2304217; 753611, 2303762; 753431, 2303730; 753285, 2303705; 753152, 2303682; 753304, 2304113; 753310, 2304130; 753367, 2304292; 753234, 2304365; 753213, 2304104; 753136, 2303909; 753136, 2303653; 753042, 2303454; 752244, 2304494; 749843, 2303965; 748359, 2304949; 747572, 2305437; 747183, 2306649; 746219, 2306757; 746690, 2307032; 746584, 2307222; 746574, 2307254; 746905, 2307584; 746773, 2307831; 746428, 2308069; 745859, 2309952; 745861, 2309954; 745855, 2309967; 745848, 2309987; 746252, 2310016; 748094, 2310374; 748180, 2310466; 747274, 2310703; 745970, 2310264; 745771, 2310115; 745591, 2310776; 745359, 2311057; 744982, 2311291; 744842, 2311439; 744842, 2311603; 744848, 2311671; 745112, 2311681; 745232, 2311591; 745532, 2311531; 746132, 2311561; 746372, 2311591; 747422, 2311441; 747662, 2311441; 747812, 2311501; 748142, 2311441; 748322, 2311471; 748472, 2311441; 748564, 2311384; 748784, 2311284; 748999, 2311226; 749324, 2311150; 749769, 2311083; 749908, 2311040; 749987, 2311042; 750063, 2311077; 750122, 2311261; 750252, 2311240; 750263, 2311247; 750279, 2311249; 750328, 2311242; 750386, 2311230; 750440, 2311216; 750482, 2311201; 750542, 2311501; 750812, 2311771; 750911, 2311782; 751082, 2311951; 751892, 2312011; 752222, 2312191; 752556, 2312292; 753182, 2312581; 753542, 2312551; 753632, 2312461; 753812, 2312461; 753872, 2312521; 754172, 2312491; 754412, 2312371; 754622, 2312281; 755012, 2312431; 755355, 2312353; 756039, 2312114; 756356, 2312094; 756481, 2312051; 756585, 2312074; 756684, 2312072; 756262, 2311897; 756172, 2311897; 756000, 2311819; 756067, 2311803; 756198, 2311730; 756382, 2311473; 756421, 2311340; 756092, 2311244; 755806, 2311216; 755636, 2311122; 755635, 2311122; 755459, 2311035; 755355, 2310968; 755230, 2311019; 754988, 2311042; 754820, 2310941; 754711, 2310770; 755295, 2310580; 755366, 2310585; 755661, 2310703; 755887, 2310863; 756085, 2310888; 756316, 2310888; 756497, 2310849; 756724, 2310720; 756918, 2310584; 756967, 2310340; 757238, 2310389; 757267, 2309857; 756883, 2309679; 757090, 2309531; 756824, 2309443; 756958, 2309254; 757267, 2308822; 756558, 2308999; 756439, 2308822; 756252, 2308927; 755765, 2308074; 756072, 2308080; 756194, 2308023; 756279, 2307861; 756270, 2307644; 756186, 2307440; 755931, 2307335; 755732, 2307367; 755806, 2307294; 755803, 2307043; 755624, 2306756; 755515, 2306552; 755377, 2306367; 755319, 2306243; 755163, 2306105; 755078, 2306075; 754857, 2305996; 754614, 2305982;

754412, 2306019; 754341, 2306032; 754346, 2305896; 754412, 2305877; 755139, 2305668; 755828, 2305033; 755089, 2305043; 755087, 2305045; 754979, 2305016; 754831, 2305142; 754540, 2305162; 754515, 2305057; 754621, 2304863; 754699, 2304812; 754760, 2304616; 754782, 2304447; 754796, 2304431.

(*ii*)Unit excludes three areas:

(*A*) Bounded by the following five points (6 ha, 15 ac): 748930 2305439, 749226 2305793, 749363 2305641, 749057 2305433, 748930 2305439.

(*B*) Bounded by the following 20 points (62 ha, 153 ac): 754495, 2306605; 754472, 2306625; 754334, 2306901; 754090, 2307018; 754065, 2307098; 754087, 2307266; 754141, 2307512; 754162, 2307496; 754243, 2307436; 754381, 2307316; 755039, 2307210; 755145, 2307181; 755188, 2307116; 755155, 2306981; 755028, 2306781; 754890, 2306567; 754808, 2306523; 754788, 2306512; 754588, 2306523; 754495, 2306605.

(*C*) Bounded by the following nine points (5 ha, 13 ac): 754959, 2307449; 75525, 2307432; 755657, 2307376; 755428, 2307345; 754834, 2307383; 754579, 2307430; 754778, 2307426; 754839, 2307410; 754959, 2307449.

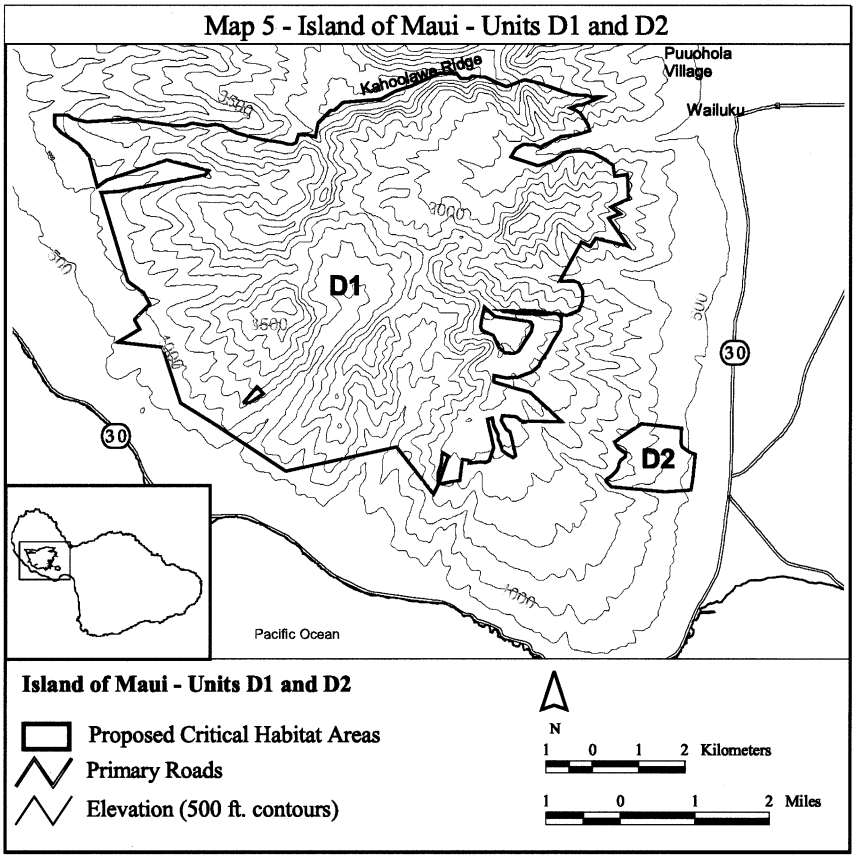
(*iii*) **Note:** See Map 5.

(*10*) Unit D2 (212 ha; 523 ac).

(*i*) unit consists of the following 22 boundary points: 756769, 2303771; 756914, 2303864; 757007, 2303958; 757058, 2304068; 757053, 2304123; 757104, 2304208; 757198, 2304267; 757206, 2304365; 757138, 2304395; 757037, 2304471; 756959, 2304605; 757541, 2304994; 758421, 2304900; 758402, 2304566; 758427, 2304491; 758605, 2304369; 758716, 2304323; 758665, 2303805; 758615, 2303558; 758067, 2303509; 756894, 2303623; 756774, 2303746.

(*ii*) **Note:** Map 5 follows:

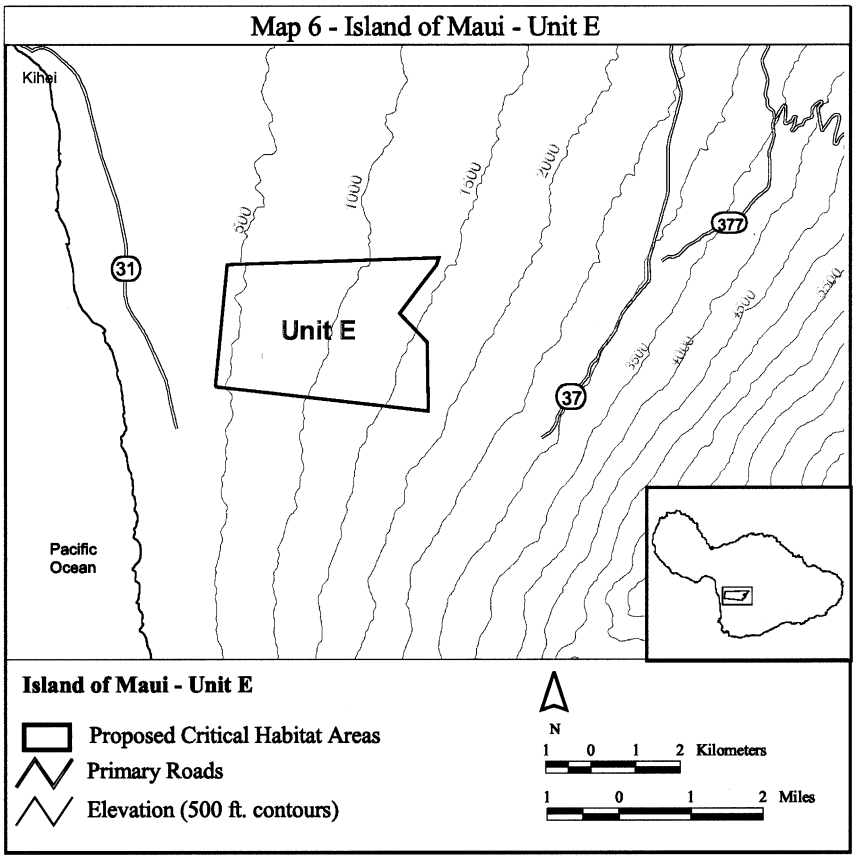
BILLING CODE 4310–55–P



(*11*) Maui E (1,389 ha; 3,432 ac).

(*i*) Unit consists of eight boundary points: 768269, 2295601; 773018, 2295761; 772962, 2295591; 772608, 2295140; 772130, 2294513; 772758, 2293858; 772784, 2292323; 768006, 2292863.

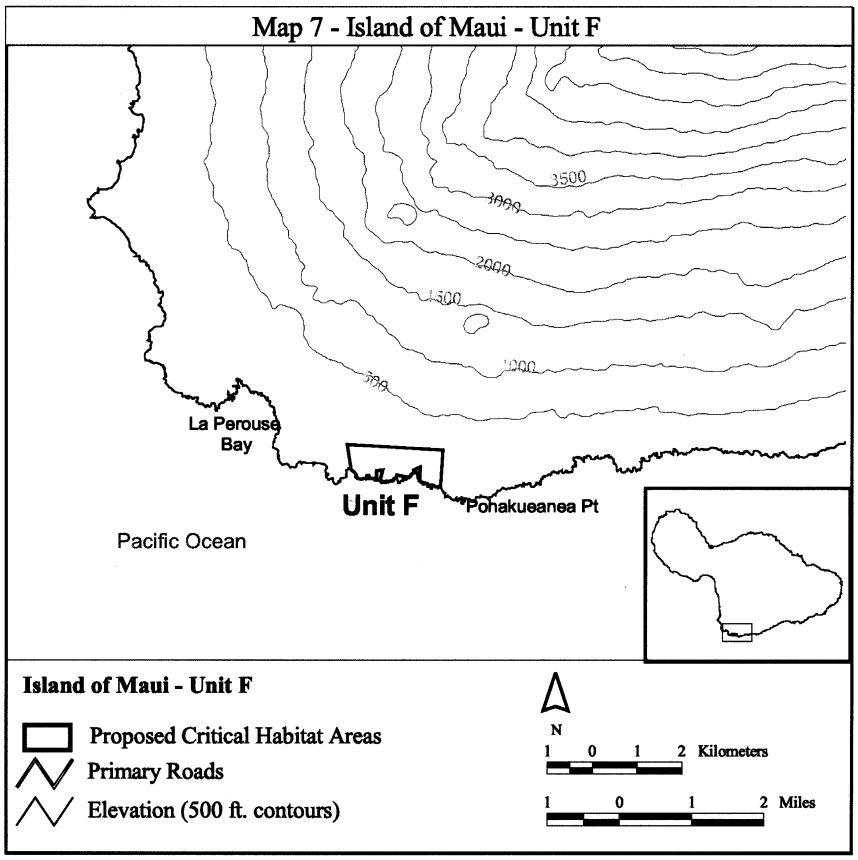
(*ii*) **Note:** Map 6 follows:



(*12*) Maui F (144 ha; 357 ac).

(*i*) Unit consists of the following 19 boundary points: coastline. 771282, 2278049; 771207, 2278581; 773349, 2278461; 773296, 2277638; 773294, 2277610; coastline. Coastline; 771941, 2277804; 772001, 2278009; 771861, 2277996; 771858, 2277785; coastline. Coastline; 772291, 2277823; 772291, 2277823; 772464, 2277817; 772464, 2277818; 772464, 2277873; 772302, 2277904; coastline. Coastline; 772830, 2277758; 772839, 2278087; 772691, 2278009; 772697, 2277944; coastline.

(*ii*) **Note:** Map 7 follows:



(*13*) Maui G1 (4 ha; 10 ac).

(*i*) Unit consists of the following 21 boundary points: coastline; 793988, 2310722; 793988, 2310722; 793988, 2310722; 793937, 2310735; 793898, 2310767; 793920, 2310825; 793940, 2310881; 793932, 2310893; 793907, 2310933; 793885, 2310962; 793833, 2311001; 793781, 2311037; 793768, 2311053; 793690, 2311134; 793635, 2311144; 793527, 2311157; 793498, 2311183; 793411, 2311267; 793362, 2311345; 793988, 2310722; 793988, 2310722; coastline.

(*ii*) **Note:** See Map 8:

(*14*) Maui G2 (.8 ha; 2 ac).

(*i*) Unit consists of the following 21 boundary points: coastline; 794253, 2311026; 794246, 2311002; 794240, 2310987; 794220, 2310955; 794200, 2310914; 794190, 2310902; 794182, 2310899; 794171, 2310899; 794168, 2310900; 794162, 2310906; 794162, 2310935; 794166, 2310959; 794169, 2310967; 794202, 2311009; 794211, 2311034; 794222, 2311052; 794246, 2311078; 794258, 2311082; 794263, 2311080; 794265, 2311076; 794265, 2311065; coastline.

(*ii*) **Note:** See Map 8:

(*15*) Maui G3 (7 ha; 16 ac).

(*i*) Unit consists of the following 22 boundary points: coastline; 794814, 2310166; 794778, 2310176; 794756, 2310192; 794756, 2310217; 794742, 2310240; 794733, 2310282; 794728, 2310324; 794711, 2310345; 794706, 2310368; 794665, 2310393; 794632, 2310428; 794625, 2310446; 794622, 2310523; 794573, 2310595; 794491, 2310645; 794326, 2310728; 794258, 2310741; 794222, 2310764; 794118, 2310718; 794053, 2310679; 794040, 2310715; 794043, 2310738; coastline.

(*ii*) **Note:** See Map 8:

(*16*) Maui G4 (22 ha; 53 ac).

(*i*) Unit consists of the following 14 boundary points: coastline; 798949, 2307406; 798949, 2307406; 798884, 2307470; 798940, 2307502; 798924, 2307613; 798829, 2307836; 798733, 2308042; 798749, 2308233; 798718, 2308487; 798631, 2308684; 798419, 2308844; 798296, 2309004; 797985, 2309037; 798021, 2309124; coastline.

(*ii*) **Note:** See Map 8:

(*17*) Maui G5 (31 ha; 77 ac).

