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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–7 FR]

Raisins Produced From Grapes Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Raisin Administrative Committee (Committee) for the 2002–03 and subsequent crop years from $6.50 to $8.00 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The Committee locally administers the Federal marketing order which regulates the handling of raisins produced from grapes grown in California (order). Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: January 10, 2003.

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 marketing order now in effect, California raisin handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins beginning on August 1, 2002, and continue until amended, suspended, or terminated. 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 increases the assessment rate established for the Committee for the 2002–03 and subsequent crop years from $6.50 to $8.00 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The order authorizes volume control provisions that establish free and reserve percentages for raisins acquired by handlers. Free tonnage raisins may be sold by handlers to any outlet, and reserve tonnage raisins are held by handlers for the account of the Committee or released or sold to handlers for sale to free tonnage outlets. Reserve raisins held for the account of the Committee are not assessable. With projected assessable tonnage about 81,000 tons less than last year's assessable tonnage, sufficient income should be generated at the higher assessment rate for the Committee to meet its anticipated expenses. This action was recommended by the Committee at a meeting on July 24, 2002.

Sections 989.79 and 989.80, respectively, of the order provide authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

A continuous assessment rate of $6.50 per ton has been in effect since the 2000–01 crop year. For the 2002–03 crop year, the Committee recommended increasing the assessment rate to $8.00 per ton of assessable raisins to cover recommended administrative expenditures of $1,912,000. This compares to budgeted expenses of $2,080,000 for the 2001–02 crop year. Major expenditures include $663,000 for export program administration and related activities, $500,000 for salaries, $164,800 for contingencies, and

$160,000 for compliance activities. Budgeted expenses for these items in 2001–02 were $662,500, $500,000, $303,500, and $220,000, respectively.

The recommended $8.00 per ton assessment rate was derived by dividing the $1,912,000 in anticipated expenses by an estimated 239,000 tons of assessable raisins. The Committee recommended increasing its assessment rate because the projected 2002–03 assessable tonnage of 239,000 tons is 81,000 tons lower than last year's assessable tonnage. Sufficient income should be generated at the higher assessment rate for the Committee to meet its anticipated expenses. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Final 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 final regulatory flexibility analysis.

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

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

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent crop years from $6.50 to $8.00 per ton of assessable raisins acquired by handlers. The Committee recommended 2002–03 expenditures of $1,912,000. Major expenditures include $663,000 for export program administration and related activities, $500,000 for salaries, $164,800 for contingencies, and $160,000 for compliance activities. Budgeted expenses for these items in 2001–02 were $662,500, $500,000, $303,500, and $220,000, respectively. With anticipated assessable tonnage at 239,000 tons, about 81,000 tons lower than last year's assessable tonnage, sufficient income should be generated at the $8.00 per ton assessment rate to meet expenses. Pursuant to § 989.81(a) of the order, any unexpended assessment funds from the crop year must be credited or refunded to the handlers from whom collected.

The industry considered various alternative assessment rates prior to arriving at the $8.00 per ton recommendation. The Committee's Audit Subcommittee met on July 24, 2002, to review preliminary budget information. The subcommittee was aware that the full Committee would be meeting later that day to consider actions that would impact the 2002 free tonnage percentage and, thus, the quantity of 2002 assessable tonnage. The Audit Subcommittee considered assessment rates of $7.50 and $8.00 per ton based on varying levels of assessable tonnage. Ultimately, the full Committee adopted the subcommittee's recommendation of $8.00 per ton based on 239,000 tons of assessable tonnage.

A review of statistical data on the California raisin industry indicates that assessment revenue has consistently been less than one percent of grower revenue in recent years. Although no official estimates or data are available for the upcoming season, it is anticipated that assessment revenue will likely continue to be less than one percent of grower revenue in the 2002–03 crop year, even with the increased assessment rate.

Regarding the impact of this action on affected entities, this action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order.

Additionally, the Audit Subcommittee and full Committee meetings held on July 24, 2002, where this action was deliberated were public meetings widely publicized throughout the California raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on November 21, 2002 (67 FR 70182). Copies of the proposed rule were mailed by the Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition the rule was made available through the Internet by the Office of the Federal Register and USDA. A 10-day comment period ending December 2, 2002, was provided for interested persons to respond to the proposal.

One comment was received opposing the proposed increase in the assessment rate. The commenter stated that the estimate of assessable tonnage used by the Committee was artificially low, improperly justifying a higher assessment rate. The commenter argued that issuance of the proposed assessment rate at this time would be arbitrary, capricious, and not in

accordance with law because there is no field price for raisins and USDA has not approved the Raisin Administrative Committee's recommendation for free and reserve tonnage. The commenter also suggests that last year's assessment rate could be retained by simply increasing the amount of assessable tonnage by 81,000 tons.

We disagree with the commenter. The issuance of this rule is consistent with the order provisions that authorize assessments. The Committee derived the $8.00 per ton assessment rate only after determining the level of necessary and appropriate administrative expenses, and dividing total administrative expenses by assessable tonnage. If later estimates indicate that the actual assessable tonnage is sufficiently greater than that projected by the Committee on July 24, 2002, the Committee could recommend that the assessment rate be reduced. Upon approval by the Secretary, this lower rate would be applied to all assessable 2002–03 crop year raisins. In either case, the assessment revenue collected from handlers would be used to fund the Committee's approved administrative expenses in accordance with §§ 989.79 and 989.80.

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, the comment received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving 2002–03 raisin crop from growers; (2) the crop year began on August 1, 2002, and the assessment rate applies to all raisins received during the 2002–03 and subsequent seasons; (3) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 10-day comment period was provided for in the proposed rule and the comment received was considered by USDA in reaching a decision on this matter.

List of Subjects in 7 CFR Part 989

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

For the reasons set forth in the preamble, 7 CFR part 989 is amended as 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 989.347 is revised to read as follows:

§ 989.347 Assessment rate.

On and after August 1, 2002, an assessment rate of $8.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: January 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–455 Filed 1–6–03; 4:34 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 996, 997, 998, and 999

[Docket No. FV02–996–1 FIR]

Establishment of Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States and Termination of the Peanut Marketing Agreement and Associated Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with changes, an interim final rule establishing a new part 996 which requires all domestic and imported peanuts marketed in the United States to be officially inspected. This action is mandated by the Farm Security and Rural Investment Act of 2002, enacted May 13, 2002. This rule continues handling standards that handlers and importers must follow and edible quality standards that all such peanuts intended for edible use must meet prior to entering human consumption channels. Safeguards to protect against peanut quality concerns are also specified. This rule also finalizes the termination of the Peanut Marketing Agreement No. 146 (Agreement) and the rules and regulations issued under the Agreement, and the termination of companion regulations that applied to imported peanuts and peanuts handled by persons not subject to the Agreement.

DATES: The changes to the interim rule of September 9, 2002 (67 FR 57129), are effective January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Wendland or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, suite 2A38, Unit 155, Riverdale, Maryland 20737; telephone (301) 734–5243, Fax: (301) 734–5275 or Ronald L. Cioffi, 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: *james.wendland@usda.gov, kenneth.johnson@usda.gov* or *ronald.cioffi@usda.gov.*

Small businesses may request information on complying with this rule by contacting Jay Guerber, at the same DC address as above, or E-mail: jay.guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under section 1308 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), 7 U.S.C. 7958, hereinafter referred to as the ''Act.''

This final rule has been determined to be non-significant for the purposes of Executive Order 12866 by the Office of Management and Budget (OMB) and therefore has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Prior documents in this proceeding are: an interim final rule published in the **Federal Register**, (67 FR 57129, September 9, 2002) and a correction (67 FR 63503, October 11, 2002).

Termination of the Peanut Marketing Agreement and the Peanut Non-signer and Import Regulations

This rule finalizes termination of Peanut Marketing Agreement No. 146 (7

CFR part 998.1–998.61) and the rules and regulations (7 CFR part 998.100–998.409) in effect under the Agreement on December 31, 2002, so that indemnification payments can be made on 2001 crop peanuts. This rule also finalizes termination of the companion regulations that apply to peanuts handled by persons not subject to the Agreement (7 CFR part 997) and to imported peanuts (7 CFR part 999.600) effective January 13, 2003.

The Peanut Marketing Agreement No. 146 (7 CFR part 998) has been in effect since 1965 under the authority of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (AMAA). The Agreement was administered by the Peanut Administrative Committee (PAC), which was comprised of peanut handlers and producers appointed by USDA. Minimum quality regulations were applied to handlers who signed the Agreement. The Agreement covered peanuts produced in the three regional production areas in the United States. The Agreement also included authority for indemnification payments to signatory handlers on peanuts involved in product and appeals claims due to aflatoxin content. Reporting and recordkeeping requirements also were prescribed. Handlers paid assessments to the PAC to cover program administrative and indemnification costs.

Consistent with the requirements of the AMAA, comparable quality requirements had been in effect for peanuts handled by persons not signatory to the Agreement (''non-signers''). The non-signer program (7 CFR part 997) was mandated in 1989 by Pub. L. 101–220, which amended the AMAA. The peanut import regulation had been authorized by section 108B(f)(2) of the Agricultural Act of 1949 (7 U.S.C. 1445c3), as amended in 1990 and 1993.

The non-signer regulations covered peanuts handled by persons not subject to the Agreement. The inspection and quality requirements were the same as those under the Agreement. Non-signer handlers had to pay the same administrative assessment rate as applied to signatory handlers under the Agreement.

The peanut import regulation required imported peanuts to meet the same quality and handling requirements as required under the Agreement. Imported peanuts were maintained under lot identification procedures and kept separate and apart from domestic peanuts until certified for human consumption use.

Under all three programs, failing peanuts could be reconditioned to meet edible requirements or disposed of in non-edible outlets. Safeguard provisions were included in the three programs to ensure that the Federal or Federal-State Inspection Service (Inspection Service) sampled, inspected, and certified the quality of all peanut lots intended for edible consumption, and that chemical analyses were performed by USDA laboratories or laboratories approved by USDA.

The Farm Security and Rural Investment Act of 2002 terminated the PAC effective July 1, 2002. That action, in turn, required termination of the Agreement and its implementing regulations. The Agreement and its implementing regulations are terminated effective January 1, 2003, by the interim final rule and indemnification payments for 2001 peanuts can be made through December 31, 2002. The companion regulations covering peanuts handled by persons not signatory to the Agreement and imported peanuts were terminated effective September 10, 2002. Assessments collected by the PAC under the Agreement and by USDA under the non-signer regulations ceased with 2001 crop peanuts.

New Peanut Program Authority

Section 1308 of the Act requires that USDA take several actions with regard to peanuts marketed in the United States, effective with 2002 crop peanuts.

Mandatory Inspection: Paragraph (a) requires that all peanuts marketed in the United States (including imported peanuts) be officially inspected and graded by Federal or Federal-State inspectors.

Termination of the Peanut Administrative Committee: Paragraph (b) terminated the PAC effective July 1, 2002. As noted above, because the PAC was charged with daily oversight of the Agreement's regulatory program, termination of the PAC necessitated termination of the Agreement and its implementing regulations. That termination is effective January 1, 2003, and indemnification payments on 2001 crop peanuts can be made through December 31, 2002. The companion non-signer and peanut import regulations were based on regulations under the Agreement. Those regulations were terminated effective September 10, 2002.

Establishment of a Peanut Standards Board: Paragraph (c) provides for the establishment of a Peanut Standards Board (Board), and requires USDA to consult with the Board prior to establishing or changing quality and handling standards for domestically produced and imported peanuts. The Board is not subject to the Federal Advisory Committee Act. A transition period is designated to allow time for USDA to implement nomination procedures and select a Board, as prescribed under the Act.

USDA received nominations and applications from interested persons to serve on the Board. A notice was published in the **Federal Register** on August 2, 2002 (67 FR 50409), and an application form was posted on the AMS website at: *http://www.ams.usda.gov/fv/peanut-farmbill.htlm.* Written nominations were received through September 3, 2002.

The Act also provides, in paragraph (g)(1) of section 1308, that during the transition period from the Agreement to the new program, USDA may designate persons serving as members of the PAC to serve as members of the Board, on an interim basis, for the purpose of carrying out the duties of the Board. USDA established the interim Board and consulted with it on three occasions to establish the quality and handling standards specified in this program.

Maintaining wholesome quality peanuts: Paragraph (d) directs USDA to make identifying and combating the presence of all quality concerns related to peanuts a priority in the development of quality and handling standards for peanuts and in the inspection of domestically produced and imported peanuts. The Act directs USDA to consult with appropriate Federal and State agencies to provide adequate safeguards against all quality concerns related to peanuts. USDA notified State government Inspection Service supervisors of the proposed text on the internet and met with supervisors on July 29 and August 15, 2002. USDA also has contacted officials in the United States Customs Service (Customs Service) and the Food and Drug Administration (FDA) with regard to this new program.

Imported peanuts: Paragraph (e) provides that imported peanuts shall be subject to the same quality and handling standards as apply to domestically produced peanuts.

Program Continuity

To maintain program continuity until the new peanut program could take effect, USDA continued the implementing regulations of the Agreement and the non-signer and import regulations as provided above. Assessments are not being collected and indemnification payments are not being made on 2002 crop peanuts.

The provisions of the new program apply to 2002 and subsequent crop year peanuts, to 2001 crop year peanuts not yet inspected, and to 2001 crop year failing peanuts that have not met disposition standards. This program continues in force and effect until modified, suspended, or terminated.

Pursuant to the Act, USDA consulted with interim Board members in the development of the quality and handling standards established in this rulemaking. USDA coordinated a conference call with interim Board members on July 2, 2002. An initial draft text with reduced USDA oversight was prepared by USDA and distributed to the interim Board members prior to the conference call. The draft was reviewed and initial changes and comments were proposed. At the interim Board's direction, four interim Board officers met with USDA on July 17, 2002. Three of the four officers proposed several additional changes, including a proposal to change the minimum kernel size that could be used in human consumption outlets. A second draft text was prepared reflecting those proposed changes. That draft was again distributed to interim Board members and State supervisors of the Inspection Service and was discussed at a meeting in Atlanta, Georgia, on July 30, 2002. In addition to the 18-member interim Board, approximately 50 industry members and Inspection Service State supervisors attended the meeting. The revised draft text was thoroughly reviewed and several modifications were recommended. Quality standards which would allow purchase of Segregation 2 and 3 quality peanuts for processing for human consumption use and the proposed change in the minimum kernel size were discussed by the interim Board. An implementation schedule also was discussed.

USDA revised the draft text after the Atlanta meeting and posted it on the AMS website. Written comments were received from interim Board members after the meeting and a few comments were received in response to the posting of the draft standards text on the internet. Comments to the draft were accepted through August 12, 2002.

Comments From Interim Board Members and Others to the Draft Rule

Most interim Board members indicated that they did not seek radical or wholesale changes to the Agreement regulations. This was apparent from comments offered during the initial conference call and at the July 30, 2002, interim Board meeting.

Grower member representatives raised three general objections to establishment of new standards for the 2002 peanut crop. They believed that the new program should not have been implemented if the 2002 crop harvest had begun. Because of geographical location, peanuts in south Texas and north Florida, representing a small portion of the total crop, were harvested before USDA could complete this rulemaking process. Because the new quality standards offer potential benefits to growers and handlers, some grower members contended that implementation after the 2002 crop harvest had begun would be unfair to producers and handlers in those early-harvest areas.

Some interim Board members suggested that the greatest benefit from the program—purchase of Segregation 2 and 3 peanuts for possible edible use—would affect only a very small percentage of the early harvest peanuts, and that it may be possible to warehouse some of the early season farmers stock peanuts until the new standards become effective. Other interim Board members did not contest this assessment.

Section 1308 of the Act provides that its provisions take effect with the 2002 peanut crop. An alternative considered was to continue the more restrictive 2001 regulations for the entire 2002 crop and implement the new program for the 2003 crop. However, USDA believed that implementation of the program as soon as possible after harvest begins was better than that alternative. The benefits of the new program to the entire industry are compelling. Most interim Board members believe that there should not be further delay in implementing this action. Only a small number of early harvest producers were affected by the implementation date of this action. Further, storage accommodations can help alleviate any timing concerns. Finally, the Act mandates that the new program be in effect for 2002 crop peanuts.

The same interim Board members concerned about producer fairness also cautioned about making significant changes to incoming quality provisions without knowledge of changes being considered to the Marketing Assistance Program by USDA's Farm Service Agency. Pursuant to the Act, the FSA loan program also was being restructured, and the extent and nature of the loan provisions were not known until after the quality and handling standards in this program became effective.

These members stated that the provision to allow purchase of Segregation 2 and 3 quality peanuts for edible consumption could affect the FSA loan program. They questioned details relating to the loan payments, inspection costs and storage of farmers stock peanuts placed under FSA's loan program.

None of the definitions and other provisions addressed in the interim final rule are applicable to other peanut programs operated by USDA, such as the loan and direct payment, counter-cyclical payments, and quota buyout payment programs provided for in the 2002 Act. Thus, for example, the definitions of ''handle'' and ''handler'' set out in the interim final rule have no application to those other programs and do not govern eligibility for payments, or the kinds of payments that can be made, under those other programs. Rather, the definitions and other provisions implemented in the interim final rule were strictly developed for the limited purposes reflected in the rule and no other. The policy choices and any statutory interpretations involved reflect that limited purpose. FSA was consulted in that respect and assured that the understanding and intent was clearly that these rules would not in any way restrict policy determination made with respect to other programs. Rules for other peanut programs will be issued in due course. Further, references in this preamble to previous peanut programs is meant to refer to those peanut operations which were under the control of the Agricultural Marketing Service (AMS) and not those under the control of FSA or FSA's predecessor agency.

Written comments concerning provisions of the draft rule were received from a few independent handlers stating that not all handlers are able to remove all defective kernels, particularly in lots with concealed freeze damage or kernels with yellow pitting. Also, some alleged that not all peanut shelling operations have the latest technologies or their own dedicated blanching facilities to remove all kernels which contain aflatoxin.

Handlers must make decisions regarding the reconditioning of each failing lot. Those decisions are made on a lot-by-lot basis, based upon the grade factors identified in the lot's latest grade inspection or aflatoxin certificate. Handlers with the latest milling technologies or their own blanching operations may be better able to recondition failing lots than handlers without such equipment. Handlers are not prevented from remilling lots more than one time to remove defective or contaminated kernels. Custom blanching operations with current

technologies are available to all handlers. If reconditioning operations are not successful, other handlers with such equipment could acquire the failing lots or recondition them on a contract basis. Because handlers are not prevented from reconditioning other handlers' failing lots, high quality standards can be established and maintained.

In the 1980's, Agreement regulations prohibited small kernels from use in edible consumption lots because research showed a higher incidence of aflatoxin in small peanuts. Research conducted at that time indicated that aflatoxin occurs more frequently in peanuts which are under stress during the growing season and that many peanut kernels are small because the plants were under such stress.

Some large handlers contended in the interim Board meeting that modern sorting technologies are able to remove the smaller, contaminated kernels and that end-product manufacturers now have markets for smaller whole kernels in snack foods and other edible products. The handlers recommended that the change would allow more domestically produced peanuts to be used in human consumption outlets and, thus, result in a more efficient use of total domestic peanut production. They also claimed that foreign manufacturers of peanut products, such as peanut paste and peanut butter, are not under such minimum size restrictions for the manufactured product they export to the United States. The handlers contended that relaxation in the size and shape of the holes in the screens used to sort out small kernels would allow domestic handlers and manufacturers to better compete with foreign product.

However, interim Board members representing regional grower associations opposed smaller kernel sizes for food quality and wholesomeness reasons. They contended that the risk of increased aflatoxin contamination in the smaller kernels outweighs the benefit of any incremental increase in the use of small peanut kernels, or cost savings accrued. Those opposed to the use of small kernels contended that, in addition to having a higher incidence of aflatoxin, smaller kernels also have a bitter taste.

At the interim Board meeting, a representative from a peanut manufacturers' association said that manufacturers oppose use of smaller size kernels.

The draft text which USDA posted on the internet included a table displaying amended screen sizes that would allow smaller kernels in edible lots. Written comments were received, most from interim Board members, opposing the use of round hole screens and the smaller kernel size. Those comments cited concerns for wholesomeness and a loss of quality if smaller kernels were allowed in edible lots. Some suggested that the screen sizes should not be changed without further research on the increased risk of aflatoxin in small peanut kernels.

After review of the positions presented at the interim Board meeting and the written comments received, USDA determined that the kernel sizes specified under the previous peanut programs should be established in the interim final rule and continue in effect for the 2002 crop year. Therefore, the recommendation to change the minimum size standard was not accepted for 2002 crop peanuts.

An oilmill operator (crusher) commenting on the draft text stated that the mission of the new standards should be to ensure food safety and not to establish restrictions that increase costs and hinder trade between willing sellers and buyers. Therefore, it was the commenter's view that peanuts to be used for non-edible purposes such as crushing should not be subject to the same incoming identification and inspection requirements as edible peanuts. USDA discussed and explained in the Interim Final Rule why incoming inspection is necessary.

Several additional minor changes were made to the draft text, reviewed by the interim Board, and posted on the internet. Those changes were based on further USDA review of the draft text and discussions with Inspection Service supervisors. The changes included re-instituting Agreement requirements in the new program that help USDA monitor the disposition of sheller oilstock residuals, the movement of failing lots through the reconditioning processes, adjustments to positive lot identification procedures, and compliance oversight. A more thorough recordkeeping paragraph also was added to reflect current industry practice and the requirements of this program.

USDA published the interim final rule (67 FR 57129) establishing the new peanut minimum quality and handling standards on September 9, 2002. The rule became effective September 10, 2002. Comments were accepted through October 9, 2002. Twenty five comments were received and are addressed below.

Comments Concerning the Interim Final Rule

The major issue discussed in the comments was the large handlers' recommendation to change screen sizes to reduce the minimum kernel size for peanuts intended for human consumption. Twenty one comments were received on that topic. Five handlers, 10 growers, and 2 other persons supported the recommendation to change the minimum kernel size. Their position was not changed from that outlined in the interim final rule discussion: (1) Domestic and international markets exist for small peanut kernels; (2) allowing the use of smaller kernels in edible lots will enable domestic handlers to compete with foreign peanut butter produced without regard to kernel size; and (3) wholesomeness is ensured because the outgoing standards are not changed in the new Peanut Standards rule.

Two growers and two handlers commented that the screens should not be changed. They claimed that an Agricultural Research Service (ARS) study conducted in the late 1980s shows a higher incidence of aflatoxin contamination in small peanut kernels. They commented that allowing the use of smaller kernels is not worth the increased risk of aflatoxin contamination in those small kernels. They also cited the pungent taste of small kernels as a quality factor which should weigh against use of smaller peanut kernels.

Proponents of smaller kernel use also contend that wholesomeness is not a concern because the electronic sorting equipment identifies and removes all damaged and contaminated kernels, even small, contaminated kernels. Based upon compliance staff information, approximately 31 of 71 handlers have electronic equipment capable of efficiently sorting out contaminated small kernels. One commenter pointed out that a reduction in kernel size for domestic peanuts would be applied to imported peanuts, but that it is not known how many foreign peanut shelling operations utilize electronic equipment.

Manufacturer associations opposed changing screen sizes when the interim final rule was being prepared. A handler commented that brand-name manufacturers are the ones best prepared, but least likely (due to quality concerns) to use the small kernels, while smaller, low-end buyers are most likely to buy the low-priced small kernels but are least likely to have the equipment or expend extra funds for testing to assure the small kernels are free of aflatoxin contamination.

After consideration of comments received on minimum kernel size, USDA has determined the regulations should continue, for the 2002 peanut

crop, the same screen sizes established in the interim rule and used since the late 1980s. This decision is based on USDA's determination that further research on aflatoxin contamination in small kernels should be conducted. Such research has been started by ARS with the cooperation of the Federal-State Inspection Service and Agricultural Marketing Service aflatoxin laboratories in Georgia. Furthermore, this year's marketing season, using the present screen sizes, is well under way and any change in screen sizes at this stage would not cover the majority of the 2002 crop. If, based on USDA's research and studies, it is determined that a change in screen size is warranted, such change will be considered and discussed with the Board.

Four other issues were covered in comments on the interim final rule. A few handlers requested that a sampling and inspection fee of $.0027 per pound, formerly charged to buyers under the Peanut Marketing Agreement, be retained in the new peanut standard program. The interim final rule terminated the Agreement. As discussed in the interim final rule, USDA did not include the fee in that rule because the fee is considered a contractual matter between sellers and buyers. This rule does not reinstate such fee.

Several handlers pointed out that a separate moisture content requirement for Virginia-type seed peanuts was omitted in the interim final rule. This was corrected by memorandum from USDA to the Inspection Service dated October 4, 2002. The separate moisture requirement for Virginia-type seed peanuts is added to the final rule as a proviso to the incoming quality standards in paragraph (b) of § 996.30.

Three commenters in Oklahoma requested an increase in the incoming grade tolerance for foreign material content because their buying point does not have facilities to clean freshly pulled farmers stock peanuts to meet the required foreign material content tolerance. However, the tolerance is the same as required under USDA's previous peanut programs for many years. Moreover, alternative courses of action provided under the previous programs are continued in this program to help growers and buying point operators to meet the foreign material content tolerance. Paragraph (c) of § 996.30 provides that farmers stock peanuts with a foreign material content exceeding 10.49 percent may held separately until milled, moved over a sand-screen before storage, or shipped directly to a handler for prompt shelling.

Finally, one interim Board grower member opposed the relaxation to allow purchase of Segregation 3 peanuts for processing into edible peanuts. The commenter stated that this would increase the chances of kernels with aflatoxin ending up in edible peanut lots. The majority of other commenters supported the relaxation in comments to the draft provisions and interim final rule on the premise that contaminated kernels would be sorted out in the handling process. USDA will continue to allow the purchase of Segregation 3 peanuts for processing for human consumption use because this will enable a more efficient use of peanut production.

Clarification of Interim Final Rule

Clarification to certain provisions of the interim rule were suggested by the Inspection and the Customs Service. These are as follows:

The Inspection Service suggested that paragraph (b)(4) of § 996.40, regarding the sampling and testing of peanuts for outgoing requirements, should read that number 3 check samples may be ground by the Inspection Service or a USDA or USDA-approved laboratory. The interim final rule provided only that the Inspection Service would grind number 3 samples. The phrase ''USDA or USDA-approved laboratory'' is added to § 996.40(b)(4) to allow those entities to grind number 3 check samples if it is more convenient to the efficient testing of the number 3 samples.

Paragraph (g) of § 996.50 provides for the positive lot identification (PLI) of residual peanuts by red tags or other PLI means acceptable to the Inspection Service. The Inspection Service also suggested that it is not the responsibility of Inspection Service personnel to determine the appropriate use of other PLI methods in addition to the use of red tags. However, Inspection Service personnel are able to utilize lot identification methods, other than red tags, if other methods are determined suitable and appropriate to a particular situation or lot of peanuts and are documented on the inspection certificate. The paragraph will continue to read as provided in the interim final rule.

Paragraph (c) of § 996.60, regarding the early arrival and storage of foreign peanuts in the U.S. prior to the opening of an import quota, incorrectly specifies that the Inspection Service may require re-inspection. However, the Inspection Service does not have authority to demand re-inspection. USDA may require such re-inspection. Paragraph (c) of § 996.60 is revised accordingly.

The Customs Service clarified titles and citations of Customs Service regulations specified in the preamble on page 57135 of the interim final rule. The correct citations are specified in the preamble discussion under Import Entry Procedures.

Customs also suggested changes in the preamble discussion and text definition of ''conditionally released'' to clarify that merchandise is not conditionally released for storage or warehousing. Under Customs Service procedures, warehoused merchandise is not conditionally released. Appropriate changes in the preamble discussion under the stamp-and-fax procedure and in the definition of ''conditionally released'' under § 996.2 have been made in this final rule.

The Customs Service requested that the preamble discussion regarding limiting lot size to 200,000 pounds clarify that Customs has no requirement on the amount of merchandise that can be covered under a single entry. The 200,000 pound limit is required by USDA and the inspection service to assure an accurate sampling protocol. The preamble language has been clarified accordingly.

Customs also suggested clarifications in the use of some terms in the preamble to be consistent with Customs Service terminologies. The preamble has been edited to use ''Customs broker'' rather than ''import broker,'' ''port of arrival'' rather than ''port of entry,'' and ''warehousing'' rather than ''storage.'' In the discussion, the process involved in the conditional release of peanuts also has been clarified to conform with Customs Service procedures. The suggested clarifications are made in the preamble discussion in this final rule.

Finally, Customs Service suggested that the definition of importer under § 966.7 should include importers who enter peanuts intended for non-edible use. Importation of non-edible peanuts may not be economically feasible at this time, given the low value of oilstock and feed-quality peanuts. Further, it is not USDA's intention to restrict importation for such purposes. However, importers of all peanuts, regardless of intended use, must comply with the inspection and disposition requirements of this program. The definition of Importer under § 966.7 has been clarified accordingly.

After review of all comments received to the interim final rule, USDA finalizes, and continues in effect with changes, the interim final rule in 7 CFR part 996 as follows.

Peanut Quality and Handling Standards

This rulemaking action finalizes the interim final rule and continues in effect, with changes, part 996, peanut quality and handling standards. These standards are similar to the quality and handling requirements that were in effect under USDA's three previous peanut programs. The changes, described in the following discussion, are based on interim Board recommendations in developing the draft rule and on industry comments to the interim final rule.

No restrictions on use of farmers stock peanuts: Prior to issuance of the interim final rule, only farmers stock peanuts determined to be Segregation 1 quality peanuts could be acquired by handlers for preparation and disposition to human consumption outlets. Segregation 2 and 3 farmers stock peanuts were restricted to non-human consumption use such as seed, oilstock, animal feed, and birdseed.

This peanut standards program differs from the previous peanut programs in that handlers may purchase any segregation quality peanuts for shelling and eventual disposition to human consumption outlets, provided that such peanuts, after handling, meet the outgoing standards of this program. This change was recommended by several of the large peanut handling operations.

Some handlers on the interim Board stated that the prohibition on Segregation 2 and 3 peanuts for edible use is more than 35 years old and that modern technologies enable handlers to shell and mill failing quality peanuts of any segregation category. They stated that this will increase use of domestic peanut production for edible consumption without a loss in edible peanut quality. They also stated that raw, farmers stock peanuts produced in other countries are not subject to incoming quality requirements or restricted as to segregation levels in those countries. Thus, they believe, this change in the peanut program would place domestic handlers on an even playing field with shellers in other countries who might export to the United States peanuts shelled and handled from any quality raw peanuts.

At the interim Board meeting, at least one grower spoke in favor of removal of the restriction on the use of Segregation 2 and 3 farmers stock only in non-edible outlets. Many growers have long contended that a single moldy peanut in a wagonload of farmers stock greatly reduces the value of the entire wagon and, thus, significantly reduces the grower's income. These growers see this as unfair and believe that they should be able to market their peanuts without a restriction on segregation use.

Under this program, Segregation 3 peanuts with visible aflatoxin mold may be purchased by handlers and imported by importers. Safeguard procedures remain in place to assure peanut quality and wholesomeness. The requirement that any farmers stock peanuts shelled and milled for human consumption use must be inspected and certified as meeting outgoing quality standards for grade and aflatoxin content prior to disposition for human consumption use is continued in this final rule.

Storage of Segregation 2 and 3 farmers stock peanuts purchased by the handler is at the handler's discretion. Separate storage and shelling of Segregation 2 and 3 peanuts under the handler's ownership are no longer necessary because any peanuts intended for human consumption use must meet outgoing quality requirements before such use. Shelling of a handler's farmers stock peanuts and use of the handler's shelled peanuts also are at the handler's discretion, provided that any shelled peanuts which the handler disposes of for human consumption use are inspected and certified for outgoing grade quality, as indicated in the table in § 996.31(a), and certified negative as to aflatoxin pursuant to a chemical analysis carried out by a USDA or USDA-approved laboratory. Positive lot identification (PLI) practices covered under § 996.40(a) must also be followed. A handler may dispose of the handler's non-edible quality peanuts (sheller oilstock residuals) to such non-edible peanut uses as crushing into oil, or animal feed, or seed, pursuant to § 996.50. Disposition is at the handler's discretion, provided that non-edible peanuts are moved under positive lot identification procedures and records documenting all such dispositions are maintained by the handler pursuant to § 996.71(b).

To the extent that farmers stock peanuts are imported, the importer has the same discretionary control over the storage, handling, and disposition of such peanuts.

Any storage or subsequent inspection that a handler may carry out for farmers stock peanuts held under USDA's Farm Service Agency's (FSA) loan program are subject to the provisions of the loan program.

Likewise, a handler may receive or acquire farmers stock peanuts or shelled peanuts from another handler and proceed to mill and prepare those peanuts for edible or non-edible use. Any contractual arrangements covering storage, shelling, milling, or disposition of such peanut lots are up to the two handlers. However, any peanuts intended for human consumption must be certified for such use pursuant to § 996.31(a).

This final rule continues the same outgoing quality standards for damage, defects, foreign material and moisture, and maximum allowable aflatoxin content as required under the previous peanut programs. The 15 parts-per-billion (ppb) maximum aflatoxin content is specified in the definition of the term ''negative aflatoxin content'' in § 996.11.

Direct blanching without prior inspection: Under the previous programs, all peanuts were required to be sampled and inspected for grade quality and aflatoxin content as the peanuts completed the shelling operation. The peanuts also were positive lot identified at that time and kept separate and apart from other milled lots. After the peanuts were moved to a blanching operation and blanched, a second sampling and grade inspection was conducted.

Under this program, handlers intending to blanch peanuts pursuant to a buyer's demand, may move peanuts from the handler's shelling facility to the handler's dedicated blanching facility without obtaining outgoing inspection and PLI prior to movement. Under this provision, the handler's blanching operation may not blanch peanuts belonging to other handlers. Movement of such peanuts under these conditions may be without grade inspection and PLI.