(*i*) Unit consists of the following 27 boundary points: coastline; 801972, 2305512; 801990, 2305372; 801833, 2305382; 801626, 2305463; 801466, 2305444; 801320, 2305260; 801117, 2305232; 801018, 2305293; 800891, 2305373; 800731, 2305387; 800581, 2305284; 800472, 2305307; 800265, 2305505; 800166, 2305599; 800152, 2305712; 800147, 2305849; 800190, 2305990; 800138, 2306094; 800001, 2306188; 799879, 2306263; 799874, 2306386; 799789, 2306428; 799723, 2306527; 799657, 2306626; 799606, 2306800; 799516, 2306902; 799516, 2306902; coastline.

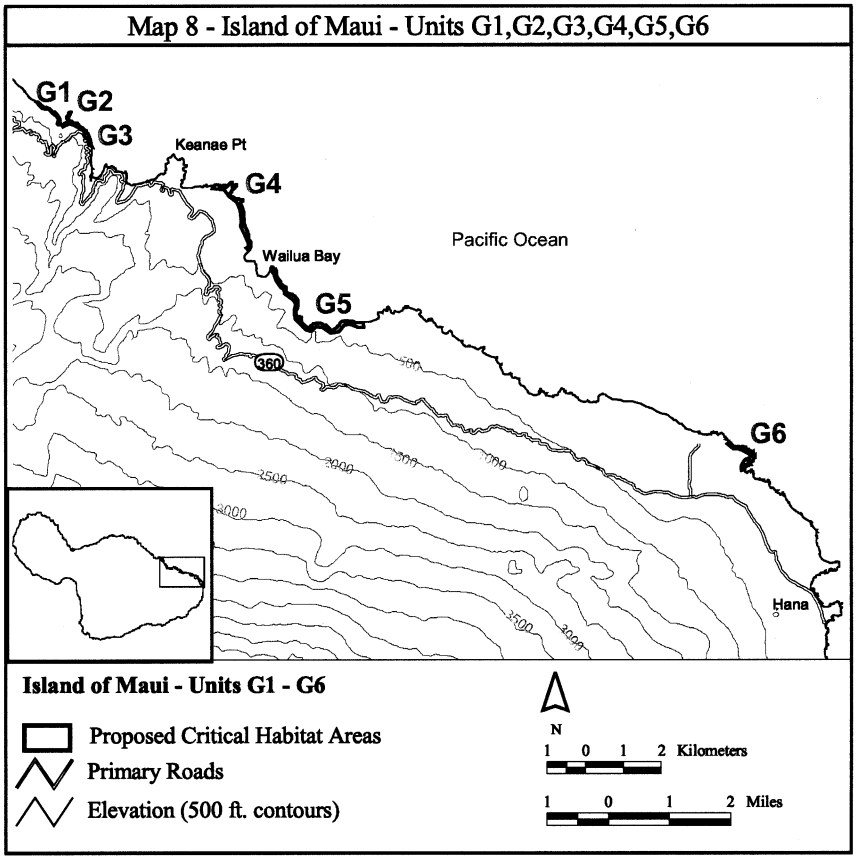
(*ii*) **Note:** See Map 8:

(*18*) Maui G6 (11 ha; 27 ac).

(*i*) Unit consists of the following 14 boundary points: coastline; 811982, 2301617; 811982, 2301617; 811936, 2301585; 811916, 2301671; 811945, 2301774; 812026, 2301885; 812133, 2301927; 812193, 2301995; 812092, 2302061; 811938, 2302135; 811849, 2302164; 811717, 2302172; 811546, 2302307; 811596, 2302341; coastline.

(*ii*) **Note:** Map 8 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(*19*) Maui H (14,101 ha; 34,843 ac).

(*i*) Unit consists of the following 133 boundary points: 792545, 2288808; 792970, 2287110; 788115, 2284625; 788254, 2284423; 786255, 2283830; 785721, 2283591; 785909, 2283329; 784364, 2282634; 784741, 2282683; 785687, 2282923; 787384, 2283423; 788910, 2284092; 791757, 2285370; 792012, 2284972; 792107, 2284459; 792107, 2284163; 789675, 2283199; 786085, 2281630; 781021, 2279811; 774426, 2279632; 774487, 2280204; 773607, 2281357; 774563, 2281463; 775099, 2281680; 775397, 2282390; 775684, 2285109; 774276, 2285496; 774305, 2285732; 774421, 2285732; 774601, 2285942; 774871, 2286062; 774961, 2286242; 775201, 2286392; 775501, 2286512; 775711, 2286572; 775801, 2286842; 775981, 2286962; 776221, 2286932; 776431, 2287082; 776611, 2287292; 776731, 2287292; 776791, 2287382; 776881, 2287322; 777091, 2287322; 777241, 2287472; 777211, 2287742; 777481, 2287862; 777661, 2288072; 778111, 2288132; 778136, 2288218; 778221, 2288151; 778986, 2288684; 779070, 2288768; 779131, 2288792; 779251, 2288792; 779401, 2288972; 779851, 2289092; 780061, 2289062; 780151, 2289182; 780576, 2289283; 780841, 2289542; 781388, 2289777; 781591, 2290022; 781861, 2290202; 782491, 2290652; 782851, 2290952; 783541, 2291072; 783871, 2291402; 784171, 2291462; 784323, 2291635; 784473, 2291725; 784623, 2291725; 784683, 2291725; 784826, 2291868; 784854, 2291851; 784917, 2291907; 784912, 2291915; 785313, 2291995; 785613, 2292265; 785823, 2292175; 785940, 2292307; 785941, 2292306; 785946, 2292314; 786063, 2292445; 786151, 2292452; 786211, 2292452; 786511, 2292242; 786631, 2292122; 787201, 2292092; 787561, 2291702; 787951, 2291582; 788131, 2291492; 788341, 2291522; 788641, 2291432; 789031, 2291522; 789720, 2291522; 790086, 2291458; 790230, 2291432; 790950, 2291672; 791730, 2291582; 792480, 2291702; 792750, 2291702; 793014, 2291770; 793450, 2291683; 793671, 2291645; 794207, 2291635; 794432, 2291674; 794523, 2291573; 794614, 2291434; 795213, 2291075; 795299, 2291051; 795400, 2290907; 795821, 2290462; 795807, 2290385; 795864, 2290318; 796008, 2290304; 796061, 2290232; 796133, 2290112; 796195, 2290069; 796310, 2290016; 796427, 2289780; 796453, 2289731; 796458, 2289724; 796453, 2289665; 794488, 2289840; 791401, 2289270; 789965, 2288718; 789343, 2291348; 787469, 2291492; 786580, 2289125; 787793, 2286254; 790244, 2287538; 790161, 2287892.

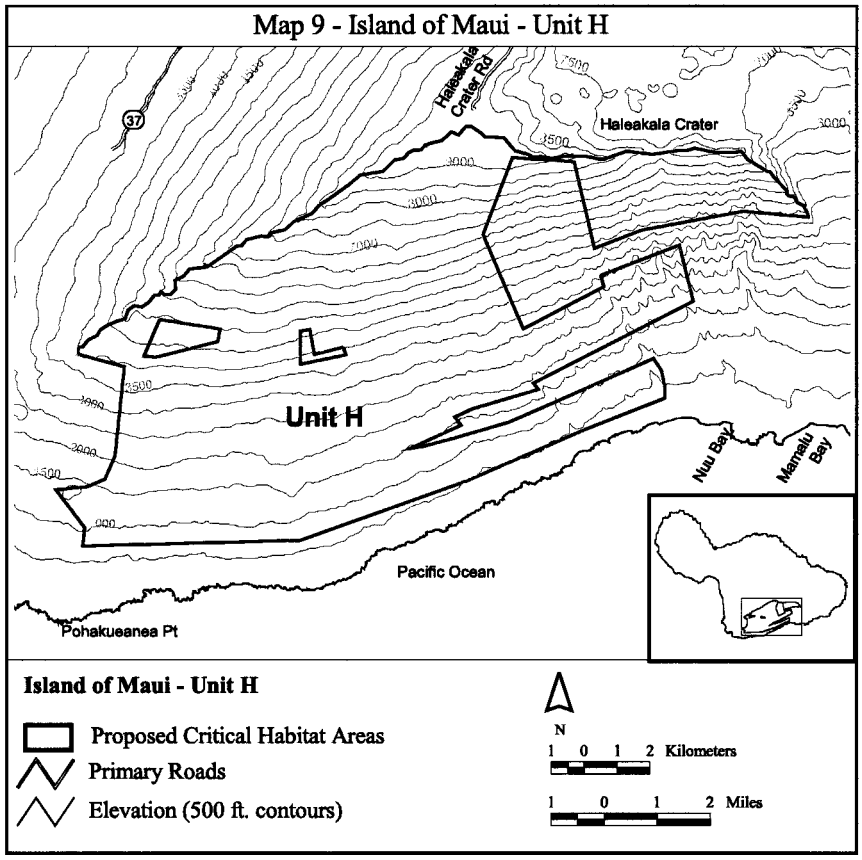
(*ii*) Unit excludes two areas:

(*A*) Bounded by the following seven points (162 ha, 400ac): 776764, 2286552; 778589, 2286255; 778519, 2285877; 776631, 2285401; 776280, 2285436; 776669, 2286345; 776764, 2286552.

(*B*) Bounded by the following 11 points (58 ha, 143 ac): 782337, 2285709; 782398, 2285481; 781035, 2285187; 781028, 2286132; 781029, 2286198; 781305, 2286239; 781412, 2285729; 781455, 2285500; 781459, 2285501; 781459, 2285501; 782337, 2285709.

(*iii*) **Note:** Map 9 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–P

(*20*) Maui I1 (1,862 ha; 4,601 ac).

(*i*) Unit consists of the following 61 boundary points: 788755, 2298314; 788934, 2298211; 788932, 2298142; 789003, 2297908; 789137, 2297528; 789205, 2297438; 789207, 2297318; 789096, 2297113; 789049, 2296968; 788869, 2296843; 788619, 2296647; 788580, 2296262; 788460, 2296022; 788165, 2295603; 787886, 2295369; 787844, 2295067; 787660, 2294754; 787231, 2294372; 786737, 2293972; 786661, 2293742; 786430, 2293387; 786421, 2292812; 786299, 2292576; 786151, 2292452; 786063, 2292445; 785946, 2292314; 785941, 2292306; 785940, 2292307; 785823, 2292175; 785613, 2292265; 785313, 2291995; 784912, 2291915; 784917, 2291907; 784854, 2291851; 784826, 2291868; 784683, 2291725; 784623, 2291725; 784473, 2291725; 784323, 2291635; 784171, 2291462; 783871, 2291402; 783541, 2291072; 782851, 2290952; 782491, 2290652; 781861, 2290202; 781591, 2290022; 781388, 2289777; 780841, 2289542; 780576, 2289283; 780151, 2289182; 780061, 2289062; 779851, 2289092; 779401, 2288972; 779251, 2288792; 779131, 2288792; 779070, 2288768; 780400, 2290082; 780380, 2290097; 788189, 2297787; 788162, 2297781.

(*ii*) **Note:** See Map 10.

(*21*) Maui I2 (680 ha; 1,680 ac).

(*i*) Unit consists of the following 11 boundary points: 784570, 2295895; 784440, 2295690; 782956, 2294207; 782421, 2293422; 782263, 2293191; 782187, 2293615; 781338, 2294254; 780818, 2294804; 781473, 2295735; 782282, 2296409; 782585, 2297193.

(*ii*) **Note:** See Map 10.

(*22*) Maui I3 (452 ha; 1,117 ac).

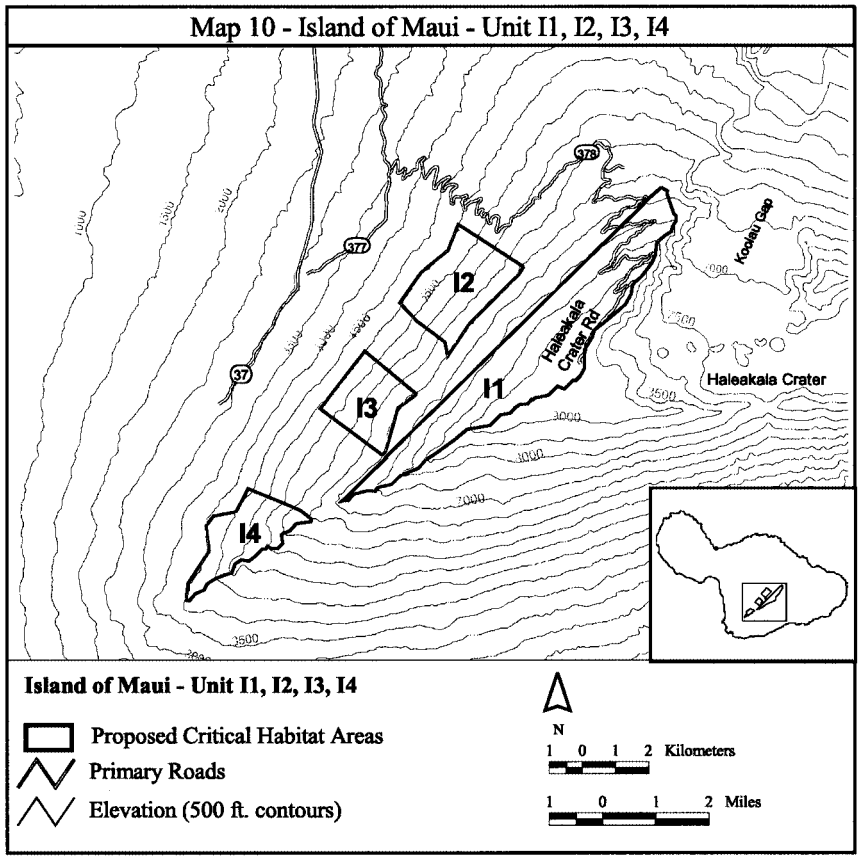
(*i*) Unit consists of the following six boundary points: 781340, 2292025; 780754, 2291599;780373, 2290270;780279, 2290173;778396, 2291591;779749, 2293351.

(*ii*) **Note:** See Map 10.

(*23*) Maui I4 (497 ha; 1,227 ac).

(*i*) Unit consists of the following 31 boundary points: 778136, 2288218; 778111, 2288132; 777661, 2288072; 777481, 2287862; 777211, 2287742; 777241, 2287472; 777091, 2287322; 776881, 2287322; 776791, 2287382; 776731, 2287292; 776611, 2287292; 776431, 2287082; 776221, 2286932; 775981, 2286962; 775801, 2286842; 775711, 2286572; 775501, 2286512; 775201, 2286392; 774961, 2286242; 774871, 2286062; 774601, 2285942; 774421, 2285732; 774305, 2285732; 774368, 2286253; 775008, 2287236; 774920, 2287996; 775155, 2288309; 775846, 2288444; 776207, 2289144; 777437, 2288634; 777822, 2288467.