This change from the previous peanut programs was recommended by interim Board handler members, who have their own blanching facilities, as a method of reducing handling and inspection costs and improving the efficiency of handling operations for peanuts that the handler intends to blanch. This provision does not apply to peanuts sent to a custom blancher for blanching because those peanuts may be commingled with peanuts from another handler. To help safeguard against inadvertent commingling with another handler's peanuts, peanut lots sent to a custom blancher must be maintained under positive lot identity and be accompanied by a valid grade inspection certificate.

Because the peanuts are sampled and inspected for grade and aflatoxin content after completion of the blanching operation, and PLI is applied at that time, the outgoing quality and identity of the peanuts is not jeopardized.

Reporting farmers stock acquisitions: Because handlers and importers may

shell and mill Segregation 2 and 3 peanuts into edible quality peanuts, it is necessary that USDA account for all farmers stock peanuts acquired by handlers and importers. This final rule continues to require that all farmers stock acquisitions, regardless of segregation category, must be reported by the handler and importer to USDA. Form FV–305, Handlers/Importers Monthly Report is similar to the form previously used under the non-signer peanut program and to the PAC–1 filed by signatory handlers under the Agreement.

Reporting failing lots: Under the previous programs, non-signer handlers and importers were required to file with USDA copies of the outgoing grade and aflatoxin certificates on every peanut lot failing quality or aflatoxin standards. USDA used these certificates to monitor reconditioning and proper disposition of the failing lots. Under the Agreement, the Inspection Service and the aflatoxin laboratories filed with PAC, all grade and aflatoxin certificates on behalf of the signatory handlers.

Reporting procedures similar to those used under the Agreement are used for all handlers and importers in this program. Thus, handlers and importers are not required to file failing grade quality and aflatoxin certificates with USDA. These certificates are filed by the Inspection Service and USDA and USDA-approved aflatoxin laboratories.

The incoming quality, outgoing quality, and handling standards established under the interim final rule and finalized in this rule are the same as, or similar to, the requirements under the previous peanut programs and are intended to maintain the peanut industry's high standards for peanut quality and wholesomeness.

Quality Standards

The following categories of peanuts are subject to inspection requirements and quality and handling standards established under part 996.

Incoming quality—farmers stock peanuts: Under this program, all farmers stock peanuts received by handlers or importers must be sampled and inspected by the Federal or Federal-State Inspection Service (Inspection Service) inspectors to determine the moisture content of the peanuts, the amount of foreign material in the peanuts, and the amount of damage and concealed damage in the peanuts. Moisture and foreign material content not exceeding 10.49 percent meet incoming quality standards—the same as under the previous peanut programs. The peanuts also are inspected for visible *Aspergillis flavus* mold. Seed peanuts produced in the Virginia-Carolina area may be received or acquired containing up to 11.49 percent moisture.

Domestically produced farmers stock peanuts are required to undergo incoming inspection at a buying point prior to shelling or storage. Incoming quality standards are found in paragraph (a) of § 966.30. Incoming inspection is conducted by the Inspection Service to determine the general grade level of raw, farmers stock peanuts presented by the producer at buying points in the various domestic production areas. Peanuts are graded for foreign material, loose-shelled kernels, and moisture content. Segregation 1 farmers stock peanuts may contain 2 percent or less damaged kernels and 1 percent or less concealed damage caused by rancidity, mold, or decay. Segregation 2 peanuts are lesser quality peanuts containing more than 2 percent damaged kernels, or more than 1 percent concealed damage. Segregation 3 peanuts are those which contain visible *Aspergillus flavus.* Segregation 2 and 3 peanuts may be shelled and entered into human consumption outlets provided the peanuts meet outgoing quality and wholesomeness requirements. Imported farmers stock peanuts must be transported directly to a buying point and subjected to incoming inspection to determine Segregation quality.

It is the handler's option to keep farmers stock peanuts segregated by category or to commingle Segregation 1, 2, and 3 peanuts in the handler's warehouse. Domestically produced and imported farmers stock peanuts, however, must be kept separate and apart because imported peanuts are subject to Customs Service redelivery demands until the imported peanuts are certified as meeting outgoing quality requirements specified in § 996.31.

Incoming inspection determines the quality of the farmers stock peanuts based on moisture content, foreign material, damage, loose-shelled kernels, and visible *Aspergillus flavus* mold. Handlers and importers must report to USDA acquisitions of all Segregation 1, 2, and 3 farmers stock peanuts. The Inspection Service issues USDA form FV–95, ''Federal-State Inspection Service Notesheet'' designating the lot as either Segregation 1, 2, or 3 quality. Reporting requirements are discussed in more detail below.

Because USDA cannot determine whether peanuts produced and milled in a foreign country originated from Segregation 1 quality peanuts, importers do not have to provide evidence of Segregation 1 quality for foreign peanuts imported in shelled or cleaned-inshell condition.

Outgoing quality—shelled peanuts: Both domestic and imported shelled peanuts must be sampled, inspected, and certified as meeting the outgoing grade standards specified in the table in § 996.31(a) entitled ''Minimum Quality Standards—Peanuts for Human Consumption.'' The table lists, for different peanut varieties, maximum percentage tolerances for damaged kernels; unshelled kernels and kernels with minor defects; split and broken kernels and sound whole kernels (size factors); foreign material, and moisture content. All categories and tolerances in the table are the same as those in effect under the Agreement at the time the PAC was terminated.

Each shelled peanut lot also must undergo chemical testing by a USDA laboratory or a private laboratory approved by USDA. AMS' Science and Technology Programs assures that all of the laboratories conducting chemical analyses follow the same testing procedures. The maximum allowable presence of aflatoxin is 15 parts per billion (ppb)—the same standard as required under the three previous peanut programs. This tolerance has been in effect for more than 15 years and was in effect at the time the PAC was terminated.

Once certified as meeting outgoing quality standards under § 996.31(a) for shelled peanuts, a lot may not be commingled with any lot that has failed outgoing quality standards or any residual peanuts from reconditioning operations.

Outgoing quality—Cleaned-inshell peanuts: Based on the changes in the edible use of Segregation 2 and 3 peanuts, cleaned-inshell peanuts are no longer restricted to Segregation 1 peanuts. Cleaned-inshell peanuts are farmers stock peanuts that are cleaned, sorted, and prepared for human consumption markets in the U.S. and must be inspected against minimum quality standards not exceeding 2 percent damage, 10 percent moisture, and 0.5 percent foreign material. Cleaned-inshell peanuts also may not exceed more than 1 percent mold unless the lot is also chemically tested and found ''negative'' as to aflatoxin. These standards are found in paragraph (b) of § 996.31.

Handling Standards

Positive lot identification procedures are continued in effect under § 966.40. These procedures are necessary to maintain identification of peanut lots and ensure that lots certified for edible consumption are not commingled with

peanuts of lower quality. This section also establishes consistent procedures for collecting samples from peanut lots that are being inspected. Lot identification and sampling procedures must be applied consistently on all peanut lots undergoing inspection to ensure that all peanut lots are handled uniformly and lots once certified as meeting outgoing standards are maintained and shipped without loss of quality. PLI standards under this final rule are the same as the positive lot identification requirements previously used by the Inspection Service under the Agreement, non-signer, and import peanut programs.

The Inspection Service works with domestic peanut handlers, importers, and storage warehouses to determine the most appropriate PLI or lot identity method to be used on individual peanut lots. Several factors dictate which PLI method should be used: (1) Size of the lot; (2) storage space on the dock or in the warehouse; (3) whether any further movement of the lot is required prior to certification; and (4) other needs of the handler, importer, dock or warehouse operators, or the Customs Service.

For domestic lots and repackaged import lots, PLI includes PLI stickers, tags or seals applied to each individual package or container in such a manner that is acceptable to the Inspection Service and maintains the identity of the lot. For imported lots, PLI tape may be used to wrap bags or boxes on pallets, PLI stickers may be used to cover the shrink-wrap overlap, doors may be sealed to isolate the lot, bags or boxes may be stenciled with a lot number, or any other means that is acceptable to the Inspection Service. The crop year or quota year shown on the positive lot identification tags shall be the year in which the peanuts in the lot were produced domestically or imported into the United States, as appropriate.

PLI practices for both domestic and imported peanuts also include affixing a PLI seal to the door of a shipping container so that it cannot be opened without breaking the seal, and affixing a red tag on sewn bags of failing quality peanuts. Other methods acceptable to the Inspection Service that clearly identify the lot and prevent peanuts from being removed or added to the lot may be used. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and, if in other containers, by other means acceptable to the Inspection Service. All lots of shelled or cleaned-inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

The standard peanut lot size is 40,000 pounds, but may vary at the handler or buyer's preference. Lot size is limited to 200,000 pounds, which is the largest amount of peanuts that can be adequately sampled by the Inspection Service. The limitation was used under the agreement, non-signer, and import peanut programs.

Sampling procedures: This rule continues in effect uniform sampling procedures and sample sizes that the Inspection Service follows when conducting grade inspections, and in collecting peanuts for chemical analysis. The portion of the peanuts collected for chemical analysis are sent to a USDA or USDA-approved laboratory. A portion of the peanuts sampled are held by the Inspection Service as check samples if the lot is determined to fail either grade or aflatoxin analysis. These procedures and sample sizes are the same as those previously used under the Agreement, non-signer, and import peanut programs.

All required sampling and positive lot identification procedures are performed by inspectors of the Federal or Federal-State Inspection Service. Imported peanuts are subject to Customs Service redelivery demands if determined in violation of these quality or handling standards or Customs Service entry requirements referenced below. Handlers and importers must reimburse the Inspection Service and chemical laboratories for sampling and grade inspection and chemical analyses for aflatoxin. Incoming inspections range from $4.00 to $6.25 per ton of farmers stock peanuts. Sampling and outgoing grade inspections vary with each Federal-State Inspection Service and range from $1.50 to $3.00 a ton. Chemical analysis for aflatoxin averages $40.00 per analysis. The fee schedule for USDA laboratories appears at 7 CFR part 91.37.

Import Entry Procedures

The import entry and safeguard procedures established under the interim final rule and finalized in this rule are similar to the procedures applied under the previous peanut import program (7 CFR part 999.600).

U.S. Customs Service requirements: Importers of foreign produced peanuts must follow established Customs Service entry procedures and AMS stamp-and-fax notification and inspection procedures specified below. Customs Service importation procedures and requirements are set out in title 19 of the Code of Federal Regulations. The Customs Service regulations applicable to peanut handling and processing include, but are not be limited to: Bond requirements (19 CFR part 113); transfer of merchandise from port of arrival to another Customs Service office location (19 CFR parts 18 and 112); entry of merchandise for consumption (19 CFR parts 141 and 142; warehouse entry and withdrawal from warehouse for consumption (19 CFR part 144); establishment of bonded warehouses (19 CFR part 19); and within these parts, manipulation in bonded warehouses (19 CFR part 19.11); substitution of actual owner as importer of record (19 CFR part 141.20); failure to recondition merchandise (19 CFR part 113.62(e); and redelivery of merchandise to Customs custody (19 CFR part 113.62(d)) and 19 CFR 141.113). For Customs Service purposes, the term ''consumption'' means ''use in the United States.'' Customs Service entry procedures are not superseded by the import procedures in this program.

It is the importer's responsibility to file import entry documentation and notify the Inspection Service with documentation sufficient to insure inspection of all imported peanut lots. It also is the importer's responsibility to account for disposition of all failing quality peanut lots imported by the importer. A bond secured by surety or U.S. Treasury obligations must be posted by the importer with the Customs Service to guarantee the importer's performance. For more information on these procedures, importers should contact their customs broker, the Customs Service office at the port where peanuts are expected to be entered, or *www.ustreas.gov/education/duties/bureaus/uscustoms.html.*

Safeguard procedures: The safeguard procedures in this part are similar to safeguard procedures already in place for peanuts and other imported fresh agricultural commodities and are consistent with the inspection, identification, and certification requirements applied to domestically produced peanuts.

To obtain information on importing peanuts or making arrangements for necessary inspection and certification, importers may contact the Fresh Products Branch headquarters office in Washington, DC, which will direct them to the closest regional inspection office. The telephone number of headquarters office is (202) 720–5870, and the fax number is (202) 720–0393.

Stamp-and-fax procedure: Under USDA safeguard procedures established in this program, the importer must provide advance notice of inspection needs to the Inspection Service office that will collect samples of the peanuts for inspection. The importer must file

completed entry documentation (usually Customs Service forms CS 3461 and CF 7501, or other equivalent forms) with the Inspection Service office by mail or facsimile transmission. To expedite entry procedures, the filing should occur prior to, or upon arrival of the shipment at the port of entry. The Inspection Service office stamps, signs, and dates the entry document and returns it to the importer or Customs broker by fax or mail. The importer/broker then submits the stamped copy to the Customs Service. This ''stamp-and-fax'' procedure is unchanged from the procedure used under the previous peanut import program and is similar to procedures in place for other imported agricultural commodities under USDA jurisdiction. Failure to file the entry documentation stamped by the Inspection Service may result in a delay in entry of the product.

The importer must file a copy of each stamp-and-fax entry document with USDA and forward a copy, with any lot that is transported in-bond to an inland destination for inspection or warehousing. The importer must provide sufficient information to identify the peanut lot being entered and to ensure that arrangements are made for sampling and inspection. This information must include the Customs Service entry number, container identification, weight of the peanut lot, the city, street address, and building number (if known) receiving the peanut lot, the requested date and time of inspection, and a contact name and telephone number at the destination. If the destination is changed from that listed on the stamp-and-fax document, the importer must immediately advise Inspection Service offices at both the original destination and the new destination of such change. Shipments that are not made available pursuant to entry documentation, or are not properly displayed for sampling purposes, will be reported to the Customs Service as failing to follow required entry procedures.

Boatload shipments exceeding 200,000 pounds must be entered as two or more items on Customs Service entry documents. This limit on lot size is required by USDA and the Inspection Service for sampling purposes and is the same as the limit on lot sizes of domestically produced peanuts. Lot size and identification arrangements must be made cooperatively between the importer and the Inspection Service. This facilitates subsequent lot identification, inspection, and reporting of large imported shipments.

Release for importation: Depending on condition (shelled or inshell) and containerization, foreign-produced peanuts may be either: (1) Held at the port-of-entry until certified by the Inspection Service as meeting the edible quality requirements of this rule; or, (2) conditionally released under Customs Service entry procedures and transported inland for inspection and certification.

Under option (1), foreign-produced shelled or cleaned-inshell peanuts which are held at the port-of-arrival must be presented in containers or bags that allow appropriate sampling of the lot pursuant to Inspection Service requirements. After sampling, such lots are held at the port-of-arrival under Customs Service custody, under positive lot identification requirements of the Inspection Service, pending results of the inspection and chemical analysis. If determined to meet the applicable edible quality requirements of this part, the shelled or cleaned-inshell peanuts may be entered for consumption without further inspection. Reports of such entries do not have to be filed with USDA.

If a lot is held at the port-of-arrival under Customs Service custody and subsequently determined to fail edible quality standards, the lot, at the importer's discretion, may be: Exported; moved inland under bond for reconditioning and, if satisfactorily remilled or blanched, used for edible consumption; or entered for non-edible consumption. Such failing peanuts that remain under Customs Service custody until exported do not have to be reported to USDA because the peanuts were not officially entered into the U.S. Failing lots that are moved in-bond for reconditioning at a remilling or blanching facility inland must be reported to USDA, pursuant to option 2, below. The importer is responsible for ensuring that such lots remain under PLI until reconditioned and determined to meet edible quality requirements. Records of disposition of residual peanuts to non-edible outlets also must be maintained. Such records must be maintained for the time frames discussed under Reporting and Recordkeeping Requirements, below.

Under option (2), foreign produced peanuts moved inland from the port-of-arrival for sampling, inspection, and certification. All imported farmers stock peanuts must be shipped inland for sampling and inspection because specialized sampling facilities at buying points are not available at ports of entry. All in-bond entries must be maintained under PLI. Shelled and cleaned-inshell lots which are subsequently sampled and determined to meet both grade and aflatoxin quality standards may be entered directly into human consumption channels of commerce and not reported to USDA. For monitoring and compliance-assurance purposes, in-bond entries which fail to meet outgoing quality standards are reported to USDA by the Inspection Service and/or the aflatoxin laboratory.

Peanuts transported from the port-of-arrival to another location must be transported by a carrier designated by the Customs Service under 19 U.S.C. 1551. Peanuts entered for warehousing must be stored in a Customs Service bonded warehouse. Such peanuts must remain in Customs Service custody until they are determined to meet the quality and handling standards of this program, at which point they may be withdrawn from warehouse and entered for consumption.

Imported shipments of farmers stock peanuts must be transported inland to a buying point where sampling equipment is available to conduct the incoming sampling operation. Importers are required to maintain all records showing compliance with these standards and all Customs Service requirements.

Importers must not release failing lots for edible consumption until reconditioned and certified as meeting the standards of this program.

Reporting and Recordkeeping

This rule finalizes reporting and recordkeeping standards under § 996.71 that are necessary for USDA to monitor compliance with program quality and handling standards.

Farmers stock acquisitions: Handlers and importers are required to report to USDA the volume of Segregation 1, 2, and 3 farmers stock peanuts acquired from growers or others, or imported. Under previous peanut programs, the information was used, in part, to determine the assessment owed by signatory handlers to the PAC and non-signatory handlers to USDA.

Because all farmers stock peanuts can now be shelled for human consumption use, all three categories of farmers stock must be reported. This information is used for compliance purposes and in the compilation of reports by USDA. The monthly report must include the volume, by variety, of Segregation 1, 2, and 3 farmers stock peanuts acquired in the preceding month. Form FV–305, Handlers/Importers Monthly Report is used by handlers and importers to report their monthly farmers stock acquisitions.

To collect farmers stock information, the interim Board recommended that USDA use the assessment form used under the national Peanut Promotion,

Research, and Information Order (7 CFR part 1216). However, that form has been discontinued and the new ''First Handler's Report'' form used under that research and promotion program does not require disclosure of volume handled, peanut variety, or Segregation of the peanuts acquired. Thus, the form cannot be used for the purposes needed under this program.

The new form, Handlers/Importers Monthly Report, must be sent to USDA. Facsimile or express mail deliveries may be used to ensure timely receipt of certificates and other required documentation. Mail deliveries must be addressed to the DC Marketing Field Office, MOAB, FVP, AMS, USDA, 4700 River Road, Unit 155, Riverdale, MD 20737, Attn: Report of Peanuts. The Fax number is (301) 734–5275.

Falsification of any report submitted to USDA is a violation of Federal law and is punishable by fine or imprisonment, or both.

Documentation of edible and non-edible peanuts: This program continues the procedures previously used under the Agreement to monitor disposition of edible and failing quality peanuts. The Inspection Service sends copies of all grade inspections and the chemical laboratories send copies of all aflatoxin assays to USDA. USDA uses this information to monitor proper disposition of all lots failing either grade or aflatoxin certification.

This represents a relaxation of reporting requirements for importers. Under the previous peanut import program, non-signatory handlers and importers were required to file copies of all failing grade and aflatoxin certificates with AMS. Importers are no longer required to do so, unless specifically requested by USDA or unless the Customs Service demands such documentation of importers. These certificates will be provided by the Inspection Service, USDA laboratories, or USDA-approved laboratories, as the case may be.

Recordkeeping: Handlers and importers are required to maintain all relevant documentation on the disposition of inedible peanuts. If a lot is remilled, blanched, or roasted, the handler or importer must maintain grade certificate(s) and/or aflatoxin certificate(s) showing that the lot has been reconditioned and subsequently meets outgoing, edible quality standards. Grade and aflatoxin inspections conducted on reconditioned lots reference the applicable lot number and previous grade and aflatoxin certificate numbers so that a record of the lot's reconditioning is maintained. Documents showing the disposition of non-edible residuals (pick-outs, etc.) must be maintained by each handler and importer. For example, if the lot is crushed for oil, the oil mill's report of crushing must be maintained. That crushing report must tie the crushed residual peanuts to their original failing lots. If the failing lot is sold for seed or for animal feed, the sales receipt of the transaction must tie the purchased lot to the failing lot through the inspection certificate number. If the failing lot is exported, an export certificate must be filed showing the inspection certificate number of the failing peanut lot. Failing peanut lots sent to a landfill or buried also must be reported with proof of such disposition through the inspection certificate number.

In total, the documentation maintained and distributed to USDA must be sufficient to document and substantiate the proper disposition of all peanut lots failing grade or aflatoxin quality standards, as well as the residuals resulting from those failing lots.

Documentation on lot dispositions must be maintained for at least two years after the crop year of applicability.

Confidentiality

This rule includes a confidentiality provision in § 996.72 to protect handler and importer reports and records required to be submitted to USDA under this program. Confidential information includes data or information constituting a trade secret or disclosing a trade position, financial condition, or business operations of handlers or their customers. Confidentiality provisions do not extend to disclosure of peanut lots determined to be within the provisions in § 996.74(b).

Verification of Reports

Provisions are included in § 996.73 of this part that allows USDA access to any premises where peanuts may be held or processed, and access to any business files containing information regarding the handling, importing, and disposition of peanuts. USDA, at any time during regular business hours, is permitted to inspect any peanuts held and any and all records with respect to the acquisition, holding, or disposition of any peanuts which may be held or which may have been disposed of by that handler or importer.

Compliance Oversight

USDA will take action against any handler or importer in violation of the Act or this part. Such action includes instances when a handler or importer: (1) Acquires farmers stock peanuts without official incoming inspection; (2) fails to obtain outgoing inspection on shelled or cleaned-inshell peanuts and ships such peanuts for human consumption use; (3) ships failing quality peanuts for human consumption use; (4) commingles failing quality peanuts with certified edible quality peanuts and ships the commingled lot for human consumption use; (5) fails to maintain PLI on peanut lots certified for human consumption use; (6) fails to maintain and provide access to records on the reconditioning or disposition of failing quality peanuts; or (7) otherwise violates any provisions of the Act or this program.

USDA will use injunctions to restrain violations and withdraw inspection services from alleged violators.

AMS will notify the FDA of the names of any handlers or importers known to have shipped un-inspected or failing peanuts into human consumption channels and the lot numbers of such peanuts. AMS also will publish on the AMS Web site the names of any handler and importer and the failing lots not reported as reconditioned or disposed to non-edible outlets.

Final 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 had prepared this final 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.

There were approximately 45 peanut handlers and 38 importers that were subject to regulation under the Agreement and non-signer program, and the peanut import regulation. An estimated two-thirds of the handlers and nearly all of the importers may be classified as small entities, based on the documents and reports received by USDA. Small agricultural service firms, which include handlers and importers, are defined by the Small Business Administration (SBA) (13 CFR 121.201), as those having annual receipts of less than $5,000,000.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition (less than $750,000 in annual receipts from agricultural sales) can be obtained from the 1997 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 10,505 peanut farms with sales valued at less than $500,000 in 1997,

representing 86 percent of the total number of peanut farms in the U.S (12,221). Since the Agricultural Census does not use $750,000 in sales as a category, $500,000 in sales is the closest approximation. Assuming that most of the sales from those farms are attributable to peanuts, the percentage of small peanut farms in 1997 (less than $750,000 in sales) was likely a few percentage points higher than 86 percent, and may have shifted a few percentage points since then. Thus, the proportion of small peanut farms is likely to be between 80 and 90 percent.

Two-year average peanut production for the 2000 and 2001 crop years was 3.711 billion pounds, harvested from 1.363 million acres, yielding 2,723 pounds per acre. The average value of production for the two-year period was $948.777 million, as reported on the National Agricultural Statistics Service (NASS) Web site as of August 2002 (*http://www.nass.usda.gov:81/idepd/report.htm*). The average grower price over the two-year period was $0.26 per pound, and the average value per harvested acre was $707. Dividing the two-year average value of production ($948.177 million) by the estimated 12,221 farms yields an estimated revenue per farm of approximately $77,600.

The Agricultural Census presents farm sizes in ranges of acres, and median farm size in 1997 was between 50 and 99 acres. The median is the midpoint ranging from the largest to the smallest. Median farm size in terms of annual sales revenue was between $100,000 and $250,000. Several producers may own a single farm jointly, or, conversely, a producer may own several farms. In the peanut industry, there is, on average, more than one producer per farm. Dividing the two-year average value of production of $948.777 million by an estimated 23,000 commercial producers (2002 Agricultural Statistics, USDA, Table 11–10) results in an estimate of average revenue per producer of approximately $41,251.

Oilmill operators, blanchers, and private chemical laboratories are subject to this rule to the extent that they must comply with reconditioning provisions under § 996.50 and reporting and recordkeeping requirements under § 996.71. There are several such entities in the peanut industry and these requirements are applied uniformly to these entities, whether large or small. In addition, there are currently 10 State inspection programs (FSIS) that will perform inspection under this new program.

Importers of peanuts cover a broad range of business entities, including fresh and processed food handlers and commodity brokers who buy agricultural products on behalf of others. Under the 2001 import quota, approximately 38 business entities imported approximately 126 million pounds of low duty peanuts (sometimes called ''duty free'' quota peanuts). That import quota period ended December 31, 2001, for Mexico, and March 31, 2002, for Argentina, Israel, and other countries. Some large, corporate handlers are also importers of peanuts. AMS is not aware of any peanut producers who imported peanuts during any of the recent quota years. The majority of peanut importers have annual receipts under $5,000,000. Customs brokers may provide import services to importers who are regulated under, and accountable, to this rule. They must assure that entry requirements under § 996.60 and reporting and recordkeeping requirements under § 996.71 are met. These requirements are not applied disproportionately to small Customs brokers.

In view of the foregoing, it can be concluded that the majority of peanut producers, handlers, and importers may be classified as small entities. In addition, it may be assumed that many oilmill operators and blanchers also are small entities.

The quality and handling requirements of the prior peanut quality programs have been in effect for more than 36 years and for imported peanuts for more than six years. Handlers and importers have been the segment of the industry directly regulated under the three peanut programs, and they are in general agreement that the industry has changed greatly since the establishment of the Agreement in 1965.

With only a few exceptions, the quality and handling standards in this peanut program are the same as, or similar to, the requirements previously in effect for domestically produced and imported peanuts. The few exceptions are relaxations in requirements that will benefit handlers and importers. These requirements were subject to regulatory flexibility analysis and were found to not disproportionately affect small entities.

The Act requires that all peanuts marketed in the United States be officially inspected and graded by Federal or Federal-State inspectors. The Act further requires that USDA make identifying and combating the presence of all quality concerns a priority in the development of quality and handling standards and in the inspection of all peanuts in the domestic market. Finally, USDA is to ''* * * provide adequate safeguards against all quality concerns related to peanuts.'' The new peanut program is to be established in consultation with the Board.

This program establishes under part 996 the minimum quality and handling standards that were in effect on May 13, 2002, the date the Act became effective, with relaxations recommended by interim Board members and peanut growers and handlers. Peanuts may not be entered into human consumption channels unless the peanuts are inspected and meet minimum quality standards for size, damage, defects, foreign material and moisture, and not exceed maximum aflatoxin content specified in this rule. Handling standards include the same positive lot identification, sampling and inspection procedures, and prohibitions on commingling certified and non-edible peanuts as were in effect under the three previous programs. Peanuts failing to meet the quality standards of this part, or which are not handled consistent with the handling standards of this part, may not be used for human consumption in the United States.

All USDA required sampling, quality certification, and lot identification is conducted by the Inspection Service. Chemical analysis is conducted by USDA or USDA-approved laboratories. Private laboratories must, among other things, agree to send copies of all aflatoxin analyses conducted by the laboratory to USDA. Foreign produced peanuts stored in bonded warehouses are subject to Customs Service audits. Handlers and importers must reimburse the Inspection Service and USDA laboratories and approved private laboratories, for services provided and costs incurred in the sampling, grade inspection and chemical analysis of peanuts. Incoming inspections range from $4.00 to $6.25 per ton of farmers stock peanuts. Sampling and outgoing grade inspections vary with the Federal and each Federal-State Inspection Service and range from $1.50 to $3.00 a ton. Chemical analysis for aflatoxin averages $40.00 per analysis. These costs to handlers and importers also were incurred under the previous three programs. Thus, there is no net increase in financial burden attributable to these aspects of the new program.

This action imposes on handlers and importers a minor reporting requirement in addition to that imposed under the previous peanut programs (reporting acquisitions of Segregation 2 and 3 farmers stock peanuts). However, importers and non-signatory handlers under the previous programs have a

minor decrease in reporting requirements, because they are no longer required to submit evidence of proper disposition of failing lots. That task is completed by the USDA. Recordkeeping requirements remain the same as required under the three previous peanut programs. The information collection burden under the previous programs totaled 411 reporting hours and 269 recordkeeping hours. These were approved under OMB Nos. 0581–0067 (Agreement), 0581–0163 (non-signers), and 0581–0176 (imports).

Changes affecting regulated entities: Under this program, handlers are no longer subject to any payment of assessments on farmers stock peanuts acquired. Under the Agreement and non-signer program, handlers were assessed $.33 per net farmers stock ton of peanuts acquired. This totaled over $515,000 for the 2000 crop. Assessments collected from signatory handlers provided for the administration of the PAC. Assessments collected from non-signatory handlers helped reimburse USDA for administration of the non-signer program. There are no such assessments under this peanut program.

The previous peanut programs prohibited the use of Segregation 2 and 3 farmers stock peanuts in human consumption channels. This program removes that prohibition and allows such peanuts to be handled and marketed in higher return outlets. Handlers sought this change. As noted above, handlers believe that modern milling technologies enable handlers to remove poor quality and contaminated peanut kernels in the shelling and milling operation. This change from the previous programs' requirements enables more peanuts to be marketed at higher market values for human consumption. Segregation 2 and 3 peanuts, in a normal crop year, average around 1 percent of total production. Thus, for the 2000 and 2001 crop years, an estimated 37 million pounds of additional farmers stock peanuts would have been available for human consumption channels.

Handlers stated that peanuts used in the manufacturing of imported peanut butter and peanut paste are not restricted to Segregation 1 quality peanuts produced in those exporting countries. They contended that use of Segregation 2 and 3 quality peanuts for human consumption, after careful and efficient sorting and milling processes, would level the playing field for the U.S. peanut industry. Outgoing inspection will ensure that poor quality peanuts do not enter domestic edible consumption market channels.

Grower and handler revenues are likely to increase slightly due to the ability to sell Segregation 2 and 3 quality peanuts for human consumption use. This change is not expected to affect small and large entities differently.

If Segregation 2 and 3 peanuts are handled for human consumption, it is reasonable to assume that fewer poor quality peanuts will be available for crushing into oil and other non-edible use such as animal feed. Thus, if normal supply and demand factors take affect, the price of oilstock quality peanuts could rise. A higher percentage of sheller oilstock residuals are likely to be sorted out of Segregation 2 and 3 peanuts during the initial shelling process. Therefore, not all of the peanuts in Segregation 2 and 3 lots will be edible, and the supply of oilstock peanuts will not be cut off completely. The market value of peanuts used for crushing into oil and added to animal feed could increase.

Further, blanching operations could realize an increase in business because blanching, as a last resort in reconditioning a failing lot, will likely be used in the final preparation of shelled peanuts originating from Segregation 2 and 3 peanuts for human consumption.

Finally, handlers with blanching facilities dedicated exclusively to the handler's own peanuts may move a lot of shelled peanuts directly from the shelling operation to their dedicated blanching operations without first obtaining grade inspection and PLI on the lot. Handlers recommended removing the required inspection and PLI prior to blanching at their own, dedicated facilities because the nature of the peanuts change in the blanching process and the peanuts must be inspected immediately after blanching, rendering the first inspection redundant. This would apply only to lots blanched in the handler's own blanching facility that does not blanch peanuts belonging to others, thus eliminating the need to establish PLI prior to blanching. This streamlined handling process will increase efficiency of the handling of peanuts that the handler intends to blanch. Handler costs for such lots are reduced by inspecting the lot once, rather than twice. While this change may tend to be most beneficial to those handlers who are mostly larger operations with their own, dedicated, blanching facilities, it should not have an adverse impact on small handlers.

Reporting and recordkeeping requirements under this peanut program are not expected to adversely impact small businesses, and there is no indication that large and small businesses would be impacted differently. Under this program, handlers and importers must report monthly acquisitions of Segregation 2 and 3 peanuts—a minor increase from the previous programs when only Segregation 1 peanuts were reported. However, the benefits of being able to handle those peanuts for possible edible consumption outweigh the increased reporting requirement. Further, this minor increase in reporting is offset by a decrease in reporting disposition of failing peanut lots for non-signatory handlers and importers. In the case of imports, few, if any, peanuts are imported in farmers stock form because of the extra weight and bulk of the peanut shell.

The other provisions in this peanut program are the same as, or similar to, the requirements in effect for domestically produced and imported peanuts for the last several years. Those requirements were subject to prior regulatory flexibility analysis.

USDA has considered alternatives to this program. The Act provides that a new program be established for the 2002 peanut crop. An alternative would have been to continue the 2001 regulations for the entire 2002 crop. However, based on industry comment, implementation of a new program as soon as possible after harvest began was preferable to continuing the previous programs. USDA has met with the interim Board which is representative of the industry and has included nearly all of its recommendations in this rule. The initial draft prepared by USDA proposed a streamlined program with less USDA oversight of handling standards. However, the interim Board suggested that oversight provisions in the previous programs be included in this program to assure the continued high quality and wholesomeness of peanuts entered into human consumption channels in the U.S. Draft provisions were posted on the USDA website and comments were received. Most comments confirmed the Board's consensus that significant changes in the previous programs were not necessary. One proposal included changing screen sizes to allow smaller kernels to be included in lots intended for human consumption use. Comments advised against such a relaxation in the interim final rule. The majority of comments to the interim final rule on this topic favored the relaxation. However, USDA has decided to review this proposal further and not to make such a change at this time. Thus, this program is substantially the same as

USDA's three previous peanut programs.