(*ii*) **Note:** Map 10 follows:



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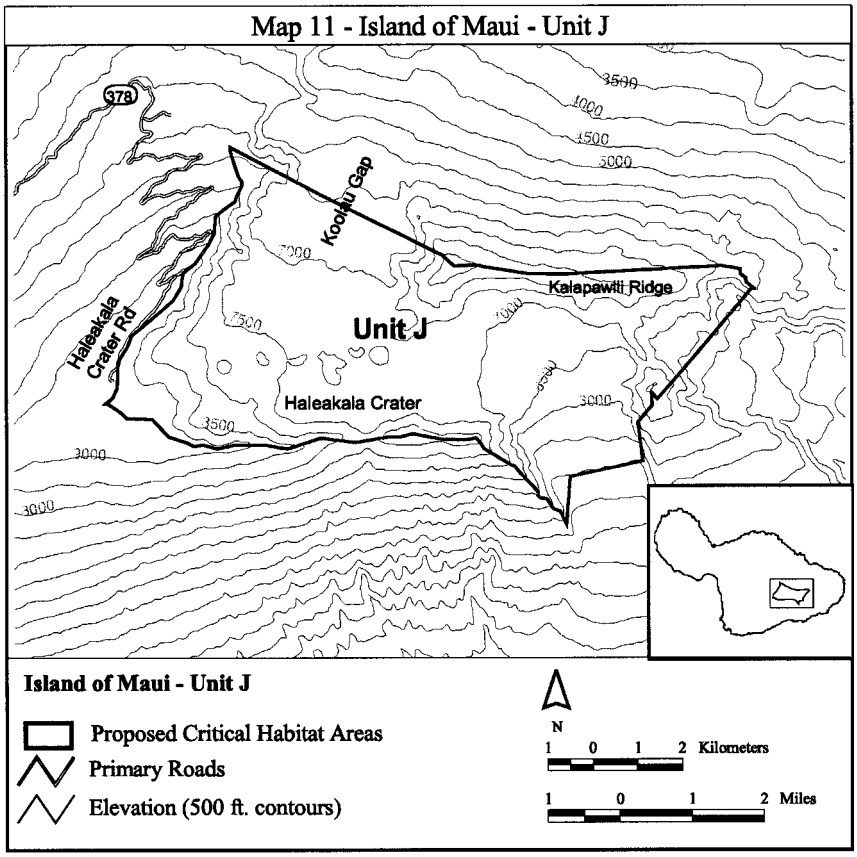
(*24*) Maui J (5,790 ha; 14,308 ac).

(*i*) Unit J consists of the following 93 boundary points: 786211, 2292452; 786151, 2292452; 786299, 2292576; 786421, 2292812; 786430, 2293387; 786661, 2293742; 786737, 2293972; 787231, 2294372; 787660, 2294754; 787844, 2295067; 787886, 2295369; 788165, 2295603; 788460, 2296022; 788580, 2296262; 788619, 2296647; 788869, 2296843; 789049, 2296968; 789096, 2297113; 789207, 2297318; 789205, 2297438; 789137, 2297528; 789003, 2297908; 788932, 2298142; 788934, 2298206; 788942, 2298202; 790992, 2297103; 791410, 2296897; 791825, 2296690; 792099, 2296555; 792241, 2296484; 792656, 2296277; 793071, 2296070; 793542, 2295836; 793699, 2295758; 793717, 2295735; 793949, 2295528; 794430, 2295549; 794610, 2295512; 795570, 2295362; 796387, 2295350; 799935, 2295528; 800349, 2295462; 800349, 2295342; 800469, 2295252; 800469, 2295162; 800636, 2295040; 800632, 2295034; 800620, 2295038; 799311, 2293503; 798490, 2292539; 798357, 2292680; 798374, 2292403; 798056, 2292031; 798165, 2291162; 796545, 2290807; 796458, 2289724; 796453, 2289731; 796427, 2289780; 796310, 2290016; 796195, 2290069; 796133, 2290112; 796061, 2290232; 796008, 2290304; 795864, 2290318; 795807, 2290385; 795821, 2290462; 795400, 2290907; 795299, 2291051; 795213, 2291075; 794614, 2291434; 794523, 2291573; 794432, 2291674; 794207, 2291635; 793671, 2291645; 793450, 2291683; 793014, 2291770; 792750, 2291702; 792480, 2291702; 791730, 2291582; 790950, 2291672; 790230, 2291432; 790086, 2291458; 789720, 2291522; 789031, 2291522; 788641, 2291432; 788341, 2291522; 788131, 2291492; 787951, 2291582; 787561, 2291702; 787201, 2292092; 786631, 2292122; 786511, 2292242; 786211, 2292452.

(ii) **Note:** Map 11 follows:

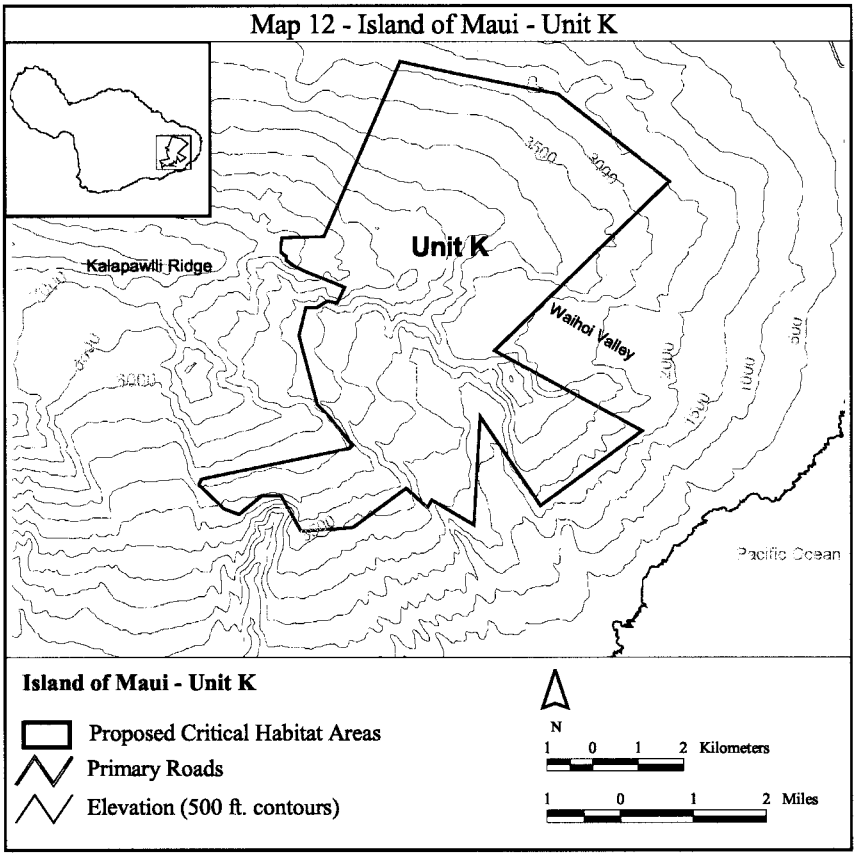
BILLING CODE 4310–55–P



(*25*) Maui K (5,464 ha; 13,502 ac).

(*i*) Unit consists of the following 39 boundary points: 798586, 2290348; 801847, 2291015; 801917, 2291085; 801389, 2291758; 801145, 2291990; 801037, 2292402; 800743, 2293514; 800900, 2294126; 801147, 2294134; 801376, 2294265; 801594, 2294228; 801760, 2294574; 800906, 2294922; 800636, 2295040; 800469, 2295162; 800469, 2295252; 800349, 2295342; 800349, 2295462; 800379, 2295672; 801296, 2295690; 802992, 2299556; 804200, 2299306; 806459, 2298838; 808913, 2296912; 805053, 2293181; 808301, 2291412; 806062, 2289747; 804741, 2291728; 804598, 2289317; 803684, 2289877; 803574, 2289704; 803114, 2290141; 801935, 2289265; 800788, 2289185; 800342, 2289966; 799912, 2289966; 799418, 2289552; 799083, 2289679; 798541, 2290221.

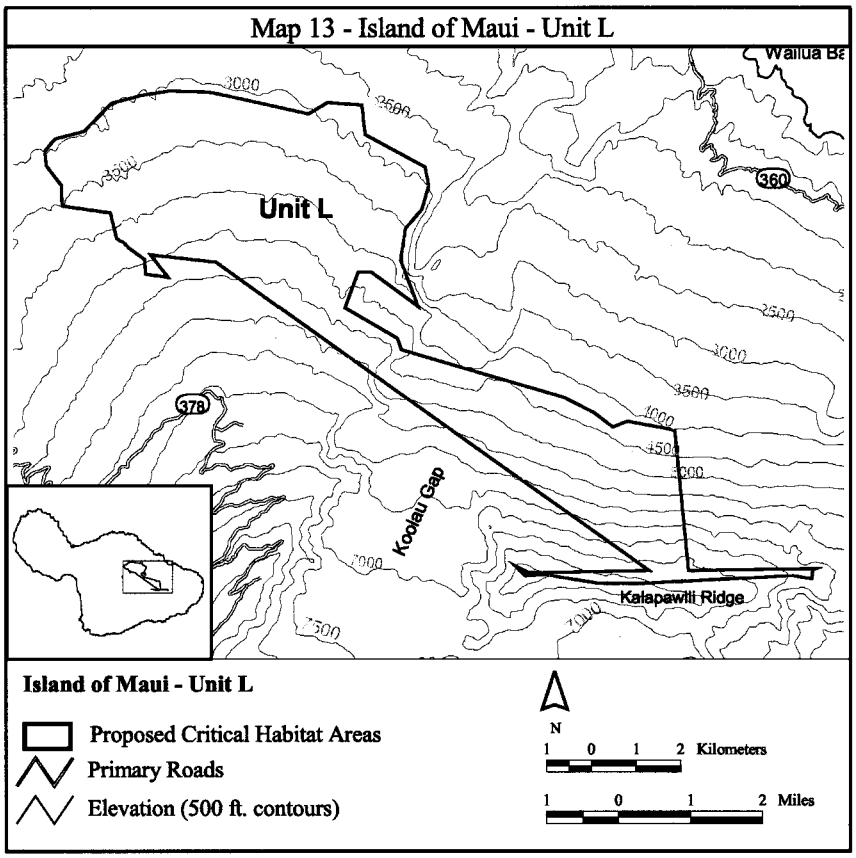
(ii) **Note:** Map 12 follows:



(*26*) Maui L (4,612 ha; 11,396 ac).

(*i*) Unit consists of the following 66 boundary points: 784691, 2306143; 785374, 2306329; 785968, 2306418; 786589, 2306409; 786953, 2306374; 789090, 2305904; 789515, 2306162; 790281, 2306097; 790360, 2305448; 791696, 2304712; 791781, 2304297; 791627, 2303742; 791264, 2303330; 791158, 2302616; 791550, 2301582; 790503, 2302354; 790198, 2302345; 789906, 2301556; 791083, 2300859; 791175, 2300611; 794821, 2299526; 795483, 2299193; 795907, 2298874; 796226, 2298998; 797155, 2298832; 797292, 2298791; 797592, 2295644; 797739, 2295646; 797990, 2295649; 799102, 2295662; 800430, 2295679; 800379, 2295672; 800349, 2295462; 799935, 2295528; 796387, 2295350; 795570, 2295362; 794610, 2295512; 794430, 2295549; 793949, 2295528; 793717, 2295735; 793699, 2295758; 794014, 2295603; 796710, 2295634; 788433, 2301564; 788429, 2301566; 787081, 2302528; 787078, 2302530; 787025, 2302567; 785551, 2302746; 785950, 2302240; 785443, 2302303; 785422, 2302623; 785067, 2302898; 784947, 2303017; 784875, 2303047; 784803, 2303101; 784660, 2303678; 783583, 2303838; 783559, 2304310; 783487, 2304404; 783488, 2304406; 783486, 2304406; 783228, 2304747; 783196, 2305076; 783422, 2305338; 784075, 2305511.

(ii) **Note:** Map 13 follows:



(*27*) Maui M (2 ha; 6 ac).

(*i*) Unit consists of the following six boundary points: 744481, 2311471; 744357, 2311489; 744330, 2311543; 744340, 2311642; 744511, 2311612; 744481, 2311471.

(ii) **Note:** Map 14 follows:

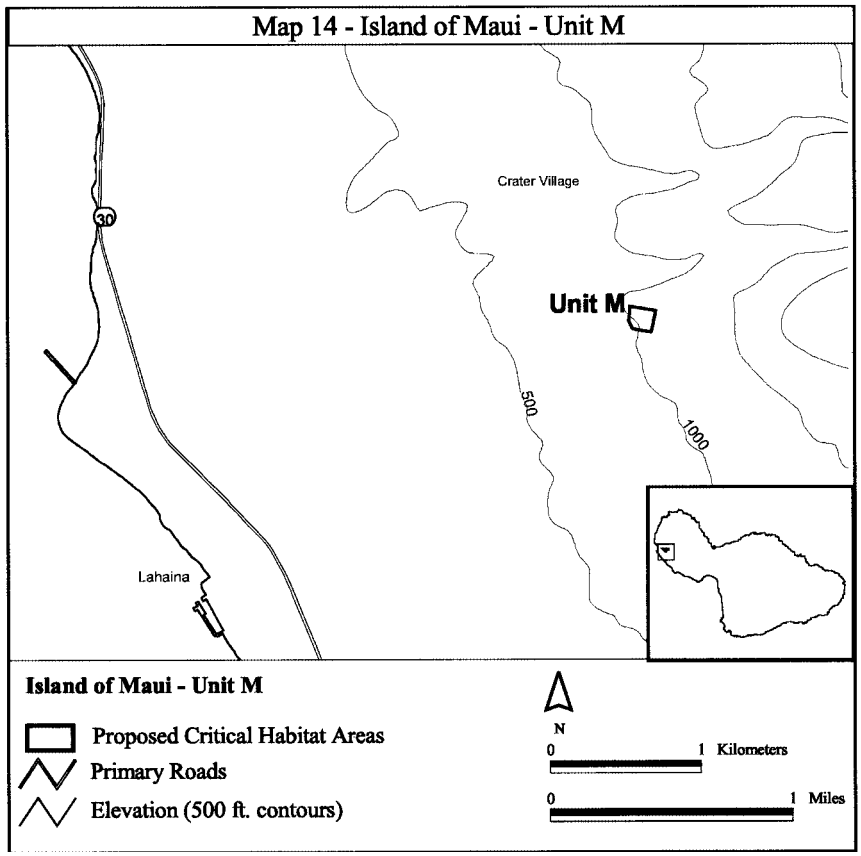


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TABLE (A)(1)(I)(C). PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI

Unit name	Species occupied	Species unoccupied
Maui A	*Clermontia oblongifolia* ssp. *mauiensis, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Cyrtandra munroi, Remya mauiensis, Sanicula purpurea*.	*Alectryon macrococcus, Cyanea glabra, Gouania vitifolia, Hedyotis mannii, Hesperomannia arbuscula, Phlegmariurus mannii, Platanthera holochila, Plantago princeps, Pteris lydgatei.*
Maui B	*Cyanea lobata, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila, Plantago princeps, Pteris lydgatei, Sanicula purpurea*.	*Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyrtandra munroi, Diplazium molokaiense.*
Maui C	*Centaurium sebaeoides, Sesbania tomentosa*	*Brighamia rockii.*
Maui D	*Ctenitis squamigera, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Diellia erecta, Dubautia plantaginea* ssp. *humilis, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arbuscula, Hibiscus brackenridgei, Lysimachia lydgatei, Neraudia sericea, Phlegmariurus mannii, Platanthera holochila, Pteris lydgatei, Remya mauiensis, Spermolepis hawaiiensis, Tetramolopium capillare*.	*Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Cyrtandra munroi, Diplazium molokaiense, Gouania vitifolia, Isodendrion pyrifolium, Peucedanum sandwicense, Plantago princeps, Sanicula purpurea, Tetramolopium remyi*
Maui E	*Bonamia menziesii, Hibiscus brackenridgei*.	
Maui F	*Vigna o-wahuensis*.	
Maui G	*Ischaemum byrone*	*Brighamia rockii, Mariscus pennatiformis, Peucedanum sandwicense*
Maui H	*Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Cenchrus agrimonioides, Flueggea neowawraea, Geranium arboreum, Lipochaeta kamolensis, Melicope adscendens, Melicope knudsenii, Melicope mucronulata, Neraudia sericea, Phlegmariurus mannii, Sesbania tomentosa, Spermolepis hawaiiensis, Zanthoxylum hawaiiense*.	*Argyroxiphium sandwicense* ssp. *macrocephalum, Clermontia lindseyana, Colubrina oppositifolia, Diellia erecta, Diplazium molokaiense, Geranium multiflorum, Nototrichium humile, Phyllostegia mollis, Plantago princeps, Schiedea haleakalensis*
Maui I	*Diellia erecta, Diplazium molokaiense, Geranium arboreum*	*Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile var. insulare, Bidens micrantha* ssp. *kalealaha, Clermontia lindseyana, Geranium multiflorum, Phlegmariurus mannii, Phyllostegia mollis, Plantago princeps*

TABLE (A)(1)(I)(C). PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MAUI—Continued

Unit name	Species occupied	Species unoccupied
Maui J	*Argyroxiphium sandwicense* ssp. *macrocephalum, Bidens micrantha ssp. kalealaha, Geranium multiflorum, Plantago princeps, Schiedea haleakalensis* .	*Asplenium fragile* var. *insulare, Clermontia samuelii, Platanthera holochila*
Maui K	*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora, Melicope balloui, Melicope ovalis, Phlegmariurus mannii, Plantago princeps* .	*Alectryon macrococcus, Cyanea glabra, Geranium multiflorum, Platanthera holochila*
Maui L	*Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora ssp. hamatiflora, Cyanea mceldowneyi, Geranium multiflorum, Melicope balloui, Phlegmariurus mannii, Zanthoxylum hawaiiense* .	*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Clermontia samuelii, Cyanea glabra, Diplazium molokaiense, Phyllostegia mannii, Phyllostegia mollis, Platanthera holochila*
Maui M	*Spermolepis hawaiiense* .	