Except as previously discussed, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. A small business guide on complying with AMS' fresh fruit, vegetable, and specialty crop programs similar to this peanut program may be viewed at the following web site: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide or compliance with this program should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Information Collection

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements under the Agreement, non-signers and import programs were approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0067, 0581–0163 and 0581–0176, respectively. However, with the termination of those peanut programs, reporting and recordkeeping burdens on peanut handlers and importers have been terminated. OMB burden hours under the previous programs were 540 hours. The burden under the new program is estimated to be 463 hours. An estimated 367 hours (nearly 80 percent) of the new program burden is for recordkeeping, which handlers and importers would normally do under good business practices.

The Act specifies in § 1604(c)(2)(A) that any new quality and handling standards, established pursuant to the Act, may be implemented without regard to the Paperwork Reduction Act. Nonetheless, USDA has considered the reporting and recordkeeping burden on handlers and importers under the new program.

Handlers and importers are required to complete and submit only one report to USDA—a monthly acquisition of farmers stock peanuts. Acquisitions of Segregation 2 and 3 peanuts must now be reported because those peanuts can be prepared for edible markets. Because Segregation 2 and 3 peanuts normally account for around 1 percent of each peanut crop, this change is expected to represent only a minor increase in the reporting burden under the new program. Non-signatory handlers and importers are no longer required to submit evidence of disposition of failing lots, which reduces their reporting burden. Recordkeeping requirements remain the same as required under the three previous peanut programs.

USDA held several meetings with the interim Board, Inspection Service supervisors, posted a draft rule on the internet for comments, and considered all comments, prior to publishing the interim final rule. Twenty-five comments were received to the interim final rule and all were carefully considered in developing this finalization action. As earlier discussed, changes have been made to the interim final rule. Any additional changes will be considered in consultation with the Peanut Standards Board, as provided for in the Act. USDA also has reviewed this rule with FSA and incorporated the suggested clarifications suggested by the Customs Service. The program established in the interim final rule and finalized in this rulemaking action is substantially the same as the three previous peanut programs. The 2002 crop harvest is now complete.

Section 1601 of the Act also specifies that promulgation of the standards and administration of the new peanut quality program shall be made without regard to: (A) The Paperwork Reduction Act; (B) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and (C) the notice and comment provisions of section 553 of title 5, United States Code.

Section 553 of title 5 provides that, upon good cause, the rule may be made effective less than 30 days after publication in the **Federal Register**. The Farm Bill required that the rule be effective for the 2002 crop year and the interim final rule became effective at the beginning of the 2002 harvest season. A 30 day comment period was provided in the interim final rule and all comments received were considered. This rule finalizes the interim final rule and implements five minor revisions which improve the overall effectiveness of the interim final rule. Based on the above, USDA finds that good cause exists for making this rule effective one day after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 996

Food grades and standards, Imports, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601–674 and Public Law 107–171, 7 CFR chapter IX is amended as set forth below.

Accordingly, the interim final rule amending 7 CFR part 996 which was published at 67 FR 57129 on September 9, 2002, is adopted as a final rule with the following changes:

PART 996—MINIMUM QUALITY AND HANDLING STANDARDS FOR DOMESTIC AND IMPORTED PEANUTS MARKETED IN THE UNITED STATES

Authority: Secs. 1308, Pub. L. 107–171, 116 Stat. 178 (U.S.C. 7958).

Definitions

1. Section 996.2 is revised to read as follows:

§ 996.2 Conditional release.

Conditional release means release from U.S. Customs Service custody to the importer for purposes of handling and USDA required sampling, inspection and chemical analysis.

2. Section 996.7 is revised to read as follows:

§ 996.7 Importer.

Importer means a person who engages in the importation of foreign produced peanuts into the United States.

3. Section 996.30 is amended by revising paragraph (b) to read as follows:

§ 996.30 Incoming quality standards.

* * * * *

(b) *Moisture.* No handler or importer shall receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing more than 10.49 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling; and *Provided further,* That Virginia-type peanuts used for seed may be received or acquired containing up to 11.49 percent moisture.

* * * * *

4. Section 996.40 is amended by revising paragraph (b)(4) to read as follows:

§ 996.40 Handling standards.

* * * * *

(b) * * *

(4) Upon call from the laboratory, the handler or importer shall cause Sample 2 to be ground by the Inspection Service, USDA or USDA-approved laboratory in a ''subsampling mill.'' The resultant ground subsample from Sample 2 shall be of a size specified by the Inspection Service and it shall be designated as ''Subsample 2–AB.'' Upon call from the laboratory, the handler shall cause Sample 3 to be ground by the Inspection Service, USDA or USDA-approved laboratory in a ''subsampling mill.'' The resultant ground subsample from Sample 3 shall be of a size

specified by Inspection Service and shall be designated as ''Subsample 3–AB.'' ''Subsamples 2–AB and 3–AB'' shall be analyzed only in a USDA laboratory or a USDA-approved laboratory and each shall be accompanied by a notice of sampling. The results of each assay shall be reported by the laboratory to the handler and to USDA.

* * * * *

5. Section 996.60 is amended by revising paragraph (c) to read as follows:

§ 996.60 Safeguard procedures for imported peanuts.

* * * * *

(c) *Early arrival and storage.* Peanut lots sampled and inspected upon arrival in the United States, but placed in storage for more than one month prior to beginning of the quota year for which the peanuts will be entered, must be reported to USDA at the time of inspection. The importer shall file copies of the Customs Service documentation showing the volume of peanuts placed in storage and location, including any identifying number of the storage warehouse. Such peanuts should be stored in clean, dry warehouses and under cold storage conditions consistent with industry standards. USDA may require re-inspection of the lot at the time the lot is declared for entry with the Customs Service.

* * * * *

Dated: January 3, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–367 Filed 1–8–03; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 211

Regulation K; Docket No. R–1114

International Banking Operations; International Lending Supervision

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its regulations relating to international lending by simplifying the discussion concerning the accounting for fees on international loans to make the regulation consistent with generally accepted accounting principles (GAAP).

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Michael G. Martinson, Associate Director (202/452–3640), Division of Banking Supervision and Regulation; or Ann Misback, Assistant General Counsel (202/452–3788), or Melinda Milenkovich, Counsel (202/452–3274), Legal Division, Board of Governors of the Federal Reserve System, 20th & Street, NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (''TDD'') only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The International Lending Supervision Act of 1983 (ILSA), 12 U.S.C. 3901, *et seq.*, requires each federal banking agency to evaluate the foreign country exposure and transfer risk of banking institutions within its jurisdiction for use in examination and supervision of such institutions. To implement ILSA, the federal banking agencies, through the Interagency Country Exposure Review Committee (ICERC), assess and categorize countries on the basis of conditions that may lead to increased transfer risk. Transfer risk may arise due to the possibility that an asset of a banking institution cannot be serviced in the currency of payment because of a lack of, or restraints on, the availability of foreign exchange in the country of the obligor. Section 905(a) of ILSA directs each federal banking agency to require banking institutions within its jurisdiction to establish and maintain a special reserve whenever the agency determines that the quality of an institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness, or no definite prospects exist for the orderly restoration of debt service. 12 U.S.C. 3904(a). In keeping with the requirements of ILSA, on February 13, 1984, the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (collectively, the federal banking agencies) issued a joint notice of final rulemaking requiring banking institutions to establish special reserves, the allocated transfer risk reserve (ATRR), against the risks presented in certain international assets. (49 FR 5594).

ILSA also requires the federal banking agencies to promulgate regulations for accounting for fees charged by banking institutions in connection with international loans. Section 906(a) of ILSA (12 U.S.C. 3905(a)) deals specifically with the restructuring of international loans to avoid excessive debt service burden on debtor countries. This section requires banking institutions, in connection with the restructuring of an international loan, to amortize any fee exceeding the administrative cost of the restructuring over the effective life of the loan. Section 906(b) of ILSA (12 U.S.C. 3905(b)) deals with all international loans and requires the federal banking agencies to promulgate regulations for accounting for agency, commitment, management and other fees in connection with such loans to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

When ILSA was enacted in 1983 and the regulation on accounting for international loan fees was promulgated on March 29, 1984, Congress and the federal banking agencies considered that the application of the broad fee accounting principles for banks contained in GAAP were insufficient to accomplish adequate uniformity in accounting principles in this area. Accordingly, the Board's regulation provided a separate accounting treatment for each type of fee charged by banking institutions in connection with their international lending. Since that time, the Financial Accounting Standards Board (FASB) has revised the GAAP rules for fee accounting for international loans in a manner that accommodates the specific requirements of section 906 of ILSA. In order to reduce the regulatory burden on banking institutions, and simplify its regulations, the Board proposed to eliminate from Subpart D the requirements as to the particular accounting method to be followed in accounting for fees on international loans and require instead that institutions follow GAAP in accounting for such fees.

No public comments were received concerning the Board's proposal and it is being adopted as proposed. In the event that the FASB changes the GAAP rules on fee accounting for international loans, the Board will reexamine its regulation in light of ILSA to assess the need for a revision to the regulation.

Regulatory Flexibility Act

The Board has reviewed the final rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule revises accounting mechanisms for fees associated with international loans and harmonizes their treatment with accounting principles set forth in other regulations. Both the underlying regulation and the final rule primarily affect financial institutions engaged in significant international loan transactions, and the overall impact of the final rule will be to reduce regulatory burden. Accordingly, pursuant to 5 U.S.C.

605(b), the Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget.

The collections of information associated with this rulemaking are found in 12 CFR 211.43 and 211.44. This information is required to evidence compliance with the requirements of Regulation K and the International Lending Supervision Act. The respondents/recordkeepers are for–profit financial institutions, including small businesses.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The information on the allocated transfer risk reserve requested in section 211.43 is collected in the Consolidated Reports of Condition and Income (FFIEC 031 and 041; OMB No. 7100–0036), the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128), and the Report of Condition for Edge and Agreement Corporations (FR 2886B; OMB No. 7100–0086). The final rule would not change the burden associated with these reports. The information requested in section 211.44 on international assets is collected in the Country Exposure Reports (FFIEC 009/009a; OMB No. 7100–0035) and the burden for this report also remains unchanged.

No comments specifically addressing the collections of information were received.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding any aspect of this collection of information, including suggestions for reducing the burden may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0036, 7100–0128, 7100–0086 or 7100–0035), Washington, DC 20503.

Plain Language

Section 722 of the Gramm–Leach–Bliley Act requires each federal banking agency to use plain language in all proposed and final rules published after January 1, 2000. Toward this end, the Board used a variety of plain language techniques in drafting this amendment. The Board invited comments on how to make the changes proposed by this rulemaking easier to understand. No commenters addressed this issue. Accordingly, no changes were made to the proposed style or format.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Board is amending 12 CFR part 211 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, 3109 *et seq*

2. Sections 211.41 through 211.45 are revised to read as follows:

§ 211.41 Authority, purpose, and scope.

(a) *Authority*. This subpart is issued by the Board of Governors of the Federal Reserve System (Board) under the authority of the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX, 97 Stat. 1153) (International Lending Supervision Act); the Federal Reserve Act (12 U.S.C. 221 *et seq.*) (FRA), and the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) (BHC Act).

(b) *Purpose and scope*. This subpart is issued in furtherance of the purposes of the International Lending Supervision Act. It applies to State banks that are members of the Federal Reserve System (State member banks); corporations organized under section 25A of the FRA (12 U.S.C. 611 through 631) (Edge Corporations); corporations operating subject to an agreement with the Board under section 25 of the FRA (12 U.S.C. 601 through 604a) (Agreement Corporations); and bank holding companies (as defined in section 2 of the BHC Act (12 U.S.C. 1841(a)) but not including a bank holding company that is a foreign banking organization as defined in § 211.21(o).

§ 211.42 Definitions.

For the purposes of this subpart:

(a) *Administrative cost* means those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(b) *Banking institution* means a State member bank; bank holding company; Edge Corporation and Agreement Corporation engaged in banking. Banking institution does not include a foreign banking organization as defined in § 211.21(o).

(c) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(d) *International assets* means those assets required to be included in banking institutions' *Country Exposure Report* forms (FFIEC No. 009).

(e) *International loan* means a loan as defined in the instructions to the *Report of Condition and Income* for the respective banking institution (FFIEC Nos. 031 and 041) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(f) *Restructured international loan* means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) A new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(g) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

§ 211.43 Allocated transfer risk reserve.

(a) *Establishment of Allocated Transfer Risk Reserve*. A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the Board in accordance with this section.

(b) *Procedures and standards*–(1) *Joint agency determination*. At least annually, the Federal banking agencies

shall determine jointly, based on the standards set forth in paragraph (b)(2) of this section, the following:

(i) Which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) The amount of the ATRR for the specified assets; and

(iii) Whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR*–(i) *Evaluation of assets.* The Federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(1) Such obligors have failed to make full interest payments on external indebtedness; or

(2) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(3) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) Whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR.* (A) In determining the amount of the ATRR, the Federal banking agencies shall consider:

(1) The length of time the quality of the asset has been impaired;

(2) Recent actions taken to restore debt service capability;

(3) Prospects for restored asset quality; and

(4) Such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be ten percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be fifteen percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies.

(3) *Board notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the Board shall notify each banking institution holding assets subject to an ATRR:

(i) Of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) That an ATRR established for specified assets may be reduced.

(c) *Accounting treatment of ATRR*–(1) *Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Loan and Lease Losses, and shall deduct the ATRR from ''gross loans and leases'' to arrive at ''net loans and leases.'' The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. For banks, consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of *Consolidated Reports of Condition and Income* (FFIEC 031 and 041). For bank holding companies, the consolidation shall be in accordance with the principles set forth in the ''Instructions to Consolidated Financial Statements for Bank Holding Companies'' (Form F.R. Y–9C). Edge and Agreement corporations engaged in banking shall report in accordance with instructions for preparation of the Report of Condition for Edge and Agreement Corporations (Form F.R. 2886b).

(4) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Loan and Lease Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset; provided, that only those international assets that may be charged to the Allowance for Loan and Lease Losses pursuant to generally accepted accounting principles may be written down by a charge to the Allowance for Loan and Lease Losses. However, the Allowance for Loan and Lease Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the Board or, at any time, by writing down such amount of the international asset for which the ATRR was established.

§ 211.44 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98–181, 97 Stat. 1153) (ILSA), a banking institution shall submit to the Board, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA, a banking institution shall submit to the Board information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the Board on request.

(b) *Procedures.* The format, content and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the Federal banking agencies. The requirements to be prescribed by the Federal banking agencies may include changes to existing reporting forms (such as the Country Exposure Report, form FFIEC No. 009) or such other requirements as the Federal banking agencies deem appropriate. The Federal banking agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the Federal banking agencies' judgment, have *de minimis* holdings of international assets.

(c) *Reservation of authority.* Nothing contained in this rule shall preclude the Board from requiring from a banking institution such additional or more frequent information on the institution's holding of international assets as the Board may consider necessary.

§ 211.45 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes the amount of the fee exceeding the administrative cost over the effective life of the loan.

(b) *Accounting treatment.* Subject to paragraph (a) of this section, banking institutions shall account for fees on international loans in accordance with generally accepted accounting principles.

By order of the Board of Governors of the Federal Reserve System, January 6, 2003.

Jennifer J. Johnson

Secretary of the Board

[FR Doc. 03–385 Filed 1–8–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Micro Chemical, Inc., to Micro Beef Technologies LTD and to correct the sponsor's mailing address.

DATES: This rule is effective January 9, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *dnewkirk@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Micro Chemical, Inc., Amarillo, TX 79105, has informed FDA of a change of name and mailing address to Micro Beef Technologies LTD, P.O. Box 9262, Amarillo, TX 79105. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect these changes.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for ''Micro Chemical, Inc.'' and in the table in paragraph (c)(2) by revising the entry for ''047126'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Micro Beef Technologies LTD, P.O. Box 9262, Amarillo, TX 79105.	047126
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
047126	Micro Beef Technologies LTD, P.O. Box 9262, Amarillo, TX 79105
* *	* * *

Dated: December 31, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–359 Filed 1–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of address for Pennfield Oil Co.

DATES: This rule is effective January 9, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967; e-mail: dnewkirk@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68137, has informed FDA of a change of address to 14040 Industrial Rd., Omaha, NE 68144. Accordingly, the agency is amending the regulations in 21 CFR 510.600 to reflect the change of sponsor's address.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A), because it is a rule of ''particular applicability.'' Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for ''Pennfield Oil Co.'' and in the table in paragraph (c)(2) by revising the entry for ''053389'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144.	053389
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
053389	Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144
* *	* * *

Dated: December 31, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–373 Filed 1–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–131]

RIN 2115–AA97

Safety and Security Zones: Drilling and Blasting Operations, HubLine Project, Captain of the Port, Boston, MA

AGENCY: Coast Guard, (DOT).

ACTION: Temporary final rule; request for comments; correction.