(D) *Kahoolawe.* 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 two critical habitat units designated on the island of Kahoolawe.

(*1*) Kahoolawe A (713 ha, 1,762 ac).

(*i*) Unit consists of the whole island excluding one area that consists of the following 35 boundary points: 754797, 2277077; 755045, 2276297; 754918, 2276004; 754909, 2276004; 754904, 2275863; 754946, 2275320; 754303, 2273696; 754396, 2273017; 754242, 2272155; 754042, 2271056; 753210, 2271022; 751707, 2271460; 751597, 2271496; 751596, 2271487; 750683, 2271836; 750542, 2272275; 750349, 2272348; 749983, 2272296; 749116, 2271616; 747586, 2271444; 747413, 2271428; 747414, 2271426; 745642, 2271630; 744685, 2271955; 744751, 2272554; 745517, 2273620; 746524, 2273925; 748215, 2274039; 749280, 2273853; 749780, 2274053; 749746, 2274386; 748914, 2275218; 749580, 2276150; 753110, 2277682; 754797, 2277077.

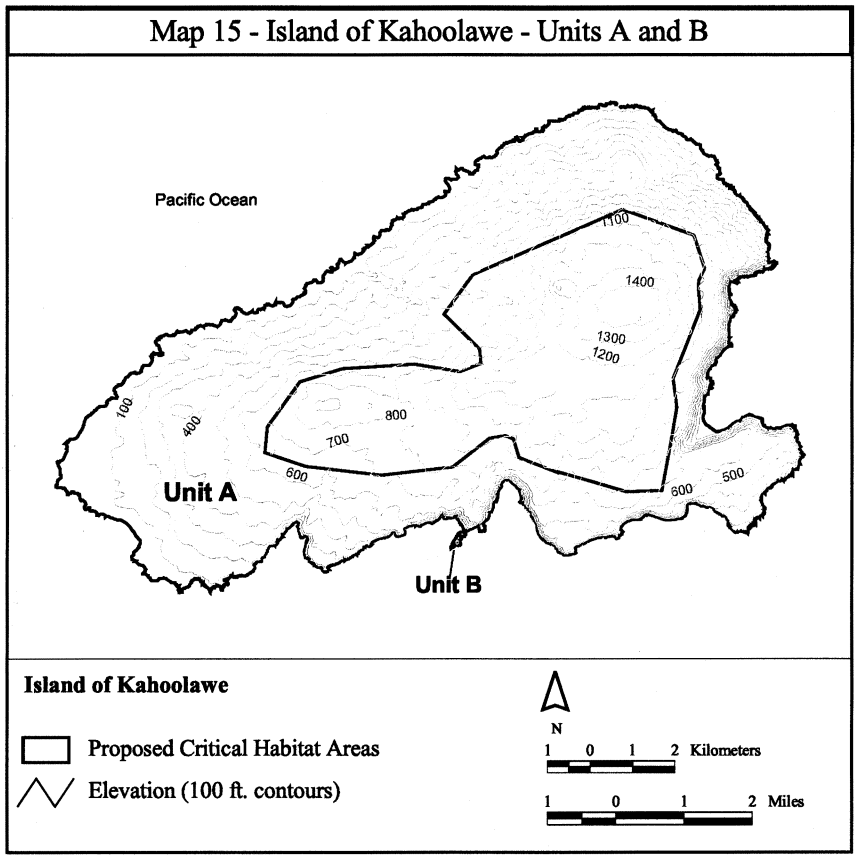
(*ii*) **Note:** See Map 15.

(*2*) Kahoolawe B (0.5 ha, 1 ac).

(*i*) Unit consists of the following 80 boundary points: 749281, 2269833; 749285, 2269821; 749303, 2269801; 749305, 2269787; 749302, 2269778; 749294, 2269774; 749276, 2269779; 749256, 2269768; 749248, 2269757; 749240, 2269754; 749221, 2269774; 749212, 2269790; 749204, 2269793; 749194, 2269793; 749182, 2269780; 749172, 2269771; 749160, 2269766; 749155, 2269743; 749149, 2269730; 749142, 2269724; 749124, 2269721; 749120, 2269713; 749115, 2269705; 749111, 2269704; 749108, 2269707; 749099, 2269706; 749086, 2269701; 749078, 2269704; 749075, 2269707; 749076, 2269721; 749091, 2269738; 749098, 2269756; 749099, 2269769; 749104, 2269777; 749111, 2269827; 749127, 2269843; 749138, 2269874; 749150, 2269880; 749164, 2269883; 749178, 2269912; 749196, 2269952; 749209, 2269970; 749230, 2269988; 749237, 2269999; 749238, 2270015; 749251, 2270040; 749266, 2270057; 749280, 2270068; 749338, 2270081; 749352, 2270078; 749388, 2270073; 749401, 2270060; 749409, 2270057; 749418, 2270046; 749424, 2270033; 749422, 2270025; 749416, 2270012; 749415, 2270003; 749407, 2270000; 749394, 2269996; 749394, 2269987; 749395, 2269978; 749388, 2269973; 749380, 2269976; 749371, 2269980; 749363, 2269977; 749353, 2269968; 749344, 2269968; 749322, 2269972; 749308, 2269961; 749306, 2269951; 749319, 2269921; 749319, 2269916; 749312, 2269909; 749304, 2269905; 749301, 2269891; 749286, 2269880; 749283, 2269867; 749282, 2269842; 749281, 2269833.

(*ii*) **Note:** Map 15 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

TABLE (a)(1)(i)(D).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAHOOLAWE

Unit name	Species occupied	Species unoccupied
Kahoolawe A	*Vigna o-wahuensis*	*Hibiscus brackenridgei, Kanaloa kahoolawensis, Sesbania tomentosa.*
Kahoolawe B	*Kanaloa kahoolawensis, Sesbania tomentosa.*	

* * * * *

(ii) *Hawaiian plants—Constituent elements*

(A) *Flowering plants.*

Family Amaranthaceae: *Nototrichium humile* (kului)

Maui H, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Nototrichium humile* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Old cinder cones in dry shrubland and containing one or more of the following associated native species: *Dodonaea viscosa, Erythrina sandwicensis, Heteropogon contortus,* or *Nototrichium sandwicense;* and

(*2*) Elevations between 338 and 734 m (1,110 and 2,407 ft).

Family Apiaceae: *Peucedanum sandwicense* (makou)

Maui D and G, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Peucedanum sandwicense* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Sparsely vegetated steep to vertical cliff habitats with little soil in mesic or coastal communities containing one or more of the following associated native species: *Artemisia australis, Eragrostis* spp., *Metrosideros polymorpha, Carex* spp., *Bidens* spp., *Diospyros sandwicensis, Chamaesyce* spp., *Peperomia* spp., *Hedyotis littoralis, Lysimachia mauritiana, Pandanus tectorius, Scaevola sericea,* or *Schiedea globosa;* and

(*2*) Elevations between 237 and 1,131 m (778 and 3,711 ft).

Family Apiaceae: *Sanicula purpurea* (NCN)

Maui B and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Sanicula purpurea* on Maui. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Open *Metrosideros polymorpha* mixed montane bogs containing one or more of the following associated plant taxa: *Styphelia tameiameiae, Gahnia beecheyi, Geranium hillebrandii, Myrsine vaccinioides, Viola maviensis, Argyroxiphium caliginis, Plantago pachyphylla, Lycopodium* sp., *Argyroxiphium grayanum, Lagenifera maviensis, Machaerina* sp., or *Oreobolus furcatus;* and

(*2*) Elevations between 1,195 and 1,764 m (3,921 and 5,787 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (NCN)

Maui D, H and M, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Shady spots in *Dodonaea viscosa* lowland dry shrubland and containing one or more of the following associated native species: *Eragrostis variabilis, Wikstroemia* sp., *Erythrina sandwicensis, Diospyros* sp., *Pleomele* sp., *Lipochaeta lavarum, Sida fallax, Myoporum sandwicense, Santalum ellipticum, Gouania hillebrandii,* or *Heteropogon contortus;* and

(*2*) Elevations between 221 and 742 m (725 and 2,434 ft).

Family Asteraceae: *Argyroxiphium sandwicense* ssp. *macrocephalum* (ahinahina)

Maui H, I, J, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Lava flows and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones and *Deschampsia* grasslands, a mean annual precipitation of approximately 75 to 250 cm (29.6 to 98.4 in), substrate with almost no soil development and subject to frequent formation of ice at night and extreme heating during cloudless days, alpine dry shrubland and containing one or more of the following associated native plant species: *Agrostis sandwicensis, Deschampsia nubigena, Dubautia menziesii, Silene struthioloides, Styphelia tameiameiae, Tetramolopium humile,* or *Trisetum glomeratum;* and

(*2*) Elevations between 1,511 and 3,053 m (4,957 and 10,016 ft).

Family Asteraceae: *Bidens micrantha* ssp. *kalealaha* (kookoolau)

Maui H, I and J, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Bidens micrantha* ssp. *kalealaha* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Blocky lava flows with little or no soil development, deep pit craters, or sheer rock walls in open canopy *Metrosideros polymorpha-Acacia koa* forest, montane shrubland, *Sophora chrysophylla* forests or cliff faces; and containing one or more of the following associated native plant species: *Styphelia tameiameiae, Coprosma montana, Dodonaea viscosa, Vaccinium reticulatu, Santalum haleakalae, Dubautia menziesii,* or *Dubautia platyphylla;* and

(*2*) Elevations between 1,317 and 2,565 m (4,321 and 8,414 ft).

Family Asteraceae: *Dubautia plantaginea* ssp. *humilis* (naenae)

Maui D, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Dubautia plantaginea* ssp. *humilis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Wet, barren, steep, rocky, wind-blown cliffs containing one or more of the following associated native plant species: *Metrosideros polymorpha, Pipturus albidus, Eragrostis variabilis, Carex* sp., *Hedyotis formosa, Lysimachia remyi, Bidens* sp., *Pritchardia* sp., or *Plantago princeps;* and

(*2*) Elevations between 266 and 1,593 m (873 and 5,226 ft).

Family Asteraceae: *Hesperomannia arborescens* (NCN)

Maui B, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Hesperomannia arborescens* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slopes or ridges in lowland mesic or wet forest and containing one or more of the following associated native plant species: *Metrosideros polymorpha, Myrsine sandwicensis, Isachne distichophylla, Pipturus* sp., *Antidesma* sp., *Psychotria* sp., *Clermontia* sp., *Cibotium* sp., *Dicranopteris linearis, Bobea* sp., *Coprosma* sp., *Sadleria* sp., *Melicope* sp., *Machaerina* sp., *Cheirodendron* sp., or *Freycinetia arborea;* and

(*2*) Elevations between 346 and 1,335 m (1,135 and 4,380 ft).

Family Asteraceae: *Hesperomannia arbuscula* (NCN)

Maui A and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Hesperomannia arbuscula* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep forested slopes and ridges in mesic forest dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* and containing one or more of the following associated native plant species: *Bidens* sp., *Tetraplasandra* sp., *Alyxia oliviformis, Clermontia* sp., *Cyanea* sp., *Cheirodendron* sp., or *Psychotria* sp.; and

(*2*) Elevations between 354 and 1,453 m (1,161 and 4,767 ft).

Family Asteraceae: *Lipochaeta kamolensis* (nehe)

Maui H, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Lipochaeta kamolensis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulches or gentle slopes outside gulches in dry shrubland and containing one or more of the following associated native plant species: *Dodonaea viscosa, Plumbago zeylanica,* or *Ipomoea indica;* and

(*2*) Elevations between 40 and 602 m (132 and 1,974 ft).

Family Asteraceae: *Remya mauiensis* (NCN)

Maui D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Remya mauiensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests and containing one or more of the following associated native species: *Diospyros sandwicensis, Xylosma hawaiiense, Nestegis sandwicensis, Myrsine lessertiana, Wikstroemia* sp., *Dodonaea viscosa, Diplazium sandwichianum, Lysimachia remyi, Microlepia strigosa, Melicope* sp., *Alyxia oliviformis, Pleomele auwahiensis, Psychotria mariniana,* or *Styphelia tameiameiae;* and

(*2*) Elevations between 400 and 1,228 m (1,312 and 4,029 ft).

Family Asteraceae: *Tetramolopium capillare* (pamakani)

Maui D, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Tetramolopium capillare* on Maui. Within this unit, the currently known primary constituent elements of critical

habitat are the habitat components provided by:

(*1*) Rocky substrates in *Heteropogon contortus* lowland dry forest and containing one or more of the following associated native plant species: *Dodonaea viscosa,* or *Myoporum sandwicense;* or in *Metrosideros polymorpha-Styphelia tameiameiae* montane mesic or wet shrubland and wet cliff faces and containing one or more of the following associated plant species: *Metrosideros polymorpha, Styphelia tameiameiae,* or *Dodonaea viscosa;* and

(*2*) Elevations between 131 and 1,432 m (430 and 4,698 ft).

Family Asteraceae: *Tetramolopium remyi* (NCN)

Maui D, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Tetramolopium remyi* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry, exposed ridges or flats in lowland dry shrubland and containing one or more of the following associated native plant species: *Dodonaea viscosa, Heteropogon contortus, Bidens mauiensis, Bidens menziesii, Eragrostis atropioides, Lipochaeta heterophylla,* or *Waltheria indica;* and

(*2*) Elevations between 52 and 550 m (171 and 1,804 ft).

Family Campanulaceae: *Brighamia rockii* (pua ala)

Maui C and G, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Brighamia rockii* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep sea cliffs, often within the spray zone, in coastal dry to mesic forests and shrublands and containing one or more of the following associated plant species: *Psydrax odorata, Diospyros sandwicensis, Osteomeles anthyllidifolia,* or *Scaevola sericea;* and

(*2*) Elevations between 0 and 195 m (0 and 640 ft).

Family Campanulaceae: *Clermontia lindseyana* **(haha)**

Maui H and I, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Clermontia lindseyana* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) *Acacia koa* mesic forest containing one or more of the following associated native plant species: *Cyrtandra* spp., native fern species, *Ilex anomala, Coprosma* sp., or *Myrsine* sp.; and

(*2*) Elevations between 1,142 and 1,870 m (3,747 and 6,134 ft).

Family Campanulaceae: *Clermontia oblongifolia* ssp. *mauiensis* (oha wai)

Maui A, B, and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) The sides of ridges and tops of ridges in *Metrosideros polymorpha*-dominated montane wet forest and containing one or more of the following associated native plant species: *Dicranopteris linearis, Ilex anomala, Myrsine* sp., *Cheirodendron* sp., *Coprosma* sp., *Clermontia* sp., *Hedyotis* sp., or *Melicope;* and

(*2*) Elevations between 414 and 1,764 m (1,358 and 5,787 ft).

Family Campanulaceae: *Clermontia samuelii* (oha wai)

Maui J, K, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Clermontia samuelii* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Wet *Metrosideros polymorpha* and *Metrosideros polymorpha-Dicranopteris linearis* forest or wet *Metrosideros polymorpha* and *Metrosideros polymorpha-Cheirodendron trigynum* forest containing one or more of the following associated native plant species: *Tetraplasandra oahuensis, Hedyotis terminalis, Hedyotis hillebrandii, Broussaisia arguta, Cibotium* sp., *Dubautia* sp., *Psychotria mariniana, Melicope clusiifolia, Diplazium sandwichianum, Peperomia obovatilimba, Adenophorus tamariscinus, Vaccinium* spp., *Carex alligata, Melicope* spp., or *Cheirodendron trigynum, Hedyotis hillebrandii, Cibotium* spp., *Broussaisia arguta, Diplazium sandwichianum, Rubus hawaiiensis, Clermontia arborescens* ssp. *waihiae, Dubautia* sp., *Clermontia* sp., *Hedyotis* sp., *Vaccinium* spp., *Carex alligata,* or *Melicope* spp.; and

(*2*) Elevations between 723 and 2,244 m (2,372 and 7,362 ft).

Family Campanulaceae: *Cyanea copelandii* ssp. *haleakalaensis* (haha)

Maui K and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Stream banks or wet scree slopes or forest understory in montane wet or mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Cibotium* sp., *Perrottetia sandwicensis, Psychotria hawaiiensis, Broussaisia arguta,* or *Hedyotis acuminata;* and

(*2*) Elevations between 616 and 1,411 m (2,021 and 4,630 ft).

Family Campanulaceae: *Cyanea glabra* (haha)

Maui A, K, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea glabra* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Soil and rock stream banks in wet lowland forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Xylosma hawaiiense, Dodonea viscosa, Psychotria* sp., *Pipturis albidus, Touchardia latifolia, Boehmeria grandis, Clermontia kakeana, Cyanea elliptica, Perrottetia sandwicensis, Coprosma* sp., *Cibotium* sp., *Dubautia plantaginea, Cheirodendron trigynum, Thelypteris cyatheoides, Diplazium* sp., or *Sadleria* sp.; and

(*2*) Elevations between 413 and 1,572 m (1,355 and 5,156 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (haha)

Maui D, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Rocky or steep slopes of stream banks in wet forest gulch bottoms often dominated by *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Antidesma* sp., *Bobea* sp., *Myrsine* sp., *Nestegis sandwicensis, Psychotria* sp., or *Xylosma* sp.; and

(*2*) Elevations between 312 and 1,617 m (1,024 and 5,305 ft).

Family Campanulaceae: *Cyanea hamatiflora* ssp. *hamatiflora* (haha)

Maui K and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Montane wet forest dominated by *Metrosideros polymorpha,* with a *Cibotium* sp. and/or native shrub understory or closed *Acacia koa-Metrosideros polymorpha* wet forest containing one or more of the following associated native plant species: *Dicranopteris linearis, Cheirodendron trigynum, Broussaisia arguta, Cyanea aculeatiflora, Cyanea kunthiana, Vaccinium* sp., *Melicope* sp., *Athyrium microphyllum, Diplazium sandwichianum* or *Myrsine* sp.; and

(*2*) Elevations between 767 and 1,553 m (2,515 and 5,095 ft).

Family Campanulaceae: *Cyanea lobata* (haha)

Maui A, B, and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyanea lobata* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep stream banks in deep shade in wet forest and containing one or more of the following associated native plant species: *Touchardia latifolia, Morinda trimera, Metrosideros polymorpha, Clermontia kakeana, Cyrtandra* spp., *Xylosma* sp., *Psychotria* sp., *Antidesma* sp., *Pipturus albidus, Peperomia* sp., *Touchardia latifolia, Freycinetia arborea, Pleomele* sp., *Athyrium* sp.; and

(*2*) Elevations between 204 and 1,531 m (669 and 5,020 ft).

Family Campanulaceae: *Cyanea mceldowneyi* (haha)

Maui L, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cyanea mceldowneyi* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Montane wet and mesic forest with mixed *Metrosideros polymorpha-Acacia koa* and containing one or more of the following associated native plant species: *Melicope clusiifolia, Hedyotis* sp., *Clermontia arborescens, Diplazium sandwichianum, Broussaisia arguta, Cibotium* sp., *Cyrtandra* sp., *Dicranopteris linearis,* or *Cheirodendron trigynum;* and

(*2*) Elevations between 779 and 1,357 m (2,555 and 4,453 ft).

Family Caryophyllaceae: *Schiedea haleakalensis* (NCN)

Maui H and J, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Schiedea haleakalensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Rock cracks on sheer cliffs adjacent to barren lava and subalpine shrublands and grasslands with cinder, weathered volcanic ash, or bare lava substrate with little or no soil development and periodic freezing temperatures and containing one or more of the following associated native plant species: *Artemisia mauiensis, Bidens micrantha, Dubautia menziesii, Styphelia tameiameiae, Vaccinium reticulatum,* or *Viola chamissoniana;* and

(*2*) Elevations between 1,678 and 2,434 m (5,505 and 7,986 ft).

Family Convolvulaceae: *Bonamia menziesii* (NCN)

Maui E and H, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Bonamia menziesii* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Aa lava in mixed open dry forest or *Erythrina sandwicensis* lowland dry forest, or in mesic mixed Metrosideros polymorpha forest and containing one or more of the following associated native plant species: *Nestegis sandwicensis, Pleomele auwahiensis, Dodonaea viscosa, Alyxia oliviformis, Diospyros sandwicensis, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum, Xylosma hawaiiensis, Nothocestrum latifolium, Pouteria sandwicensis, Achyranthes splendens, Acacia koaia, Sida fallax, Reynoldsia sandwicensis, Sicyos* sp., *Lipochaeta rockii, Nototrichium* sp., or *Myoporum sandwicense;* and

(*2*) Elevations between 184 and 906 m (604 and 2,971 ft).

Family Cyperaceae: *Mariscus pennatiformis* (NCN)

Maui G, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Mariscus pennatiformis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Cliffs with brown soil and talus within reach of ocean spray in *Pandanus tectorius* coastal wet forests and containing one or more of the following associated native plant species: *Sadleria pallida, Lysimachia mauritiana, Cyperus laevigatus, Eragrostis* spp., or *Ipomoea* sp.; and

(*2*) Elevations between 0 and 188 m (0 and 615 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Maui H, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Flueggea neowawraea* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry or mesic forest containing one or more of the following associated native plant species: *Alectryon macrococcus, Bobea timonioides, Charpentiera* sp., *Myrsine lanaiensis, Tetraplasandra* sp., *Diplazium sandwichianum, Nesoluma polynesicum, Diospyros* sp., *Antidesma pulvinatum, Psydrax odorata, Nestegis sandwicensis, Rauvolfia sandwicensis, Pleomele* sp., *Pouteria sandwicensis,* or *Pleomele auwahiensis;* and

(*2*) Elevations between 633 and 971 m (2,078 and 3,186 ft).

Family Fabaceae: *Kanaloa kahoolawensis* (kohe malama malama o Kanaloa)

Kahoolawe A and B, identified in the legal description in (a)(1)(I)(D), constitute critical habitat for *Kanaloa kahoolawensis* on Kahoolawe. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep, rocky talus slopes in mixed coastal shrubland and containing one or more of the following associated native plants: *Sida fallax, Senna gaudichaudii, Bidens mauiensis, Lipochaeta lavarum, Portulaca molokiniensis,* or *Capparis sandwichiana;* and

(*2*) Elevations between 45 to 60 m (150 to 200 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

(*1*) Maui C and H, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, and Kahoolawe A and B, identified in the legal description in paragraph (a)(1)(I)(D) of this section, constitute

critical habitat for *Sesbania tomentosa* on Maui and Kahoolawe, respectively. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*i*) Windswept slopes, sea cliffs, and cinder cones in *Scaevola sericea* coastal dry shrublands and containing one or more of the following associated native plant species: *Lipochaeta integrifolia, Jacquemontia ovalifolia* ssp. *sandwicensis, Sida fallax, Diospyros sandwicensis, Bidens* sp. and stunted *Dodonaea viscosa;* and

(*ii*) Elevations between 0 and 608 m (0 and 1,993 ft).

(*2*) Kahoolawe A and B, identified in the legal description in paragraph (a)(1)(I)(D) of this section, constitute critical habitat for *Sesbania tomentosa* on Kahoolawe. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*i*) Windswept slopes, sea cliffs, and cinder cones in *Scaevola sericea* coastal dry shrublands and containing one or more of the following associated native plant species: *Lipochaeta integrifolia, Jacquemontia ovalifolia* ssp. *sandwicensis, Sida fallax, Diospyros sandwicensis, Bidens* sp. and stunted *Dodonaea viscosa;* and

(*ii*) Elevations between 0 and 118 m (0 and 387 ft).

Family Fabaceae: *Vigna o-wahuensis* (NCN)

(*1*) Maui F, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Vigna o-wahuensis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*i*) Dry or mesic grassland or shrubland containing one or more of the following associated plant species: *Sida fallax, Dodonaea viscosa,* or *Chamaesyce* sp.; and

(*ii*) Elevations between 0 and 50 m (0 and 164 ft).

(*2*) Kahoolawe A, identified in the legal description in paragraph (a)(1)(i)(D) of this section, constitutes critical habitat for *Vigna o-wahuensis* on Kahoolawe. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*i*) Dry or mesic grassland or shrubland containing one or more of the following associated plant species: *Sida fallax, Dodonaea viscosa,* or *Chamaesyce* sp.; and

(*ii*) Elevations between 0 and 50 m (0 and 164 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

Maui C, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Centaurium sebaeoides* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Volcanic or clay soils or cliffs in windward coastal areas and containing one or more of the following associated native plant species: *Panicum torridum, Lysimachia mauritiana, Schiedea globosa, Lipochaeta integrifolia, Bidens mauiensis, Scaevola sericea,* or *Lycium sandwicense;* and

(*2*) Elevations between 0 and 194 m (0 and 636 ft).

Family Geraniaceae: *Geranium arboreum* (nohoanu)

Maui H and I, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Geranium arboreum* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep, damp and shaded narrow canyons and gulches, steep banks, and intermittent streams in *Sophora chrysophylla* subalpine dry shrubland or *Metrosideros polymorpha* montane forest and containing one or more of the following associated native plant species: *Vaccinium reticulatum, Dodonaea viscosa, Styphelia tameiameiae, Rubus hawaiiensis,* or *Dryopteris wallichiana;* and

(*2*) Elevations between 1,451 and 2,184 m (4,760 and 7,164 ft).

Family Geraniaceae: *Geranium multiflorum* (nohoanu)

Maui units H, I, J, K, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Geranium multiflorum* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Styphelia tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands containing one or more of the following associated native plant species: *Coprosma montana, Dryopteris glabra, Dryopteris wallichiana, Rubus hawaiiensis, Vaccinium* sp., *Metrosideros polymorpha, Hedyotis* sp., *Styphelia tameiameiae* or *Sadleria cyatheoides;* and

(*2*) Elevations between 1,499 and 2,710 m (4,918 and 8,890 ft).

Family Gesneriaceae: *Cyrtandra munroi* (haiwale)

Maui A, B, and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Cyrtandra munroi* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Rich, moist to wet, moderately steep talus slopes in lowland wet *Metrosideros polymorpha* forest and containing one or more of the following associated native plant species: *Diospyros* sp., *Strongylodon ruber, Hedyotis acuminata, Clermontia* sp., *Alyxia oliviformis, Bobea* sp., *Coprosma* sp., *Freycinetia arborea, Melicope* sp., *Myrsine* sp., *Perrottetia sandwicensis, Pipturus* sp., *Pittosporum* sp., *Pouteria sandwicensis, Psychotria* sp., *Sadleria* sp., *Scaevola* sp., *Xylosma* sp., *Sicyos* sp., *Zanthoxylum kauense,* or other *Cyrtandra* spp.; and

(*2*) Elevations between 390 and 1,108 m (1,280 and 3,635 ft).

Family Lamiaceae: *Phyllostegia mannii* (NCN)

Maui L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Phyllostegia mannii* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gentle slopes and the steep sides of gulches in mesic to wet forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Cheirodendron trigynum, Melicope* spp., *Alyxia oliviformis, Diplazium sandwichianum, Myrsine lessertiana,* or *Dicranopteris linearis;* and

(*2*) Elevations between 1,069 and 1,615 m (3,506 and 5,297 ft).

Family Lamiaceae: *Phyllostegia mollis* (NCN)

Maui H, I, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for Phyllostegia mollis on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep slopes and gulches in mesic forest dominated by *Metrosideros polymorpha* and/or *Acacia koa* and containing one or more of the following

associated native plant species: *Cheirodendron trigynum, Melicope* spp., *Diplazium sandwichianum, Myrsine lessertiana,* or *Alyxia oliviformis;* and

(*2*) Elevations between 1,144 and 1,970 m (3,754 and 6,463 ft).

Family Malvaceae: *Hibiscus brackenridgei* (mao hau hele)

(*1*) Maui D and E, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Hibiscus brackenridgei* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*i*) Lowland dry forest sometimes with *Erythrina sandwicensis* as the dominant tree containing one or more of the following associated native plant species: *Myoporum sandwicense, Chenopodium* sp., *Achyranthes* sp., *Nototrichium* sp., *Diospyros* sp., *Chamaesyce celastroides* var. *lorifolia, Dodonaea viscosa, Psydrax odorata, Schiedea salicaria, Lipochaeta lavarum,* annual *Panicum* spp., or *Sida fallax;* and

(*ii*) Elevations between 43 and 610 m (141 and 2,001 ft).

(*2*) Kahoolawe A, identified in the legal description in paragraph (a)(1)(I)(D) of this section, constitutes critical habitat for *Hibiscus brackenridgei* on Kahoolawe. Within this unit, the currently known primary constituent elements of critical habitat for *Hibiscus brackenridgei* on Kahaoolawe are the habitat components provided by:

(*i*) Lowland dry forest sometimes with *Erythrina sandwicensis* as the dominant tree containing one or more of the following associated native plant species: *Myoporum sandwicense, Chenopodium* sp., *Achyranthes* sp., *Nototrichium* sp., *Diospyros* sp., *Chamaesyce celastroides* var. *lorifolia, Dodonaea viscosa, Psydrax odorata, Schiedea salicaria, Lipochaeta lavarum,* annual *Panicum* spp., or *Sida fallax;* and

(*ii*) Elevations between 43 and 337 m (141 and 1,105 ft).

Family Orchidaceae: *Platanthera holochila* (NCN)

Maui A, B, D, J, K, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Platanthera holochila* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *Metrosideros polymorpha* mixed montane bog or mesic scrubby *Metrosideros polymorpha* forest containing one or more of the following associated native plant species: *Cibotium* sp., *Coprosma ernodeoides, Oreobolus furcatus, Styphelia tameiameiae, Wikstroemia* sp., *Scaevola chamissoniana, Sadleria* sp., *Deschampsia nubigena, Metrosideros polymorpha, Luzula hawaiiensis, Sisyrinchium acre, Broussaisia arguta, Clermontia* sp., *Lycopodium cernuum, Dubautia scabra, Polypodium pellucidum, Morelotia gahniiformis,* or *Vaccinium reticulatum;* and

(*2*) Elevations between 536 and 2,314 m (1,759 and 7,592 ft).

Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)

Maui A, B, D, H, I, J, and K, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Plantago princeps* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Basalt cliffs that are windblown with little vegetation in *Metrosideros polymorpha* lowland wet forest, or *Acacia koa-Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha* montane wet shrubland and containing one or more of the following associated native plant species: *Eragrostis variabilis, Hedyotis formosa, Dubautia plantaginea* ssp. *humilis, Pipturus albidus, Perrottetia sandwicensis, Touchardia latifolia, Dryopteris* sp., various other ferns, *Cyanea* spp, and *Melicope ovalis, Bidens micrantha* ssp. *kalealaha, Chamaesyce celastroides, Styphelia tameiameiae,* or *Dubautia menziesii* and

(*2*) Elevations between 281 and 2,539 m (922 and 8,329 ft).

Family Poaceae: *Cenchrus agrimonioides* (kamanomano (=sandbur, agrimony))

Maui H and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Cenchrus agrimonioides* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry forest or *Pleomele-Diospyros* forest and containing one or more of the following associated native plant species: *Dodonaea viscosa, Osteomeles anthyllidifolia, Alyxia oliviformis, Santalum ellipticum*; and

(*2*) Elevations between 471 and 1,091 m (1,544 and 3,579 ft).

Family Poaceae: *Ischaemum byrone* (Hilo ischaemum)

Maui G, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Ischaemum byrone* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland and containing one or more of the following associated native plant species: *Bidens* sp., *Fimbristylis cymosa*, or *Scaevola sericea*; and

(*2*) Elevations between 0 and 190 m (0 and 623 ft).

Family Primulaceae: *Lysimachia lydgatei* (NCN)

Maui D, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Lysimachia lydgatei* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis* dominated wet to mesic shrubland or *Metrosideros polymorpha-Cheirodendron* sp. montane forest and containing one or more of the following associated native plant species: *Lycopodium* sp., *Ilex anomala, Dodonaea viscosa, Vaccinium* sp., *Eurya* sp., *Styphelia tameiameiae, Coprosma* sp., *Ochna* sp., *Astelia* sp., *Broussaisia arguta* or mat ferns; and

(*2*) Elevations between 829 and 1,432 m (2,720 and 4,698 ft).

Family Rhamnaceae: *Colubrina oppositifolia* (kauila)

Maui A and H, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Colubrina oppositifolia* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Lowland dry and mesic forests dominated by *Diospyros sandwicensis* containing one or more of the following associated native plant species: *Dodonaea viscosa, Canavalia* sp., *Wikstroemia* sp., *Psydrax odorata, Pleomele auwahiensis, Freycinetia arborea, Metrosideros polymorpha, Microlepia strigosa, Bidens micrantha* spp. *micrantha*, or *Reynoldsia sandwicensis*; and

(*2*) Elevations between 192 and 929 m (630 and 3,047 ft).

Family Rhamnaceae: *Gouania vitifolia* (NCN)

Maui A and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Gouania vitifolia* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) The sides of ridges and gulches in dry to mesic forests and containing one or more of the following associated native plant species: *Erythrina sandwicensis*, *Dodonea viscosa*, *Hibiscus arnottianus*, *Pipturus albidus*, *Urera glabra*, *Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis*, *Bidens* sp., *Carex meyenii*, or *Diospyros sandwicensis*; and

(*2*) Elevations between 155 and 1,326 m (509 and 4,350 ft).

Family Rubiaceae: *Hedyotis coriacea* (kioele)

Maui D, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Hedyotis coriacea* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep, rocky, slopes in dry lowland *Dodonaea viscosa* dominated shrublands and containing one or more of the following associated native plant species: *Sida fallax*, *Gouania hillebrandii*, *Bidens menziesii*, *Lipochaeta lavarum*, *Myoporum sandwicense*, or *Schiedea menziesii*; and

(*2*) Elevations between 110 and 937 m (361 and 3,074 ft).

Family Rubiaceae: *Hedyotis mannii* (pilo)

Maui A and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Hedyotis mannii* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Basalt cliffs along stream banks in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest and containing one or more of the following associated native plant species: *Machaerina* sp., *Carex meyenii*, *Phyllostegia* sp., *Hedyotis acuminata*, *Cyrtandra platyphylla*, *Cyanea* sp., *Psychotria* sp., *Pipturus albidus*, *Boehmeria grandis*, *Urera glabra*, *Touchardia latifolia*, *Cyrtandra grayi*, *Cyrtandra hawaiensis*, or *Isachne distichophylla*; and

(*2*) Elevation between 340 and 1,593 m (1,115 and 5,226 ft).

Family Rutaceae: *Melicope adscendens* (alani)

Maui H, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope adscendens* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Aa lava with pockets of soil in *Nestegis sandwicensis-Pleomele auwahiensis-Dodonaea viscosa* lowland mesic forest or open dry forest and containing one or more of the following associated native plant species: *Osteomeles anthyllidifolia*, *Alphitonia ponderosa*, *Chamaesyce celastroides* var. *lorifolia*, *Santalum ellipticum*, *Pouteria sandwicensis*, *Styphelia tameiameiae* or *Xylosma hawaiiensis*; and

(*2*) Elevations between 761 and 1,209 m (2,497 and 3,967 ft).

Family Rutaceae: *Melicope balloui* (alani)

Maui K and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Melicope balloui* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Mesic to wet forest and containing one or more of the following associated native plant species: *Acacia koa*, *Cibotium chamissoi*, *Cibotium glaucum*, *Diplazium sandwichianum*, *Melicope clusiifolia*, *Metrosideros polymorpha*, or *Sadleria pallida*; and

(*2*) Elevations between 781 and 1,596 m (2,561 and 5,235 ft).

Family Rutaceae: *Melicope knudsenii* (alani)

Maui H, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope knudsenii* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Forested flats or talus slopes in *Nestegis-Pleomele* mixed open dry forests and containing one or more of the following associated native plant species: *Dodonaea viscosa, Osteomeles anthyllidifolia, Alphitonia ponderosa, Santalum ellipticum,* or *Xylosma hawaiiensis;* and

(*2*) Elevations between 648 and 1,331 m (2,125 and 4,367 ft).

Family Rutaceae: *Melicope mucronulata* (alani)

Maui H, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope mucronulata* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gentle south-facing slopes in lowland dry to mesic forest and containing one or more of the following associated species: *Pleomele auwahiensis, Dodonea viscosa, Nestegis sandwicensis, Pouteria sandwicensis, Antidesma pulvinatum, Streblus pendulinus, or Melicope hawaiensis;* and

(*2*) Elevations between 625 and 1,331 m (2,050 and 4,367 ft).

Family Rutaceae: *Melicope ovalis* (alani)

Maui K, identified in the legal description in paragraph paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Melicope ovalis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) *Acacia koa* and *Metrosideros polymorpha*-dominated montane wet forests along streams and containing one or more of the following associated species: *Dicranopteris linearis, Machaerina angustifolia, Labordia hedyosmifolia, Wikstroemia oahuensis, Dubautia plantaginea, Hedyotis hillebrandii, Broussaisia arguta, Cheirodendron trigynum, or Perrottetia sandwicensis;* and

(*2*) Elevations between 753 and 1,537 m (2,469 and 5,042 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (ae)

Maui H and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Zanthoxylum hawaiiense* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forests or *Acacia koa-Pleomele auwahiensis* forest, or montane dry forest containing one or more of the following associated native species: *Metrosideros polymorpha, Diospyros sandwicensis, Pisonia* sp., *Xylosma hawaiiensis, Santalum ellipticum, Alphitonia ponderosa, Osteomeles anthyllidifolia, Alectryon macrococcus, Charpentiera* sp.,

Melicope sp., *Dodonaea viscosa, Streblus pendulinus, Myrsine lanaiensis,* or *Sophora chrysophylla;* and

(*2*) Elevations between 882 and 1,540 m (2,894 and 5,051 ft).

Family Sapindaceae: *Alectryon macrococcus* (mahoe)

Maui A, H, K, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Alectryon macrococcus* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Mesic to wetter mesic and upper dryland forest containing one or more of the following associated native plant species: *Alphitonia ponderosa, Antidesma platyphylla, Antidesma pulvinatum, Bobea sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Osteomeles anthyllidifolia, Pittosporum confertiflorum, Pittosporum glabrum, Pouteria sandwicensis, Santalum ellipticum, Streblus pendulinus, Xylosma* spp., and *Xylosma hawaiiensis;* and

(*2*) Elevations between 333 and 3,562 m (1,092 and 3,337 ft).

Family Urticaceae: *Neraudia sericea* (NCN)

Maui D and H, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for Neraudia sericea on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland or forest or *Acacia koa* forest containing one or more of the following associated native plant species: *Urera glabra, Cyrtandra oxybapha, Cyrtandra* spp., *Sida fallax, Diospyros* sp., *Bobea* sp., *Coprosma* sp., or *Hedyotis* sp.; and

(*2*) Elevations between 198 and 1,658 m (650 and 5,439 ft).

Family Violaceae: *Isodendrion pyrifolium* (aupaka)

Maui D, identified in the legal description in paragraph (a)(1)(i)(C) of this section, constitutes critical habitat for *Isodendrion pyrifolium* on Maui. Within this unit, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry shrubland containing one or more of the following associated native plant taxa: *Psydrax odorata, Capparis sandwichiana, Dodonaea viscosa,* or *Myoporum sandwicene;* and

(*2*) Elevations between 54 and 557 m (177 and 1,827 ft).

(B) Ferns and Allies.

Family Adiantaceae: *Pteris lidgatei* (NCN)

Maui A, B, and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Pteris lidgatei* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep stream banks in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest and containing one or more of the following native plant species: *Cibotium chamissoi, Dicranopteris linearis, Elaphoglossum crassifolium, Sadleria squarrosa, Thelypteris cyatheoides,* or *Sphenomeris chusana;* and

(*2*) Elevations between 201 and 1,717 m (659 and 5,633 ft).

Family Aspleniaceae: *Asplenium fragile* var. *insulare* (NCN)

Maui H, I, J, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Asplenium fragile* var. *insulare* on Maui. Within these units, the primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Streamside hollows and grottos in gulches that occur in mesic to dry subalpine shrubland dominated by *Styphelia tameiameiae* and *Sadleria cyatheoides,* with scattered *Metrosideros polymorpha* and containing one or more of the following native plant species: *Pteris cretica, Grammitis hookeri,* or *Dryopteris wallichiana;* and

(*2*) Elevations between 1,682 and 2,407 m (5,518 and 7,896 ft).

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Maui A, B, and D, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Ctenitis squamigera* on Maui. Within these units, the primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Forest understory in *Metrosideros polymorpha* montane wet forest, mesic forest, or diverse mesic forest and containing one or more of the following native plant species: *Alyxia oliviformis, Freycinetia arborea, Coprosma* sp., *Pleomele* sp., *Sadleria* sp., *Doodia* sp., *Pittosporum* sp., *Dryopteris* sp., *Bobea* sp., *Antidesma* sp., *Peperomia* sp., *Dicranopteris linearis, Schiedea pubescens* var. *pubescens, Hibiscus kokio* ssp. *kokio, Hedyotis terminalis, Pritchardia* sp., *Remya mauiensis, Canavalia* sp. *Myrsine* sp., *Psychotria* sp., or *Xylosma* sp.; and

(*2*) Elevations between 74 and 1,593 m (243 and 5,226 ft).

Family Aspleniaceae: *Diellia erecta* (NCN)

Maui D, H, and I, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Diellia erecta* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep slopes or gulch sides in deep shade in *Acacia koa-Metrosideros polymorpha* low- to mid-elevation mesic forest and containing one or more of the following associated native plant species: *Styphelia tameiameiae, Melicope* sp., *Coprosma* sp., *Dodonaea viscosa, Dryopteris unidentata, Myrsine* sp., *Psychotria* sp. or *Osteomeles anthyllidifolia;* and

(*2*) Elevations between 338 and 1,744 m (1,109 and 5,722 ft).

Family Aspleniaceae: *Diplazium molokaiense* (NCN)

Maui B, D, H, I, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Diplazium molokaiense* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Water courses often in proximity to waterfalls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest; and

(*2*) Elevations between 273 and 1,917 m (896 and 6,289 ft).

Family Lycopodiaceae: *Phlegmariurus mannii* (wawaeiole)

Maui A, B, D, H, I, K, and L, identified in the legal descriptions in paragraph (a)(1)(i)(C) of this section, constitute critical habitat for *Phlegmariurus mannii* on Maui. Within these units, the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) An epiphyte on *Metrosideros polymorpha, Dodonaea viscosa,* and *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *Metrosideros polymorpha-Acacia koa* forests or wet montane *Metrosideros polymorpha-Acacia koa* forests and containing one or more of the following associated native plant

species: *Thelypteris* sp., *Athyrium* sp., *Styphelia tameiameiae, Cyanea* sp., *Machaerina* sp., *Cyrtandra* sp., *Sadleria* sp., *Vaccinium* sp., *Astelia menziesii, Coprosma* sp., *Cheirodendron trigynum, Ilex anomala,* or *Myrsine* sp.; and

(*2*) Elevations from 446 and 1,688 m (1,464 and 5,539 ft).

Dated: March 15, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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Part III

Department of Education

Teaching American History Grant Program; Notice Inviting Grant Applications for New Awards for Fiscal Year (FY) 2002; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.215X]

Teaching American History Grant Program; Notice Inviting Grant Applications for New Awards for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with the statute authorizing these grants and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a Teaching American History grant under this competition. These grants are authorized by Title II, Part C, subpart 4, of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2351 *et seq.*).

Purpose of Program: Teaching American History grants support programs to raise student achievement by improving teachers' knowledge, understanding, and appreciation of traditional American history. Grant awards assist local educational agencies (LEAs), in partnership with entities that have extensive content expertise, to develop, document, evaluate, and disseminate innovative, cohesive models of professional development. By helping teachers to develop a deeper understanding and appreciation of traditional American history as a separate subject matter within the core curriculum, these programs will improve instruction and raise student achievement.

Eligible Applicants: Local educational agencies (LEAs), working in partnership with one or more of the following entities:

- Institutions of higher education (IHEs);
- Non-profit history or humanities organizations; and
- Libraries and museums.

Note 1: LEAs must provide evidence of a partnership with the entities described above in order to be eligible for a grant.

Note 2: Groups of LEAs interested in submitting a single application must follow the procedures for group applications in 34 CFR 75.127–129 of EDGAR.

E-Mail Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of LEAs that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department with a short e-mail noting the intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Secretary requests that this e-mail notification be sent no later than May 3, 2002. The e-mail notification should be sent to Ms. Christine Miller at: TeachingAmericanHistory@ed.gov. Applicants that fail to provide this e-mail notification may still apply for funding.

Deadline for Transmittal of Applications: June 3, 2002.

Deadline for Intergovernmental Review: August 1, 2002.

Estimated Available Funds: $100,000,000.

Estimated Range of Awards: $350,000-$1,000,000 (total funding per grant, for a three-year project period).

Estimated Average Size: $500,000 (total for all three years).

Maximum Award Amount: The total amount of funding that an LEA may receive under this competition is $1,000,000.

Estimated Number of Awards: 150–200.

Project Period: Up to 36 months.

Please note that applicants for multi-year awards are required to provide detailed budget information for the total grant period requested. The Department will determine at the time of the initial award the funding levels for each year of the grant award. The Department of Education is not bound by any estimates in this notice.