SUMMARY: This document corrects the temporary final rule; request for comments published in the **Federal Register** on December 9, 2002, creating temporary safety and security zones around the Drillboat No. 8 and Lablift IV to protect the public from hazards associated with drilling and blasting operations and to protect the vessels and the public from possible acts of terrorism. Due to heavy weather conditions and better information as to the makeup of the ocean floor in the area, contractors with the Hubline Gas Pipeline Project decided to replace the vessels Drillboat No. 8 and Lablift IV with one vessel, the lift barge Kaitlyn Eymard. This correction amends the temporary final rule to reflect the change of vessels that the security and safety zones are established to protect.

DATES: The temporary final rule published in the **Federal Register** is effective from November 18, 2002 through February 28, 2003. These corrections to that rule are effective December 24, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule; request for comments; correction, contact Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard published a temporary final rule; request for comments in the **Federal Register** on December 9, 2002 (67 FR 72840). This rule added temporary section 165.T01–131 to part 165 of Title 33 Code of Federal Regulations creating temporary safety and security zones around the Drillboat No. 8 and the Lablift IV from November 18, 2002 through February 28, 2003.

Need for Correction

As published, the vessels named in the temporary final rule have been changed. Due to heavy weather conditions and better information as to the makeup of the ocean floor in the area, contractors with the Hubline Gas Pipeline Project determined that use of a single vessel, the lift barge Kaitlyn Eymard, would be safer and more effective than using two vessels, Drillboat No. 8 and Lablift IV, as currently identified in the temporary final rule. This rule removes the Drillboat No. 8 and the Lablift IV and replaces it with the lift barge Kaitlyn Eymard.

Correction of Publication

In temporary final rule, FR Doc. 02–30928, published on December 9, 2002 (67 FR 72840), make the following corrections:

1. On page 72840, in the first column, on lines 25, 38, and 41, in the second column, line 60, and in the third column, lines 18 and 29, on page 72841 first column, line 24, third column, line 57, and on page 72842, first column, lines 2, 5, and 14, replace the words ''Drillboat No. 8 and Lablift IV'' with ''Kaitlyn Eymard''.

2. On page 72840, first column, lines 24, 31, and 37, second column, lines 59 and 67, and third column, lines 23, 31, and 43, on page 72841, in the third column, line 62, replace the word ''vessels'' with ''vessel''.

3. On page 72840, first column, lines 24, 28, and 35, second column, line 64, third column, lines 23, 28, 30, 40, 41, 53, and 54, on page 72841, first column, lines 23, 37, and 40, second column, line 2, third column, lines 50 and 55, and on page 72842, first column, line 12, replace the word ''zones'' with ''zone''.

4. On page 72840, first column, line 33, and third column, line 8 replace, ''800–PSI'' with ''high pressure''.

5. On page 72840, in the first column, on lines 30 and 35, and in third column, line 41, replace the word ''these'' with ''this''.

6. On page 72840, in the first column, on lines 35 and 42, in the second column, lines 65 and 67, in the third column, lines 2 and 40, and on page 72841, in the first column, on line 25, replace the word ''are'' with ''is''.

7. On page 72840, in the first column, on line 42 and in the third column, on line 2, replace the words ''they'' with ''it''.

8. On page 72840, in the third column, on line 24, replace the word ''them'' with ''it''.

9. On page 72840, in the second column, on line 65, replace the words ''drill barges'' with ''vessel''.

10. On page 72840, in the third column, on line 19, replace the words ''drill vessels themselves'' with ''vessel itself''.

11. On page 72840, in the third column, on line 44, replace the word ''each'' with ''the''.

12. On page 72840, in the third column, on line 50, replace the word ''in'' with ''is''.

13. On page 72840, in the second column, on line 64, replace the word ''affect'' with ''affects''.

14. On page 72840, third column, line 45, replace the word ''each'' with the word ''the''.

Dated: December 24, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 03–314 Filed 1–8–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[GU02–01; FRL–7433–5]

Clean Air Act Interim Approval of the Alternate Permit Program; Territory of Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to grant interim approval of the alternate permit program submitted by the Territory of Guam (Guam). In EPA's November 13, 1996 direct final rule, EPA granted Guam, as well as owners and operators of certain sources within Guam, an exemption from Title V requirements on the condition that Guam promulgate and administer an approved alternative permit program. EPA granted these conditional exemptions under the authority of section 325 of the Clean Air Act (Act). Interim approval of Guam's alternate permit program will allow sources to be permitted under an approved alternate permit program while also requiring Guam to make additional submissions to fulfill all of the requirements of the conditional exemption.

DATES: The direct final rule for Guam is effective on April 9, 2003 unless adverse

or critical comments are received by March 10, 2003. If EPA receives such comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Mail comments to Gerardo Rios, Chief of the Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted program and other supporting information used in evaluating the alternate permit program are available for inspection during normal business hours at the following location: Pacific Insular Area Program, U.S. EPA-Region IX (CMD–5), U.S. EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Ben Machol, EPA Region IX, at (415) 972–3770, (*Machol.Ben@epa.gov*), Pacific Insular Area Program, or Robert Baker, at (415) 972–3979, Permits Office, Air Division, at the EPA-Region IX address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Action and Implications
A. Interim Approval of Guam's Exemption Request
B. Expiration and Revocation of the Exemption in 40 CFR 69.13(a)
C. Other Terms of Conditional Exemption Continue Unchanged
D. Interaction of Part 71 and Part 69
III. Administrative Requirements

I. Background

Section 325(a) of the Act authorizes the Administrator of EPA, upon petition by the Governor, to exempt any person or source or class of persons in Guam, from any requirement of the Act except for requirements of section 110 and Part D of subchapter I of the Act (where necessary to attain and maintain the National Ambient Air Quality Standards), and section 112. An exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.

The Governor of Guam submitted a petition pursuant to section 325(a) of the Act for an exemption from Title V of the Act. Title V requires states, including Guam, to adopt and submit to EPA a Title V operating permit program for major sources and certain other stationary sources. If any state does not adopt an operating permit program, Title V requires EPA to apply certain sanctions within that area and to promulgate, administer, and enforce a federal operating permit program for such area. EPA proposed regulations to implement a federal operating permit program on April 27, 1995 (60 FR 20804) and promulgated the final rule on July 1, 1996, at 40 CFR part 71 (61 FR 34202) (part 71). Title V requires that sources located in states that do not adopt a Title V permitting program obtain a federal operating permit from the EPA. Guam requested an exemption from the Title V program, but committed to achieving several of the goals of Title V by developing an alternate operating permit program.

On November 13, 1996, EPA issued a direct final rule (61 FR 58289), codified at 40 CFR 69.13 (the conditional exemption) in which EPA granted the government of Guam an exemption from the requirement to adopt a Title V program on the condition that Guam adopt and implement a local alternate operating permit program. EPA also granted owners or operators of certain sources on Guam a conditional exemption from the requirement to apply for a federal Title V operating permit under part 71. These certain owners and operators of sources are exempted from Title V requirements so long as they obtain, by January 13, 2003, an operating permit under an alternate operating program approved by EPA. That rulemaking did not waive part 71 permitting requirements for owners or operators of solid waste incinerators required to obtain a Title V operating permit under section 129(e) of the Act or of major sources under section 112 of the Act required to obtain Title V permits. That rulemaking also does not waive or exempt the government of Guam, or owners or operators of sources located in Guam, from complying with all other applicable Clean Air Act provisions.

On January 13, 1999, Guam submitted an alternate permit program, consisting of Guam's Air Pollution Control Standards and Regulations (Guam's Regulations), along with supporting documents and authorizing legislation. Guam's Regulations set forth (1) the requirements for Guam's proposed alternate permit program, which applies to sources that would be subject to Title V without the exception provided in the conditional exemption; and (2) the requirements for Guam's purely local air permit program, which applies to sources that are not subject to requirements of Title V of the Act. The entire alternate permit program was also submitted as a SIP revision, including matters not required to be submitted as a SIP.

On July 12, 1999, Guam sent a clarifying letter, withdrawing the SIP submission and setting forth which parts of Guam's Air Pollution Control Standards and Regulations are to be considered part of the alternate permit program, and further stating that the SIP revision would be submitted to EPA after all comments were received from EPA.

II. Final Action and Implications

A. Interim Approval of Guam's Alternate Permit Program

EPA is granting interim approval of the alternate permit program submitted by Guam. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to grant interim approval to Guam's part 69 program if adverse comments are filed. This rule will be effective on April 9, 2003 without further notice unless we receive adverse comment by March 10, 2003. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

1. Alternate Permit Program Meets Most, But Not All, of the Conditional Exemption Requirements

The alternate permit program submitted by Guam meets most of the requirements of the conditional exemption. The technical support document contains a more detailed discussion of the criteria and EPA's evaluation.

(a). Fees

40 CFR 69.13(b)(2) requires that the program shall provide for the collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of the program, and that it ensure that funds are used solely to support the program. Guam's alternate permit program provides for the collection of fees from permitted sources, in an amount that will pay for the cost of operation of the program, and it ensures that the funds will be used solely to support the program activities authorized under Guam's Air Pollution Control Act. But Guam's alternate

permit program treats fees in a manner which EPA would not allow under a Title V program, because a unified fund is established for fees which are collected under the alternate permit program submitted to EPA (approved program fees) and fees which are collected under the completely local air permit program (local air program fees), and money from this unified fund will be commingled for use on both the approved program and the local program.

A Title V operating permit program is not allowed to commingle fees between the Title V program and the non-federal local program because non-federal local program fees are often used as part of the state matching grant required to receive federal funds. See the July 21, 1994 Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, ''Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants,'' which can be found at *http://www.epa.gov/ttn/oarpg/t5/memoranda/grantmem.pdf*.

The Administrator has exercised her authority under Section 325 of the Act and granted Guam a conditional exemption from the Title V requirements. In addition, the Administrator has the authority to waive the Title V requirement concerning commingled fees because Congress made different rules for grants and matching fees in ''Insular Areas'' such as Guam, American Samoa, and CNMI. Congress authorized grants to be consolidated, and for agencies to waive any requirements for matching funds otherwise required by law to be provided by the Insular Area involved. See 48 U.S.C. 1469a (2002). More specifically, Congress authorized the Administrator of EPA to modify the maintenance or level of effort requirements for assistance grants. See Act August 27, 1986, Public Law 99–396, section 12(a), 100 Stat. 841.

EPA believes that it is appropriate to allow Guam's consolidated treatment of funds for the following reasons. The unique situation of the territories has prompted Congress to allow consolidation of grants and waiver of matching fund requirements in Insular Territories such as Guam, in recognition of factors which are relevant here. One purpose of granting a section 325 conditional exemption was to allow for the development of a streamlined part 69 program which would be protective of air quality and designed in a manner appropriate to the unique conditions of Guam. Guam EPA (GEPA) shall be implementing the 40 CFR part 69 alternate permit program and the purely local program as a combined program. Maintaining the federal program separate from the local activities authorized under Guam's Air Pollution Control Act would require burdensome recordkeeping and reporting procedures, and the increased burden would be an unnecessary drain on the resources of GEPA which would not contribute to better air quality. Most critical, Guam's law and regulations require that fees collected under the combined program can only be used to support the program activities authorized under Guam's Air Pollution Control Act. Taking all of these factors into consideration, EPA finds that Guam's program, meets the requirements of 40 CFR 69.13(b)(2).

(b). Scope

EPA notes that Guam's Regulations Section 1102.11 (Variances) is not part of the approved alternate permit program. Variances are not available for the part 69 program. We also note that section 1102.11 by its very terms would not apply to the alternate permit program because section 1102.11(b) states ''Under no circumstances shall a variance from any federal regulations or federally enforceable air pollution control permit terms or conditions be granted.'' All owners or operators of a source wishing to qualify for the exemption from the permitting requirements of 40 CFR part 71 must obtain an operating permit under Guam's approved alternate permit program.

(c). Regular Inspections

40 CFR 69.13(b)(8) requires a system of regular inspections of permitted sources. Section 1104.13 of Guam's Regulations provides that sources required to obtain a permit are subject to regular inspections for compliance. 40 CFR 69.13(b)(8) also requires a system to identify unpermitted major sources, and guidelines for appropriate responses to violations. The submission packet by Guam included a program description discussing inspection, compliance, enforcement and penalties.

A system of regular inspections requires that Guam provide adequate inspector staff and training and develop appropriate internal procedures to inspect all permitted sources. EPA also expects that Guam will develop appropriate guidelines for responding to violations that are discovered. EPA will continue to assist Guam by providing guidance and manuals for inspecting permitted sources. EPA reserves the right to revoke the exemption in its entirety through rulemaking if Guam does not provide adequate inspector staff and training and develop appropriate internal procedures to inspect permitted sources so that it is adequately administering and enforcing the alternate operating permit program.

2. Alternate Permit Program Does Not Meet All Requirements

Two key requirements of the conditional exemption were not met by Guam's submission.

(a). EPA Ability To Reopen for Cause

40 CFR 69.13(b)(10) requires that the program allow EPA to reopen a permit for cause. If EPA provides Guam with written notice that a permit must be reopened for cause, Guam must issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. If Guam fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and reissue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment. The language in Guam's submission does not match this requirement that Guam must issue a permit that resolves EPA's concerns within 180 days, or EPA will terminate, modify or revoke and reissue the permit under part 71.

Section 1104.16 of Guam's Regulations states that EPA has authority to act under 40 CFR part 71 if EPA lodges an objection concerning GEPA issuing a permit, permit renewal or permit amendment and that objection is not resolved within 180 days, but section 1104.16 does not clearly cover the situation where a permit is reopened and the action is to terminate or suspend the permit.

Under sections 1104.18(f) and 1104.18(g) of Guam's Regulations, it can take up to 360 days to terminate, suspend, reopen or amend the permit in accordance with EPA's objection. Under section 1104.18(f), GEPA has up to 180 days to submit a proposed determination. Under section 1104.18(g), if EPA then objects, GEPA has up to 180 additional days to terminate, suspend, reopen or amend the permit in accordance with EPA's objection. Further, in the case of termination or suspension of a permit, sections 1104.18 does not clearly specify that EPA shall itself have authority to act under part 71. For final approval of the alternate permit program, section 1104.18 must be amended to conform with the requirements of 40 CFR 69.13(b)(10).

(b). SIP Revision

Forty CFR 69.13(c) states that Guam shall no later than March 15, 1999 submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant the exemption authorized in 40 CFR 69.13.

Guam submitted a revision to its SIP by the applicable deadline but, at EPA's request, GEPA issued a clarification letter on July 12, 1999 in which it withdrew the SIP submission. EPA agreed at that time to defer action on the required SIP language until GEPA received comments from EPA on the revision. EPA has now provided comments on the alternate permit program, and Guam can thus proceed in properly adopting and submitting a SIP revision which meets the requirements of 40 CFR 69.13(c).

(c). Other Changes

Major deficiencies are discussed above. In addition, EPA has recommended that GEPA take certain steps to clarify the regulatory language and strengthen the program. The technical support document contains a more detailed discussion of these recommended changes.

3. Reason for Interim Approval of Program

The alternate operating permit program submitted by Guam meets most of the requirements of the conditional exemption from Title V requirements, but the deficiencies discussed above must be corrected before EPA can grant full approval of the alternate permit program. EPA is confident that these deficiencies can be corrected by Guam, but there remains a question of timing. If the owner or operator of any source has not obtained an operating permit under an alternate operating permit program approved by EPA for Guam by January 13, 2003, the exemption for such source shall expire and the source shall become subject to the permitting requirements of 40 CFR part 71 on that date.

To ensure that there is adequate time to review and issue permit applications under an EPA-approved program before the January 13, 2003 deadline, EPA has decided to grant interim approval of the program. This interim approval will allow Guam to simultaneously move forward with permitting sources while correcting the deficiencies identified above. If Guam has not corrected the deficiencies in the alternate permit program within two years, then the interim approval of the alternate program shall expire and the owner or operators of such sources shall become subject to the permitting requirements of 40 CFR part 71 on that date.

B. Expiration and Revocation of the Conditional Exemption in 40 CFR 69.13(a)

The conditional exemption set forth circumstances under which the exemption shall expire or may be revoked. Those circumstances set forth in the conditional exemption continue unchanged. Guam's alternate program, which is receiving interim approval pursuant to today's rule, will be implemented within the framework of the conditional exemption as follows:

(1) If Guam does not submit a revised alternate operating permit program within 18 months of the effective date of this interim approval, then interim approval of the alternate permit program shall expire with no further rulemaking and 40 CFR Part 71 shall become effective for all subject sources in Guam.

(2) If Guam submits revisions within 18 months of the effective date of this interim approval, the interim approval will continue for an additional 6 months while EPA reviews the amended program to determine if it qualifies for full approval. Unless EPA approves the amended program, the interim approval will expire with no further rulemaking two years after the effective date of this interim approval. EPA will approve the amended program and provide notice of the approval in the **Federal Register** if the amended program meets all the conditions of the exemption. In the event that EPA disapproves the program because the program does not meet the requirements, EPA will revoke the exemption at 40 CFR 69.13(a)(1) by rulemaking.