Note: To provide the applicant the capacity to effectively plan for and carry out the comprehensive long-term activities involved in ongoing, intensive professional development, to establish partnerships to support this work, and to document and demonstrate the effectiveness of its program for future dissemination, the Secretary anticipates awarding the entire three-year grant amount for the project at the time of the initial award.

Page Limits: Applicants are strongly encouraged to limit the application narrative to no more than 20 double-spaced pages.

The following standards are preferred: (1) A ''page'' is 8.5″ × 11″ (one side only) with one-inch margins (top, bottom, and sides). (2) Use 12-point font for all text in the application narrative.

The page limit does not apply to the cover sheet, the one-page abstract, budget section, appendices, and forms and assurances.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

Supplementary Information: Budgets must include funds for at least two project staff members to attend a two-day annual meeting of the Teaching American History Grant program in Washington, DC, each year of the project. Applicants must include funds to cover travel and lodging expenses for these training activities during each year of the project.

Background: In fiscal year 2001, Congress appropriated $50 million for the Teaching American History program, of which the Department awarded $49.6 million in support of 60 grants to LEAs and consortia in 33 States. Abstracts of these grants are available at www.ed.gov/offices/OESE/TAH/. The Secretary reserved the remaining $365,000 in FY 2001 for peer review costs. Congress appropriated $100 million for this program for fiscal year 2002.

Program Description: The Teaching American History Grant Program is authorized by Part C, subpart 4, of Title II of the Elementary and Secondary Education Act.

Students who know and appreciate the great ideas, issues, and events of American history are more likely to understand and exercise their civic rights and responsibilities. Their understanding of traditional American history will be enhanced if it is taught as a separate academic subject and not as a component of social studies. Teachers must have strong content knowledge to teach students effectively about the significant issues, episodes, individuals, and turning points in the history of the United States.

The Teaching American History Grant Program will support projects to raise student achievement in traditional American history by improving teachers' knowledge, understanding, and appreciation for American history through intensive, ongoing professional development. Project activities should enable teachers to develop further expertise in American history subject content, teaching strategies, and other essential elements of teaching to higher standards. Projects should be driven by a coherent, long-term plan and should be evaluated on the basis of their impact on teacher effectiveness and student learning. This assessment should guide subsequent professional development efforts.

This program will demonstrate how school districts and institutions with expertise in traditional American history can collaborate over a three-year period to ensure that teachers develop the content knowledge and skills necessary to teach traditional American history effectively as a separate academic subject. In addition to any dissemination conducted directly by grantees, the Department intends to take

the products and information resulting from this grant program and share the results with other communities.

Under this program, applicants may propose projects that:

• Develop and implement high-quality in-service or pre-service professional development that provides educators with content knowledge and related teaching skills to prepare all students to achieve to higher standards in American history; and

• Develop and implement strategies for sustained and on-going collaboration that will take place over the course of at least three years among teachers and outside experts to improve content knowledge and instruction in traditional American history.

Applicants should consider projects that include at least one or more of the following:

• Supporting participation of teams of teachers in summer institutes and summer immersion activities designed to improve content knowledge and instruction in traditional American history;

• Supporting school-based collaborative efforts among teachers, including programs that facilitate teacher observation and analyses of fellow history teachers' classroom practice to improve content knowledge and instruction;

• Developing programs to assist new history teachers in the classroom, such as—

(a) Mentoring and coaching by trained mentor teachers over the entire grant period;

(b) Team teaching with experienced history teachers; or

(c) Providing release time for observation and consultation with experienced history teachers;

• Providing collaborative professional development experiences for veteran history teachers;

• Supporting LEA collaboration with history departments at IHEs to improve content understanding and quality of instruction in the LEA;

• Developing programs to improve history knowledge and instruction, and therefore student achievement, in high-poverty areas or for disadvantaged students;

• Establishing and maintaining professional networks, focused specifically on teaching traditional American history, that provide a forum for interaction among teachers and that allow for the exchange of information;

• Providing guidance to teachers on the use of technology to provide access to primary historical documents, enable cooperative learning efforts, and develop effective presentations of historical content; and

• Creating materials documenting the implementation and benefits of the program and products for other educators to use in the course of teaching American history as a separate subject within the core curriculum.

Application Content: To apply for Teaching American History program funds, applicants must fully describe, in their project narrative, projects that:

• Develop and implement high-quality professional development programs, or strengthen existing programs, in order to improve traditional American history education programs in elementary, middle, or high schools;

• Demonstrate strong evidence of collaboration with either an institution of higher education, a non-profit history or humanities association, or a library or museum;

• Document the program's outcomes and benefits; and

• Develop products that may be used to replicate the program in other settings.

Thus, grant applications must describe existing or proposed strategies that could successfully be implemented, expanded, documented, evaluated and disseminated. Taken together, these strategies and methods should comprise a research-based and comprehensive traditional American history education improvement project that:

• Is based on reliable theory, preliminary internal or external research, and evaluation regarding effective practice;

• Has the potential to improve students' achievement in traditional American history;

• Highlights the development of model pre-service or in-service professional development for history teachers;

• Involves multiple partners and effectively combines resources to create quality, sustainable programs;

• Demonstrates the feasibility of further replication and dissemination;

• Is applicable to a broad range of rural and urban schools serving poor and disadvantaged students, including schools that are chronically low-performing; and

• Describes methods by which the applicant will assess the project's outcomes.

Competition Requirements

Invitational Priority: The Secretary is particularly interested in applications that meet the following priority:

Applications from high-poverty rural and urban LEAs for projects designed to improve traditional American history instruction in chronically low-performing schools and improve achievement of disadvantaged students.

Under 34 CFR 75.105(c)(1), we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed selection criteria. However, in order to make timely grant awards in fiscal year (FY) 2002, the Assistant Secretary for Elementary and Secondary Education has decided to issue this application notice without first publishing selection criteria for public comment. These selection criteria will apply to the FY 2002 grant competition only. The Assistant Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

Reporting Requirements and Expected Outcomes

The Secretary requires successful applicants to submit annual performance reports that document the grantee's yearly progress toward meeting expected programmatic outcomes. These outcomes must be based on measurable performance objectives. The Secretary will use these reports to measure the success of the grantee's project, and the reports will contribute to a broader knowledge base about high-quality, effective professional development strategies that can improve the teaching and learning of American history nationwide.

In addition, grantees will be required to submit a final performance report, due no later than 90 days after the end of the project period.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for grants under this competition. In all instances where the word ''project'' appears in the selection criteria, the reference to a Teaching American History program should be made. The maximum composite score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Within each criterion, the Secretary evaluates each factor equally.

(a) Significance. (30 points)

In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The likelihood that the proposed project will improve the quality of

instruction in American history and student knowledge of the subject.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(iii) The likelihood that the proposed project will promote the teaching of traditional American history as a separate academic subject (not as a component of social studies) within the LEA's elementary school and secondary school curricula.

(b) Quality of the project design. (25 points)

In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning in American history and support rigorous academic standards for all students.

(iii) The extent to which the proposed project involves the collaboration of appropriate partners with content expertise in American history to improve teachers' knowledge and instruction.

(c) Quality of the management plan. (20 points)

In determining the quality of the management plan, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, continuous improvement strategies and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(d) Quality of the project evaluation. (15 points)

In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(e) Adequacy of resources. (10 points)

In determining the adequacy of resources for the proposed project, the Secretary considers:

(i) The extent to which the costs are reasonable and the budget sufficient in relation to the objectives, design, and scope of project activities.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedures established in each State under the Executive order.

If you want to know the name and address of any State Single Point of Contact (SPOC) you may view the latest SPOC list on the OMB Web site at the following address: *www.whitehouse.gov/omb/grants.*

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA #84.215X, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern Standard Time) on the date indicated in this notice.

Please note that the above ADDRESS is not the same ADDRESS as the one to which the applicant submits its completed application. *Do not send applications to the above ADDRESS.*

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Teaching American History Grant program (CFDA #84.215X) is one of the programs included in the pilot project. If you are an applicant under the Teaching American History Grant program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application

fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424B to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Teaching American History Grant program at: *http://e-grants.ed.gov*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(A) If You Send Your Application by Mail

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional two copies of your application. Mail your application to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.215X, 7th & D Streets, SW., ROB–3, Room 3633, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Special Note: Due to recent disruptions to normal mail delivery, the Department encourages you to consider using an alternative delivery method (for example, a commercial carrier, such as Federal Express or United Parcel Service; U.S. Postal Service Express Mail; or a courier service) to transmit your application for this competition to the Department. If you use an alternative delivery method, please obtain the appropriate proof of mailing under ''Applications Sent by Mail,'' then follow the instructions for ''Applications Delivered by Hand.''

(B) Applications Delivered by Hand

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional two copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.215X, 7th & D Streets, SW, ROB–3, Room 3633, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(C) If You Submit Your Application Electronically

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6:00 a.m. until 12:00 midnight (Washington, DC time) Monday–Friday and 6:00 a.m. until 7 p.m. Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7 p.m. (Washington, DC time).

Notes:

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail, or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(5) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

Application Instructions and Forms

The appendix to this notice contains all required forms and instructions, including instructions for preparing the application narrative, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), various assurances and certifications, and a checklist for applicants.

To apply for an award under this competition, your application must be organized in the following order and include the following four parts. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (ED 424, Exp. 11/30/2004) and Instructions

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and Instructions

An applicant for a multi-year project must provide a budget narrative that provides budget information for each budget period of the proposed project period.

Part III: Application Narrative

The application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. Applicants are strongly encouraged to limit the application narrative to no more than 20 double-spaced, standard-type pages.

The following standards are preferred: (1) A ''page'' is 8.5″ × 11″ (one side only) with one-inch margins (top, bottom, and sides). (2) If using a proportional computer font, applicants are requested to use a 12-point font.

Part IV: Assurances and Certifications

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

c. Certifications regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

An applicant may submit information on photostatic copies of the application, budget forms, assurances, and certifications as printed in this notice in the **Federal Register**. However, the application form, assurances, and certifications must each have an original signature. All applicants are required to submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application, one bound and one unbound copy suitable for photocopying. Please mark each application as ''original'' or ''copy.'' To aid with the review of applications, the Department encourages applicants to submit two additional paper copies of the application. The Department will not penalize applicants who do not provide additional copies. No grant may be awarded unless a completed application form, including the signed assurances and certifications, has been received.

For Further Information Contact:

Christine Miller, Alex Stein, Harry Kessler, or Claire Geddes, Teaching American History Grant Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6200. Telephone (202) 260–8766 (Christine Miller); (202) 205–9085 (Alex Stein); (202) 708–9943 (Harry Kessler); (202) 260–8757 (Claire Geddes).

E-mail: *teachingamericanhistory@ed.gov*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 2351 *et seq.*

Dated: March 28, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

Appendix

Instructions for the Application Narrative

The narrative is the section of the application where the selection criteria used by reviewers in evaluating the application are addressed. The narrative must encompass each function or activity for which funds are being requested. Before preparing the application narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

Applicants should note the preferable page limits for the application narrative stated in this notice under *Page Limits.*

1. Begin with a one-page Abstract summarizing the proposed Teaching American History project, including a description of project objectives and activities and partners in the application. Also include a short description of the population to be served by the project.

2. Include a Table of Contents listing the parts of the narrative in the order of the selection criteria and the page numbers where the parts of the narrative are found. Be sure to number the pages.

3. Describe fully the proposed project in light of the selection criteria in the order in which the criteria are listed in the application package. Do not simply paraphrase the criteria.

4. Provide the following in response to the attached ''Notice to all Applicants:'' (1) A reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation, or (2) a separate statement that contains that information.

5. If the application is from a group, attach the group's agreement. When applying for funds as a group, such as a consortium, individual eligible applicants must enter into an agreement signed by all members of the group. The group's agreement must detail the activities each member of the group plans to perform, and must bind each member to every statement and assurance made in the group's application. (The designated applicant must submit the group's agreement with its application.)

6. Applicants may include supporting documentation as appendices to the narrative. This material should be concise and pertinent to the competition. Note that the Secretary considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

7. Attach copies of all required assurances and forms.

Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is 1890–0009, (Expiration Date: 06/30/2002). The time required to complete this information collection is estimated to average sixty-five (65) hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* Christine Miller, Teaching American History Grant Program, U.S. Department of Education, 400 Maryland Avenue SW, FB–6, 5C126, Washington, DC 20202–6200.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Christine Miller, Teaching American History Grant Program, U.S. Department of Education, 400 Maryland Avenue SW, FB–6, 5C126, Washington, DC 20202–6200.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

____1. Application for Federal Assistance (ED 424)

____2. Budget Information—Non-Construction Programs ED (Form No. 524) and budget narrative.

____3. Application Narrative, including information that addresses section 427 of the General Education Provisions Act (see the section entitled ''NOTICE TO ALL APPLICANTS''), and relevant appendices.

____4. Group agreement, if applicable.

____5. Assurances—Non-Construction Programs (SF 242B).

____6. Certifications Regarding Lobbying; Debarment, Suspension, and Other

Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

____7. Disclosure of Lobbying Activities (Standard Form LLL).

Parity Guidelines Between Paper and Electronic Applications

In FY 2002, the U.S. Department of Education is continuing to expand the pilot project, which began in FY 2000, which allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that have an electronic submission option available to all applicants. The system, called e-APPLICATION, formerly e-GAPS (Electronic Grant Application System), allows an applicant to submit a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-APPLICATION visit the following address: *http://e-grants.ed.gov*.

Users of e-APPLICATION, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project continues the Department's transition to an electronic grant award process. In addition to e-APPLICATION, the Department plans to expand the number of discretionary programs using the electronic peer review (e-READER) system and to increase the participation of discretionary programs offering grantees the use of the electronic annual performance reporting (e-REPORTS) system. To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

- Submit your application on 8½″ by 11″ paper.
- Leave a 1-inch margin on all sides.
- Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.
- Please use black and white, also, for illustrations, including charts, tables, graphs and pictures.
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page limitation.
- Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.

BILLING CODE 4000–01–U

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
City _____ State _____ County _____ ZIP Code + 4 ____-____

Organizational Unit

2. Applicant's D-U-N-S Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]
3. Applicant's T-I-N [ ][ ] - [ ][ ][ ][ ][ ][ ][ ]
4. Catalog of Federal Domestic Assistance #: 8 4 [ ][ ][ ][ ]
Title: _____
5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 ____-____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No
7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)
8. Type of Applicant (Enter appropriate letter in the box.) [ ]

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication
☐ Construction
☐ Non-Construction
—Application
☐ Construction
☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3). Washington, DC 20202-4248.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

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Wednesday,
April 3, 2002

Part III

Department of Education

Teaching American History Grant Program; Notice Inviting Grant Applications for New Awards for Fiscal Year (FY) 2002; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.215X]

Teaching American History Grant Program; Notice Inviting Grant Applications for New Awards for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with the statute authorizing these grants and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a Teaching American History grant under this competition. These grants are authorized by Title II, Part C, subpart 4, of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2351 *et seq.*).

Purpose of Program: Teaching American History grants support programs to raise student achievement by improving teachers' knowledge, understanding, and appreciation of traditional American history. Grant awards assist local educational agencies (LEAs), in partnership with entities that have extensive content expertise, to develop, document, evaluate, and disseminate innovative, cohesive models of professional development. By helping teachers to develop a deeper understanding and appreciation of traditional American history as a separate subject matter within the core curriculum, these programs will improve instruction and raise student achievement.

Eligible Applicants: Local educational agencies (LEAs), working in partnership with one or more of the following entities:

- Institutions of higher education (IHEs);
- Non-profit history or humanities organizations; and
- Libraries and museums.

Note 1: LEAs must provide evidence of a partnership with the entities described above in order to be eligible for a grant.