C. Other Terms of Conditional Exemption Continue Unchanged

EPA is granting interim approval only to those portions of Guam's Regulations that are necessary to implement Guam's alternate permit program, required by the conditional exemption as part of the exemptions from the Title V program. This approval does not constitute approval under any other provisions of the Act. Except as provided herein, all other terms and conditions of the conditional exemption continue unchanged. The scope of the exemptions set forth in the conditional exemption continues unchanged. EPA continues to reserve its authority to revoke or modify the exemptions in whole or in part.

D. Interaction of Part 71 and Part 69

Approval of Guam's program is occurring close to the January 13, 2003 deadline set forth in part 69. As a result, most sources will be unable to obtain a permit under an EPA approved program by the January 13, 2003 deadline, as required by § 69.13(d)(3). Because the failure to meet the January 13, 2003 deadline is not, in these cases, caused by the failure of the applicant to timely submit information required or requested to process the application, GEPA has asked EPA to clarify how the provisions of part 71 will be applied to sources which submit a timely and complete permit application to GEPA but which have not obtained a permit by January 13, 2003.

(1) Requirements of Guam's program: Guam's program requires that major sources must submit permit applications within 6 months of the effective date of Guam's alternate program, PSD sources and NSPS sources must submit permit applications within 10 months, and NESHAP and all other sources must submit permit applications within 12 months of the effective date of Guam's alternate program. See Guam's Regulations at section 1104.10, and appendix A to section 1104.10. These deadlines match or exceed the requirements of parts 70 and 71. See 40 CFR 70.4(b)(11)(i) and 71.5(a)(1)(i). Guam shall approve or deny the application within twelve months after receipt of a complete application, although shorter actions times apply in some instances. See Guam's Regulations at section 1104.6(j). Guam's program requires action from the regulatory agency that matches or exceeds the requirements of parts 70 and 71. See 40 CFR 70.4(b)(11)(ii), 71.7(a)(2) and 71.4(i).

(2) Sources become subject to part 71 on January 13, 2003: Sources without permits become subject to part 71 on January 13, 2003. Pursuant to 40 CFR 69.13(d)(3), part 71 requirements will apply to all sources which do not have permits under an EPA approved program on January 13, 2003. If the owners or operators of a source which was eligible for the conditional exemption do not have a permit under Guam's approved part 69 program on January 13, 2003, and do not have a part 71 permit, then they must submit a timely and complete part 71 application to EPA, and ''timely'' means submitted to EPA within 12 months. See 40 CFR 71.5(a)(1).

(3) Approval of part 70 programs results in EPA suspension of part 71 permit issuance: Interim approval of Guam's program should affect the need

for sources to obtain part 71 permits. Sources in areas with approved part 70 programs are not permanently required to submit part 71 applications to EPA. Forty CFR 71.4(l) states that the Administrator will suspend the issuance of part 71 permits promptly upon publication of notice of approval of a State or Tribal operating permits program that meets the requirements of part 70. Forty CFR 71.4(l)(1) states that the Administrator will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program. EPA thus suspends issuance of part 71 permits once a part 70 program is authorized. A program that meets the requirements of part 70 can be a program with full approval, or a program with interim approval. Section 71.4(l) states that the Administrator may retain jurisdiction over the part 71 permits for which the administrative or judicial review process is not complete and will address this issue in the notice of state program approval. If the program being granted interim approval in this action were a part 70 program, then EPA would suspend the issuance of part 71 permits, and address in the notice of program approval the issue of part 71 permits for which the administrative process is not complete.

(4) Interpretation of part 71 regulations in light of the conditional exemption: EPA believes that the part 71 regulations should be interpreted in a manner which is consistent with the conditional exemption granted to Guam under section 325 of the Act. Guam requested and received a conditional exemption from the need to implement a program which meets all of the requirements of part 70. Although Guam is not required to implement a part 70 program, it must have a program which meets the requirements set forth at 40 CFR 69.13. Furthermore, while Guam's alternate permit program reflects Guam's unique conditions and circumstances, it is the functional equivalent of a part 70 permit program. It is consistent with the regulatory framework therefore, to consider that Guam's alternate permit program approved in today's rule ''meets the requirements of part 70'' for the purposes of 40 CFR 71.4(l). Accordingly, EPA will suspend the issuance of part 71 permits for sources which are eligible for the conditional exemption upon Guam's program being granted interim approval, provided that the owners and operators of such sources apply for and obtain permits under Guam's approved operating permit program, in the manner specified below.

(5) Timing and source requirements upon approval of Guam's program. Owners and operators of sources eligible for the conditional exemption that become, pursuant to 40 CFR 69.13(d)(3), automatically subject to part 71 on January 13, 2003 because such source does not have a permit issued under Guam's EPA-approved permit shall be subject to the following: (1) Owners/operators of such sources must submit a timely and complete application to Guam EPA by the applicable deadline specified in Guam's approved program. (2) Owners/operators of such sources must obtain a federally enforceable operating permit issued pursuant to Guam's alternative operating permit program within the time periods specified by that program.

Owners and operators of sources which under 40 CFR 69.13(d)(3) are automatically subject to part 71 on January 13, 2003 do not need to submit a part 71 permit application to EPA so long as they meet all of the above criteria. Owners and operators of sources which under 40 CFR 69.13(d)(3) are automatically subject to part 71 on January 13, 2003 and which do not meet all of the above criteria remain subject to the requirement to apply for and obtain a part 71 permit. Owners or operators of sources excluded from the conditional exemption (see 40 CFR 69.13(a)(4)) remain subject to the requirement to apply for and obtain a part 71 permit.

III. Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law.

This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law.

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000).

This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Act.

This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR parts 69 and 70. 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.

In reviewing State operating permit programs submitted pursuant to Title V of the Act, EPA will approve State programs provided that they meet the requirements of the Act and EPA's regulations codified at 40 CFR part 70 or, in this case, 40 CFR part 69. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 69

Environmental protection, Air pollution control, Guam.

Dated: December 17, 2002.

Alexis Strauss,

Acting Regional Administrator, Region 9.

40 CFR part 69 is amended as follows:

PART 69—[AMENDED]

1. The authority citation for part 69 continues to read as follows:

Authority : Sec. 325, Clean Air Act, as amended (42 U.S.C. 7625–1).

Subpart A—Guam

2. Subpart A is amended by adding § 69.13(f) to read as follows:

§ 69.13 Title V conditional exemption.

* * * * *

(f) Interim approval of alternate permit program.

(1) The following sections of Guam's Air Pollution Control Standards and Regulations are granted interim approval as Guam's alternate permit program:

1101.1(a) Administrator
1101.1(d) Air pollutant
1101.1(e) Air pollution
1101.1(i) Air pollution emission source
1101.1(r) CFR
1101.1(s) Clean Air Act
1101.1(t) Commenced
1101.1(v) Compliance Plan
1101.1(aa) Emission
1101.1(cc) Emissions unit
1101.1(ii) Fugitive Emissions
1101.1(jj) GEPA
1101.1(kk) Hazardous air pollutant
1101.1(xx) Owner or operator
1101.1(zz) Permit
1101.1(bbb) Person
1101.1(eee) Potential to emit
1101.1(iii) Regulated air pollutant
1101.1(jjj) Responsible official
1101.1(ooo) Source
1101.1(uuu) USEPA
1101.1(vvv) USEPA Administrator
1102.3 Certification
1102.7 Public Access to Information
1102.9 Prompt Reporting of Deviations
1104.1 Definitions
(a) Administrative Permit Amendment
(b) AP–42
(c) Applicable requirement
(d) Federal oversight source
(e) Insignificant source
(f) Insignificant sources—Type I
(g) Insignificant sources—Type II
(h) Major source
(i) Minor source
(j) Modification
(k) Pollution prevention
(l) Significant modification
(m) Transition period
1104.2 Applicability
1104.3 General conditions for considering applications
1104.4 Holding and transfer of permit
1104.5(a) Cancellation of Air Pollution Control Permit
1104.6 Air Pollution Control Permit Application
1104.7 Duty to Supplement or Correct Permit Applications
1104.8 Compliance Plan
1104.9 Compliance Certification of Air Pollution Emission Sources
1104.10 Transition Period and Deadlines to Submit First Applications
1104.11 Permit Term
1104.12 Permit Content
1104.13 Inspections
1104.14 Federally-Enforceable Permit Terms and Conditions
1104.15 Transmission of Information to USEPA
1104.16 USEPA Oversight
1104.17 Emergency Provision
1104.18 Permit Termination, Suspension, Reopening, and Amendment
1104.19 Public Participation
1104.20 Administrative Permit Amendment
1104.21 General Fee Provisions
1104.22 Air Pollution Control Special Fund
1104.23 Application Fees for Air Pollution Emission Sources
1104.24 Annual Fees for Air Pollution Emission Sources
1104.25 Penalties and Remedies
1106 Standards of Performance for Air Pollution Emission Sources

(2)(i) If Guam does not submit a revised alternate operating permit program within 18 months of April 9, 2003, then interim approval of the alternate permit program shall expire with no further rulemaking and 40 CFR part 71 shall become effective for all subject sources in Guam.

(ii) If Guam submits revisions within 18 months of April 9, 2003, the interim approval will continue for an additional 6 months while EPA reviews the amended program to determine if it qualifies for full approval. Unless EPA approves the amended program, the interim approval will expire with no further rulemaking two years after April 9, 2003. EPA will approve the amended program and provide notice of the approval in the **Federal Register** if the amended program meets all the conditions of the exemption.

(3) SIP Revision. Guam shall adopt, pursuant to required procedures, and submit to EPA a revision to Guam's SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant the exemption authorized in this § 69.13.

[FR Doc. 03–119 Filed 1–8–03; 8:45 am]

BILLING CODE 6560–50–U

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–75

[FMR Amendment C–1 Corrections]

RIN 3090–AH45

Federal Management Regulation; Real Property Policies Update; Corrections

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Correcting amendments.

SUMMARY: The General Services Administration is issuing amendments to FMR Amendment C–1, Real Property Policies Update, published in the **Federal Register** at 67 FR 76820, December 13, 2002, to correct the dollar thresholds associated with negotiated sales and explanatory statements to be consistent with existing statutes.

DATES: Effective Date: January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, Office of Governmentwide Policy, General Services Administration, by phone at (202) 501–1737 or by e-mail at *stanley.langfeld@gsa.gov.*

Corrections

In the final rule document appearing in the issue of December 13, 2002, make the following corrections:

§ 102–75.880 [Corrected]

1. On page 76864, third column, under § 102–75.880, correct paragraph (a) by removing ''$50,000'' and adding ''$15,000'' in its place.

§ 102–75.885 [Corrected]

2. On page 76864, third column, under § 102–75.885, correct paragraph (b) by removing ''$700,000'' and adding ''$100,000'' in its place.

§ 102–75.905 [Corrected]

3. On page 76865, second column, under § 102–75.905, correct paragraphs (a) and (c) by removing ''$700,000'' and adding ''$100,000'' in its place.

Dated: January 2, 2003.

Stanley C. Langfeld,

Director, Real Property Policy Division, Office of Governmentwide Policy.

[FR Doc. 03–377 Filed 1–8–03; 8:45 am]

BILLING CODE 6820–23–P

Proposed Rules

Federal Register
Vol. 68, No. 6
Thursday, January 9, 2003

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–02–007]

RIN 0581–AC24

Requirements for the USDA ''Produced From'' Grademark for Shell Eggs

AGENCY: Agricultural Marketing Service, (USDA).

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the regulations governing the voluntary shell egg grading program by clarifying the requirements for using the ''Produced From'' grademark for shell eggs. Use of this grademark began in April 1998. Since then, questions have arisen regarding the regulatory language. This proposal would clarify the language of the ''Produced From'' grademark requirements in the regulations by removing the reference to continuous supervision.

DATES: Comments must be received on or before March 10, 2003.

ADDRESSES: Send written comments to David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, Room 3944-South, 1400 Independence Avenue, SW., Washington, DC 20250–0259. Comments may be faxed to (202) 690–0941.

State that your comments refer to Docket No. PY–02–007 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, (202) 720–3271.

SUPPLEMENTARY INFORMATION:

Background

AMS administers a voluntary grading program for shell eggs under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). Any interested person, commercial firm, or government agency that applies for service must comply with the terms and conditions of the regulations and must pay for the services rendered. AMS graders monitor processing operations and verify the grade and size of eggs packed into packages bearing the USDA grademark.

Current regulations allow for the use of several different grademarks to identify consumer-pack USDA graded shell eggs or products prepared from them. The regulations also include the eligibility requirements for eggs to be identified with an official grademark.

Proposed Changes

A ''Produced From'' grademark was added to the regulations, effective April 20, 1998 (63 FR 13329, March 19, 1998). As currently written, the regulations state that the ''Produced From'' grademark may be used to identify products for which there are no official U.S. grade standards (*e.g.*, pasteurized shell eggs), provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade AA or A shell eggs under the continuous supervision of a grader.''

The intent of the regulations was to ensure that the eggs used to produce the products were U.S. Consumer Grade AA or A. One of the requirements for eggs to be identified with an official grademark is that the eggs be graded under the supervision of a grader.

The regulations could be interpreted to mean that the products that are produced from the U.S. Consumer Grade AA or A shell eggs must also be produced under continuous supervision. However, this was not the Department's intent.

The Agency has determined that in order to clarify the regulatory language, the reference to continuous supervision regarding the ''Produced From'' grademark should be removed.

Executive Order 12866

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

Regulatory Flexibility

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

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000 (13 CFR 121.201). Approximately 625,000 egg laying hens are needed to produce enough eggs to gross $9,000,000.

Currently, the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) authorizes a voluntary grading program for shell eggs. Shell egg processors that apply for service must pay for the services rendered. These user fees are proportional to the volume of shell eggs graded, so that costs are shared by all users. Plants in which these grading services are performed are called official plants. Shell egg processors who do not use USDA's grading service may not use the USDA grade shield. There are about 625 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 175 are official plants that use USDA's grading service and would be subject to this proposed rule. Of these 175 official plants, 57 meet the small business definition.

This proposed amendment would benefit the processors in the industry, both large and small. It is intended to clarify a regulatory provision which has caused some confusion and involves no additional costs.

Executive Orders 12988

This proposed 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. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection and recordkeeping requirements included in this rule, and there are no new requirements. The assigned OMB control number is 0581–0128.

List of Subjects in 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 56 be amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 56.36 [Amended]

2. In § 56.36, paragraph (a)(3) is amended by adding a period after the word ''eggs'' the second time it appears in the paragraph and by removing the words ''under the continuous supervision of a grader.''

Dated: December 26, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–369 Filed 1–8–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

7 CFR Parts 1951, 1962, and 1965

RIN 0560–AG50

Farm Loan Programs Account Servicing Policies—Elimination of 30-Day Past-Due Period

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to amend its regulations to eliminate the 30-day past-due period prior to a determination that the borrower is delinquent and clarify the use of the terms ''delinquent'' and ''past due'' with regard to direct loan servicing and offset. Because the regulation only allows debt writedown after a borrower becomes delinquent, this proposed change would allow Farm Loan Program (FLP) borrowers to receive debt writedown on the day after a missed payment, assuming all other primary loan servicing criteria are met, instead of waiting 31 days.

DATE: Comments on this rule must be submitted by March 10, 2003, to be assured consideration.

ADDRESSES: Submit written comments to Director, Farm Loan Programs, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, SW., Washington, DC 20250–0523. Comments will be available for public inspection weekdays from 8 a.m. to 4:15 p.m., eastern standard time, at the above address.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, telephone (202) 690–4014; electronic mail: *mike_cumpton@wdc.fsa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. This rule will allow borrowers in financial difficulty to work with the Agency to cure the delinquency at an earlier time. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Evaluation

It is the determination of FSA that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) except as specifically stated in this rule, no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before seeking judicial review.

Executive Order 12372

For reasons contained in the notice related to 7 CFR part 3015, subpart V (48 FR 29115 June 24, 1983) the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost and benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Paperwork Reduction Act

The amendments to 7 CFR part 1951 contained in this rule require no revisions to the information collection requirements that were previously approved by OMB under control numbers 0575–0119 and 0560–0161 according to the provisions of 44 U.S.C. chapter 35. The information collections currently approved by OMB under control number 0560–0171 include the amendment to 7 CFR part 1962 contained in this rule. The amendment to 7 CFR part 1965 contained in this rule requires no revision to the information collection requirements that were previously approved by OMB and assigned control number 0560–0158.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans

10.406—Farm Operating Loans

10.407—Farm Ownership Loans

Discussion of the Proposed Rule

Currently, borrowers are considered ''past-due'' for 30 days after a scheduled FLP payment is not made, after which they are considered ''delinquent''. This is not consistent with the terminology used by FSA Farm Programs (FP) where no ''past-due'' period exists prior to delinquency. For consistency, FSA proposes to amend 7 CFR part 1951, subparts C and S, 7 CFR part 1962, subpart A, and 7 CFR part 1965, subpart A to eliminate the 30-day ''past-due'' period prior to a borrower becoming delinquent. Because 7 CFR part 1951, subpart S only allows debt writedown after a borrower becomes delinquent, this change would allow FLP borrowers to receive debt writedown on the day after a missed payment, assuming all other primary loan servicing criteria are met, instead of waiting 31 days. This will allow servicing to be completed earlier with no additional loss to the government, as the additional accrued interest during the 30 day period is often simply added to the writedown which would have been calculated on the first day the account was ''past-due''. This proposal also will change the definition of the word ''delinquent'' with regard to all servicing and offsets. The rule will not affect the ''90 days past due'' criteria that is currently used to determine initial notice of primary loan servicing under 7 CFR part 1951 subpart S, as this requirement is statutory (7 U.S.C. 1981d).