Note 2: Groups of LEAs interested in submitting a single application must follow the procedures for group applications in 34 CFR 75.127–129 of EDGAR.

E-Mail Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of LEAs that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department with a short e-mail noting the intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Secretary requests that this e-mail notification be sent no later than May 3, 2002. The e-mail notification should be sent to Ms. Christine Miller at: TeachingAmericanHistory@ed.gov. Applicants that fail to provide this e-mail notification may still apply for funding.

Deadline for Transmittal of Applications: June 3, 2002.

Deadline for Intergovernmental Review: August 1, 2002.

Estimated Available Funds: $100,000,000.

Estimated Range of Awards: $350,000-$1,000,000 (total funding per grant, for a three-year project period).

Estimated Average Size: $500,000 (total for all three years).

Maximum Award Amount: The total amount of funding that an LEA may receive under this competition is $1,000,000.

Estimated Number of Awards: 150–200.

Project Period: Up to 36 months.

Please note that applicants for multi-year awards are required to provide detailed budget information for the total grant period requested. The Department will determine at the time of the initial award the funding levels for each year of the grant award. The Department of Education is not bound by any estimates in this notice.

Note: To provide the applicant the capacity to effectively plan for and carry out the comprehensive long-term activities involved in ongoing, intensive professional development, to establish partnerships to support this work, and to document and demonstrate the effectiveness of its program for future dissemination, the Secretary anticipates awarding the entire three-year grant amount for the project at the time of the initial award.

Page Limits: Applicants are strongly encouraged to limit the application narrative to no more than 20 double-spaced pages.

The following standards are preferred: (1) A ''page'' is 8.5″ × 11″ (one side only) with one-inch margins (top, bottom, and sides). (2) Use 12-point font for all text in the application narrative.

The page limit does not apply to the cover sheet, the one-page abstract, budget section, appendices, and forms and assurances.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

Supplementary Information: Budgets must include funds for at least two project staff members to attend a two-day annual meeting of the Teaching American History Grant program in Washington, DC, each year of the project. Applicants must include funds to cover travel and lodging expenses for these training activities during each year of the project.

Background: In fiscal year 2001, Congress appropriated $50 million for the Teaching American History program, of which the Department awarded $49.6 million in support of 60 grants to LEAs and consortia in 33 States. Abstracts of these grants are available at www.ed.gov/offices/OESE/TAH/. The Secretary reserved the remaining $365,000 in FY 2001 for peer review costs. Congress appropriated $100 million for this program for fiscal year 2002.

Program Description: The Teaching American History Grant Program is authorized by Part C, subpart 4, of Title II of the Elementary and Secondary Education Act.

Students who know and appreciate the great ideas, issues, and events of American history are more likely to understand and exercise their civic rights and responsibilities. Their understanding of traditional American history will be enhanced if it is taught as a separate academic subject and not as a component of social studies. Teachers must have strong content knowledge to teach students effectively about the significant issues, episodes, individuals, and turning points in the history of the United States.

The Teaching American History Grant Program will support projects to raise student achievement in traditional American history by improving teachers' knowledge, understanding, and appreciation for American history through intensive, ongoing professional development. Project activities should enable teachers to develop further expertise in American history subject content, teaching strategies, and other essential elements of teaching to higher standards. Projects should be driven by a coherent, long-term plan and should be evaluated on the basis of their impact on teacher effectiveness and student learning. This assessment should guide subsequent professional development efforts.

This program will demonstrate how school districts and institutions with expertise in traditional American history can collaborate over a three-year period to ensure that teachers develop the content knowledge and skills necessary to teach traditional American history effectively as a separate academic subject. In addition to any dissemination conducted directly by grantees, the Department intends to take

the products and information resulting from this grant program and share the results with other communities.

Under this program, applicants may propose projects that:

• Develop and implement high-quality in-service or pre-service professional development that provides educators with content knowledge and related teaching skills to prepare all students to achieve to higher standards in American history; and

• Develop and implement strategies for sustained and on-going collaboration that will take place over the course of at least three years among teachers and outside experts to improve content knowledge and instruction in traditional American history.

Applicants should consider projects that include at least one or more of the following:

• Supporting participation of teams of teachers in summer institutes and summer immersion activities designed to improve content knowledge and instruction in traditional American history;

• Supporting school-based collaborative efforts among teachers, including programs that facilitate teacher observation and analyses of fellow history teachers' classroom practice to improve content knowledge and instruction;

• Developing programs to assist new history teachers in the classroom, such as—

(a) Mentoring and coaching by trained mentor teachers over the entire grant period;

(b) Team teaching with experienced history teachers; or

(c) Providing release time for observation and consultation with experienced history teachers;

• Providing collaborative professional development experiences for veteran history teachers;

• Supporting LEA collaboration with history departments at IHEs to improve content understanding and quality of instruction in the LEA;

• Developing programs to improve history knowledge and instruction, and therefore student achievement, in high-poverty areas or for disadvantaged students;

• Establishing and maintaining professional networks, focused specifically on teaching traditional American history, that provide a forum for interaction among teachers and that allow for the exchange of information;

• Providing guidance to teachers on the use of technology to provide access to primary historical documents, enable cooperative learning efforts, and develop effective presentations of historical content; and

• Creating materials documenting the implementation and benefits of the program and products for other educators to use in the course of teaching American history as a separate subject within the core curriculum.

Application Content: To apply for Teaching American History program funds, applicants must fully describe, in their project narrative, projects that:

• Develop and implement high-quality professional development programs, or strengthen existing programs, in order to improve traditional American history education programs in elementary, middle, or high schools;

• Demonstrate strong evidence of collaboration with either an institution of higher education, a non-profit history or humanities association, or a library or museum;

• Document the program's outcomes and benefits; and

• Develop products that may be used to replicate the program in other settings.

Thus, grant applications must describe existing or proposed strategies that could successfully be implemented, expanded, documented, evaluated and disseminated. Taken together, these strategies and methods should comprise a research-based and comprehensive traditional American history education improvement project that:

• Is based on reliable theory, preliminary internal or external research, and evaluation regarding effective practice;

• Has the potential to improve students' achievement in traditional American history;

• Highlights the development of model pre-service or in-service professional development for history teachers;

• Involves multiple partners and effectively combines resources to create quality, sustainable programs;

• Demonstrates the feasibility of further replication and dissemination;

• Is applicable to a broad range of rural and urban schools serving poor and disadvantaged students, including schools that are chronically low-performing; and

• Describes methods by which the applicant will assess the project's outcomes.

Competition Requirements

Invitational Priority: The Secretary is particularly interested in applications that meet the following priority:

Applications from high-poverty rural and urban LEAs for projects designed to improve traditional American history instruction in chronically low-performing schools and improve achievement of disadvantaged students.

Under 34 CFR 75.105(c)(1), we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed selection criteria. However, in order to make timely grant awards in fiscal year (FY) 2002, the Assistant Secretary for Elementary and Secondary Education has decided to issue this application notice without first publishing selection criteria for public comment. These selection criteria will apply to the FY 2002 grant competition only. The Assistant Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

Reporting Requirements and Expected Outcomes

The Secretary requires successful applicants to submit annual performance reports that document the grantee's yearly progress toward meeting expected programmatic outcomes. These outcomes must be based on measurable performance objectives. The Secretary will use these reports to measure the success of the grantee's project, and the reports will contribute to a broader knowledge base about high-quality, effective professional development strategies that can improve the teaching and learning of American history nationwide.

In addition, grantees will be required to submit a final performance report, due no later than 90 days after the end of the project period.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for grants under this competition. In all instances where the word ''project'' appears in the selection criteria, the reference to a Teaching American History program should be made. The maximum composite score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Within each criterion, the Secretary evaluates each factor equally.

(a) Significance. (30 points)

In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The likelihood that the proposed project will improve the quality of

instruction in American history and student knowledge of the subject.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(iii) The likelihood that the proposed project will promote the teaching of traditional American history as a separate academic subject (not as a component of social studies) within the LEA's elementary school and secondary school curricula.

(b) Quality of the project design. (25 points)

In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning in American history and support rigorous academic standards for all students.

(iii) The extent to which the proposed project involves the collaboration of appropriate partners with content expertise in American history to improve teachers' knowledge and instruction.

(c) Quality of the management plan. (20 points)

In determining the quality of the management plan, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, continuous improvement strategies and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(d) Quality of the project evaluation. (15 points)

In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(e) Adequacy of resources. (10 points)

In determining the adequacy of resources for the proposed project, the Secretary considers:

(i) The extent to which the costs are reasonable and the budget sufficient in relation to the objectives, design, and scope of project activities.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedures established in each State under the Executive order.

If you want to know the name and address of any State Single Point of Contact (SPOC) you may view the latest SPOC list on the OMB Web site at the following address: *www.whitehouse.gov/omb/grants.*

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA #84.215X, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern Standard Time) on the date indicated in this notice.

Please note that the above ADDRESS is not the same ADDRESS as the one to which the applicant submits its completed application. *Do not send applications to the above ADDRESS.*

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Teaching American History Grant program (CFDA #84.215X) is one of the programs included in the pilot project. If you are an applicant under the Teaching American History Grant program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application

fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424B to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Teaching American History Grant program at: *http://e-grants.ed.gov*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(A) If You Send Your Application by Mail

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional two copies of your application. Mail your application to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.215X, 7th & D Streets, SW., ROB–3, Room 3633, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Special Note: Due to recent disruptions to normal mail delivery, the Department encourages you to consider using an alternative delivery method (for example, a commercial carrier, such as Federal Express or United Parcel Service; U.S. Postal Service Express Mail; or a courier service) to transmit your application for this competition to the Department. If you use an alternative delivery method, please obtain the appropriate proof of mailing under ''Applications Sent by Mail,'' then follow the instructions for ''Applications Delivered by Hand.''

(B) Applications Delivered by Hand

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional two copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.215X, 7th & D Streets, SW, ROB–3, Room 3633, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(C) If You Submit Your Application Electronically

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6:00 a.m. until 12:00 midnight (Washington, DC time) Monday–Friday and 6:00 a.m. until 7 p.m. Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7 p.m. (Washington, DC time).

Notes:

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail, or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(5) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

Application Instructions and Forms

The appendix to this notice contains all required forms and instructions, including instructions for preparing the application narrative, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), various assurances and certifications, and a checklist for applicants.

To apply for an award under this competition, your application must be organized in the following order and include the following four parts. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (ED 424, Exp. 11/30/2004) and Instructions

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and Instructions

An applicant for a multi-year project must provide a budget narrative that provides budget information for each budget period of the proposed project period.

Part III: Application Narrative

The application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. Applicants are strongly encouraged to limit the application narrative to no more than 20 double-spaced, standard-type pages.

The following standards are preferred: (1) A ''page'' is 8.5″ × 11″ (one side only) with one-inch margins (top, bottom, and sides). (2) If using a proportional computer font, applicants are requested to use a 12-point font.

Part IV: Assurances and Certifications

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

c. Certifications regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

An applicant may submit information on photostatic copies of the application, budget forms, assurances, and certifications as printed in this notice in the **Federal Register**. However, the application form, assurances, and certifications must each have an original signature. All applicants are required to submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application, one bound and one unbound copy suitable for photocopying. Please mark each application as ''original'' or ''copy.'' To aid with the review of applications, the Department encourages applicants to submit two additional paper copies of the application. The Department will not penalize applicants who do not provide additional copies. No grant may be awarded unless a completed application form, including the signed assurances and certifications, has been received.

For Further Information Contact:

Christine Miller, Alex Stein, Harry Kessler, or Claire Geddes, Teaching American History Grant Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6200. Telephone (202) 260–8766 (Christine Miller); (202) 205–9085 (Alex Stein); (202) 708–9943 (Harry Kessler); (202) 260–8757 (Claire Geddes).

E-mail: *teachingamericanhistory@ed.gov*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 2351 *et seq.*

Dated: March 28, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

Appendix

Instructions for the Application Narrative

The narrative is the section of the application where the selection criteria used by reviewers in evaluating the application are addressed. The narrative must encompass each function or activity for which funds are being requested. Before preparing the application narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

Applicants should note the preferable page limits for the application narrative stated in this notice under *Page Limits.*

1. Begin with a one-page Abstract summarizing the proposed Teaching American History project, including a description of project objectives and activities and partners in the application. Also include a short description of the population to be served by the project.

2. Include a Table of Contents listing the parts of the narrative in the order of the selection criteria and the page numbers where the parts of the narrative are found. Be sure to number the pages.

3. Describe fully the proposed project in light of the selection criteria in the order in which the criteria are listed in the application package. Do not simply paraphrase the criteria.

4. Provide the following in response to the attached ''Notice to all Applicants:'' (1) A reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation, or (2) a separate statement that contains that information.

5. If the application is from a group, attach the group's agreement. When applying for funds as a group, such as a consortium, individual eligible applicants must enter into an agreement signed by all members of the group. The group's agreement must detail the activities each member of the group plans to perform, and must bind each member to every statement and assurance made in the group's application. (The designated applicant must submit the group's agreement with its application.)

6. Applicants may include supporting documentation as appendices to the narrative. This material should be concise and pertinent to the competition. Note that the Secretary considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

7. Attach copies of all required assurances and forms.

Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is 1890–0009, (Expiration Date: 06/30/2002). The time required to complete this information collection is estimated to average sixty-five (65) hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* Christine Miller, Teaching American History Grant Program, U.S. Department of Education, 400 Maryland Avenue SW, FB–6, 5C126, Washington, DC 20202–6200.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Christine Miller, Teaching American History Grant Program, U.S. Department of Education, 400 Maryland Avenue SW, FB–6, 5C126, Washington, DC 20202–6200.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

____1. Application for Federal Assistance (ED 424)

____2. Budget Information—Non-Construction Programs ED (Form No. 524) and budget narrative.

____3. Application Narrative, including information that addresses section 427 of the General Education Provisions Act (see the section entitled ''NOTICE TO ALL APPLICANTS''), and relevant appendices.

____4. Group agreement, if applicable.

____5. Assurances—Non-Construction Programs (SF 242B).

____6. Certifications Regarding Lobbying; Debarment, Suspension, and Other

Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

____7. Disclosure of Lobbying Activities (Standard Form LLL).

Parity Guidelines Between Paper and Electronic Applications

In FY 2002, the U.S. Department of Education is continuing to expand the pilot project, which began in FY 2000, which allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that have an electronic submission option available to all applicants. The system, called e-APPLICATION, formerly e-GAPS (Electronic Grant Application System), allows an applicant to submit a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-APPLICATION visit the following address: *http://e-grants.ed.gov*.

Users of e-APPLICATION, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project continues the Department's transition to an electronic grant award process. In addition to e-APPLICATION, the Department plans to expand the number of discretionary programs using the electronic peer review (e-READER) system and to increase the participation of discretionary programs offering grantees the use of the electronic annual performance reporting (e-REPORTS) system. To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

- Submit your application on 8½″ by 11″ paper.
- Leave a 1-inch margin on all sides.
- Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.
- Please use black and white, also, for illustrations, including charts, tables, graphs and pictures.
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page limitation.
- Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.

BILLING CODE 4000–01–U

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
City _____ State _____ County _____ ZIP Code + 4 ____-____

Organizational Unit

2. Applicant's D-U-N-S Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]
3. Applicant's T-I-N [ ][ ] - [ ][ ][ ][ ][ ][ ][ ]
4. Catalog of Federal Domestic Assistance #: 8 4 [ ][ ][ ][ ]
Title: _____
5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 ____-____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No
7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)
8. Type of Applicant (Enter appropriate letter in the box.) [ ]

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication
☐ Construction
☐ Non-Construction
—Application
☐ Construction
☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3). Washington, DC 20202-4248.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2356/P.L. 107–155

Bipartisan Campaign Reform Act of 2002 (Mar. 27, 2002; 116 Stat. 81)

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