List of Subjects

7 CFR Part 1951

Account servicing, Credit, Debt restructuring, Loan programs—agriculture, Loan programs-housing and community development.

7 CFR Part 1962

Agriculture, Bankruptcy, Loan programs-agriculture, Loan programs-housing and community development.

7 CFR Part 1965

Loan programs-agriculture, Loan programs-housing and community development, Low and moderate income housing.

Accordingly, 7 CFR chapter XVIII is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

2. Amend § 1951.102 to:

a. Revise paragraph (b)(6)

b. Revise the third sentence of paragraph (b)(13), to read as follows:

§ 1951.102 Administrative Offset.

* * * * *

(b) * * *

(6) *Delinquent or past-due* means a payment that was not made by the due date.

* * * * *

(13) * * * To be feasible the debt must exist and be 90 days past due or the borrower must be in default of other obligations to the Agency, which can be cured by the payment.

* * * * *

Subpart S—Farm Loan Programs Account Servicing Policies

3. Amend § 1951.906 by removing the definition of ''Delinquent borrower'' and adding in its place the definition of ''Delinquent or past-due borrower''.

§ 1951.906 Definitions.

* * * * *

Delinquent or past-due borrower: A borrower who has failed to make all or part of a payment by the due date.

* * * * *

4. Amend the second sentence of § 1951.907 paragraph (c) to read as follows:

§ 1951.907 Notice of loan service programs.

* * * * *

(c) * * * FLP borrowers who are at least 90 days past due will be sent exhibit A of this subpart with Attachments 1 and 2 by certified mail, return receipt requested.* * *

* * * * *

PART 1962—PERSONAL PROPERTY

5. The authority citation for part 1962 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing and Liquidation of Chattel Security

6. Amend § 1962.40 to revise the first sentence of paragraph (b)(2) to read as follows:

§ 1962.40 Liquidation.

* * * * *

(b) * * *

(2) In Farm Loan Programs loan cases, borrowers who are 90 days past due on their payments must receive exhibit A with attachments 1 and 2 or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default.

* * * * *

PART 1965—REAL PROPERTY

7. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

8. Amend § 1965.26 to revise the first sentence of paragraph (b)(2) to read as follows:

§ 1965.26 Liquidation action.

* * * * *

(b) * * *

(2) In Farm Loan Programs loan cases, borrowers who are 90 days past due on their payments, must receive Exhibit A with attachments 1 and 2, or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default.

* * * * *

Dated: December 31, 2002.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

Dated: January 3, 2003.

Thomas C. Dorr,

Under Secretary for Rural Development.

[FR Doc. 03–394 Filed 1–8–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 255 and 399

[Docket Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations; Statements of General Policy

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Proposed rule; notice of petition response date.

SUMMARY: The Department has issued a notice of proposed rulemaking that proposes to readopt and amend its existing rules governing airline computer reservations systems (CRSs) and to clarify the requirements of its Statements of General Policy on travel agency disclosure of any agency service fees. Sabre, one of the CRSs, has filed a petition asking for a fact hearing. The Department is now establishing January 13, 2003, as the due date for responses to Sabre's petition.

DATES: Responses to Sabre's petition are due January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION:

The Department has begun a rulemaking to reexamine whether it should maintain its existing rules governing CRS operations. We issued a notice of proposed rulemaking that set forth our tentative proposals regarding the existing rules and our tentative belief that we should not extend the rules to cover the sale of airline tickets through the Internet. 67 FR 69366 (November 15, 2002). We stated our intent to follow the notice-and-comment procedures established by the Administrative Procedure Act for informal rulemakings. 67 FR 69369. Comments and reply comments on our notice of proposed rulemaking are now due March 16 and May 15, 2003. 67 FR 72869 (December 9, 2002).

On December 23 Sabre filed a petition asking us to hold a ''Fact Hearing.'' Sabre asserts that our notice did not provide an adequate factual basis for our tentative decision that we should maintain the existing rules with some changes. The hearing sought by Sabre would include, among other things, testimony from a Department official on the factual basis underlying these decisions.

Delta Airlines, assuming that answers to Sabre's petition would normally be due January 3, has filed a motion asking that answers be due January 13. Sabre filed its 33-page petition on December 23. Delta contends that it did not receive a copy of the petition until December 30, since Sabre had served it by mail, that Delta would have only two business days to prepare its response if it were required to respond by January 3, and that a 10-day extension would be reasonable. Delta notes that the petition seeks extraordinary relief and raises a number of controversial legal issues.

We believe that Delta's request is reasonable and that responses by other parties would assist our consideration of Sabre's petition. Given the holidays and the unusual nature of Sabre's petition, establishing January 13 as the due date for answers would give the parties an adequate time to respond without delaying the rulemaking. We therefore invite interested persons to file answers by January 13.

Issued in Washington, DC on January 2, 2003.

Kirk K. Van Tine,

General Counsel.

[FR Doc. 03–355 Filed 1–8–03; 8:45 am]

BILLING CODE 4910–63–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Expansion of the Port Limits of Portland, MA

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs regulations pertaining to the field organization of Customs by extending the geographical limits of the port of entry of Portland, Maine, to include the City of Auburn, Maine. This proposed change is being made to provide better service to carriers, importers, and the general public.

DATE: Comments must be received on or before March 10, 2003.

ADDRESSES: Written comments must be submitted to the U. S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at the U.S. Customs Service, 799 9th Street, NW., Washington, DC, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202–572–8768.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Fleming, Office of Field Operations, at 202–927–1049.

SUPPLEMENTARY INFORMATION:

Background

To provide better service to carriers, importers, and the general public, Customs proposes to amend § 101.3(b)(1), Customs regulations (19 CFR 101.3(b)(1)), by extending the geographical limits of the port of entry of Portland, Maine.

Current Port Limits of Portland, Maine

The current port limits of Portland, Maine, as extended by Executive Order (E. O.) 9297 of February 1, 1943 (8 FR 1479), include Portland, Maine, and the territory embracing the municipalities of South Portland, Falmouth, and Cape Elizabeth, in the State of Maine, and Peak, Long, Cliff, Cushing, and Diamond Islands, in the State of Maine.

Proposed Expansion of Port

It is proposed to expand the port limits of the port of entry of Portland, Maine, to include the City of Auburn, Maine.

Customs proposes to include the City of Auburn within the port limits to facilitate the clearance of international cargo at the Auburn Intermodal Facility (''AIF''). AIF is a rail/truck intermodal facility with a high cube, doublestack intermodal terminal worldwide.

If the proposed extension of the Portland, Maine, port of entry limits to include the City of Auburn, Maine, is adopted, the limits of port column adjacent to the listing of Portland, Maine, in the list of Customs ports of entry in § 101.3(b)(1) will be amended accordingly.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Comments

Before adopting this proposal, consideration will be given to any

written comments that are timely submitted to Customs. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5, Treasury Department Regulations (31 CFR 1.5), and § 103.11(b), Customs regulations (19 CFR 102.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

Customs establishes, expands and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

Robert C. Bonner,

Commissioner of Customs.

Approved: January 6, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–432 Filed 1–8–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 103

RIN 1515–AD18

Confidentiality Protection for Vessel Cargo Manifest Information

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to provide that, in addition to the importer or consignee, parties that electronically transmit vessel cargo manifest information directly to Customs 24 or more hours before cargo is laden aboard the vessel at the foreign port may request confidentiality with respect to the name and address of the importer or consignee, related marks and identification numbers that reveal their names and addresses, and the names and addresses of their shippers. These parties must submit to Customs a letter of authorization signed by the importer or consignee with the request for confidentiality. Current regulations allow only the importer or consignee, or an authorized employee, attorney, or official of the importer or consignee, to make such requests.

DATES: Comments must be received on or before February 10, 2003.

ADDRESSES: Written comments (preferably in triplicate), regarding both the substantive aspects of the proposed rule and how it may be made easier to understand, may be submitted to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at the U.S. Customs Service, 799 9th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Burton, Chief, Entry and Carriers Branch, Office of Regulations and Rulings, at (202) 572–8724.

SUPPLEMENTARY INFORMATION:

Background

Under 19 U.S.C. 1431, Customs must make available for public disclosure certain information contained in vessel manifests except when the importer or consignee has requested confidential treatment.

On October 31, 2002, Customs published a final rule document in the **Federal Register** (67 FR 66318) that amended the Customs Regulations pertaining to the inward foreign manifest to provide that Customs must receive from the carrier the vessel's Cargo Declaration (Customs Form (CF) 1302), one document among a few that comprise the manifest, or a Customs-approved electronic equivalent of the cargo declaration, at least 24 hours before the cargo is laden aboard the vessel at the foreign port, and to require that Vessel Automated Manifest System (AMS) participants provide the cargo declaration electronically (see 19 CFR 4.7(b)(2)). The amended regulation also provides that a properly licensed or registered non-vessel operating common carrier (NVOCC) that is in possession of an International Carrier Bond containing the provisions of § 113.64 of the regulations (19 CFR 113.64) may electronically transmit required manifest information directly to Customs through the AMS 24 or more hours before cargo it delivers to the vessel carrier is laden aboard the vessel at the foreign port. If the NVOCC chooses not to transmit the required manifest information to Customs, as described above, the amended regulation provides that the NVOCC must instead fully disclose and present the required information to the vessel carrier to allow the vessel carrier to present the information to Customs via the AMS system. (See 19 CFR 4.7(b)(3).)

The final rule amended other sections within Part 4 of the regulations and made amendments to § 113.64 having to do with bond obligations of NVOCCs that elect to transmit manifest information in accordance with § 4.7(b). Discussion of these particular amendments is not necessary in this document. (See the final rule, cited previously, for a more complete presentation of these amendments.)

In response to the notice of proposed rulemaking (NPRM) that preceded publication of the final rule discussed above, published in the **Federal Register** (67 FR 51519) on August 8, 2002, the NVOCC community submitted several comments expressing concern that certain information and data that a NVOCC would supply under the new procedures of § 4.7(b) would be subject to release for publication. Under § 103.31 of the regulations (19 CFR 103.31), vessel manifest information is made available to newspapers, commercial magazines, trade journals, and similar publications. The NVOCC group contended that such release would reveal confidential business information that could result in harm to the NVOCC community, and recommended that Customs amend the regulations to permit NVOCCs to request confidentiality on behalf of importers and consignees under § 103.31. Because the NVOCC comments concerned an issue that was not the focus of the prior rulemaking, Customs responded to these comments in the final rule document by indicating that it would soon publish another NPRM proposing to amend the regulations to address the issue within the limitations of existing law. The purpose of this NPRM is to seek further input from the trade community on the specific question whether the Customs regulations should be amended.

Under 19 U.S.C. 1431(c), only importers and consignees are authorized to make such confidentiality requests to

protect their name and address from disclosure as well as the name and address of their shippers. The regulations implementing this Section provide that authorized employees, attorneys, or officials of importers or consignees may make such requests (19 CFR 103.31(d)). Consistent with the view that authorized representatives of the importers or consignees may file confidential requests, this document proposes to amend § 103.31(d) of the Customs Regulations to allow parties that transmit directly to Customs manifest information in accordance with §§ 4.7(b) and 4.7a to file a biennial certification requesting confidentiality on behalf of an importer or consignee when authorized to do so by the importer or consignee. This amendment allowing such parties, including NVOCCs and vessel carriers, to make confidentiality requests will enhance the new procedures set forth in the final rule, as these parties will be relieved from any disadvantage that might result from publication of certain manifest information.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC. To make arrangements to inspect submitted comments, call Mr. Joseph Clark at (202) 572–8768.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Inasmuch as adoption of the proposed amendment would expand the parties who may request confidentiality of business sensitive information for the purpose of protecting their competitive standing or advantage, and thus would benefit this segment of the importing community, it is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the proposed amendments to the Customs Regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in § 103.31 has previously been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0124 (Disclosure by Customs of information on cargo declarations of inward vessel manifests). This notice of proposed rulemaking (NPRM) contains an additional collection of information that has been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The additional collection of information in this proposed rule document is contained in § 103.31(d)(i). This information is required to allow a party transmitting vessel cargo manifest information directly to Customs in accordance with the procedures of § 4.7(b) of this chapter to submit a confidentiality certification on behalf of an importer or consignee. The likely respondents are businesses such as non-vessel operating common carriers and vessel carriers that must submit to Customs the information required under the regulation when choosing to obtain confidentiality for importers and consignees.

The estimated burden to the public resulting from the additional collection is as follows:

Estimated total annual reporting and/or recordkeeping burden: 250 hours.

Estimated average annual burden per respondent/recordkeeper: 30 minutes.

Estimated number of respondents and/or recordkeepers: 500.

Estimated annual frequency of responses: 1.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to Customs at the address set forth in the **ADDRESSES** section of this document.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

List of Subjects in 19 CFR Part 103

Administrative practice and procedure; Confidential business information, Electronic filing, Freedom of Information, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons stated in the preamble, Part 103 of the Customs Regulations (19 CFR Part 103) is proposed to be amended as follows:

PART 103—AVAILABILITY OF INFORMATION

1. The general authority citation for part 103 and the specific authority citation for § 103.31 continue to read as follows:

Authority: 5 U.S.C. 301; 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431;

* * * * *

2. Section 103.31 is proposed to be amended by revising paragraph (d)(1)(i) to read as follows:

§ 103.31 Information on vessel manifests and summary statistical reports.

* * * * *

(d) *Confidential treatment*—(1) *Inward manifest.* * * *

(i) An importer or consignee, or authorized employee, attorney or official of the importer or consignee, must submit a certification (as described in paragraph (d)(1)(ii) of this section) to claim confidential treatment of the data set forth in paragraph (d)(1) of this section. In addition, a party that either electronically directly transmits, or uses a service provider to transmit, the Customs Form 1302 Cargo Declaration to Customs in accordance with the procedures of § 4.7(b) of this chapter may submit a certification to claim confidential treatment of the data set forth in paragraph (d)(1) of this section on behalf of an importer or consignee if the importer or consignee designates such party as its attorney-in-fact authorized to submit a certification on the importer's or consignee's behalf. The party so designated/authorized must provide Customs with a letter of authorization signed by the importer or consignee, or its authorized employee, attorney or official, to support any

submission of a certification under this paragraph.

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: January 3, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–363 Filed 1–8–03; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[GU02–02; FRL–7433–4]

Clean Air Act Interim Approval of the Alternate Permit Program; Territory of Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant interim approval of the alternate permit program submitted by the Territory of Guam (Guam). In EPA's November 13, 1996 direct final rule, EPA granted Guam, as well as owners and operators of certain sources within Guam, an exemption from title V requirements on the condition that Guam promulgate and administer an approved alternative permit program. EPA granted these conditional exemptions under the authority of section 325 of the Clean Air Act (Act). Interim approval of Guam's alternate permit program will allow sources to be permitted under an approved alternate permit program while also requiring Guam to make additional submissions to fulfill all of the requirements of the conditional exemption.

In the rules and regulations section of this **Federal Register**, we are granting interim approval of these local rules as Guam's alternate permit program in a direct final action without prior proposal because we believe this action is not controversial and do not anticipate adverse comment. A detailed rationale for this approval is set forth in the direct final rule. If we do not receive adverse comments, no further activity is planned. If EPA receives adverse comments, however, we will publish a timely withdrawal of the direct final action and address the comments in a subsequent final action based on this proposed rule. We will not open a second comment period, so anyone interested in commenting should do so at this time.

DATES: Any comments on this proposal must arrive by March 10, 2003.

ADDRESSES: Mail comments to Gerardo Rios, Chief of the Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Copies of the submitted program and other supporting information used in evaluating the alternate permit program are available for inspection during normal business hours at the following location: Pacific Insular Area Program, U.S. EPA-Region IX (CMD–5), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Ben Machol, EPA Region IX, at (415) 972–3770, (*Machol.Ben@epa.gov*), Pacific Insular Area Program, or Robert Baker, at (415) 972–3979, (*Baker.Robert@epa.gov*) Permits Office, Air Division, at the EPA-Region IX address listed above.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located under the rules and regulations section of this **Federal Register**.

Dated: December 17, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–120 Filed 1–8–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AH86

Florida Manatees; Incidental Take During Specified Activities; Extension of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, provide notice that the public comment period for the proposed regulations that would authorize for the next five years the incidental, unintentional take of a small number of Florida manatees (*Trichechus manatus latirostris*) resulting from government activities related to watercraft and watercraft access facilities is extended to allow all interested parties to submit written comments on the proposal and the draft environmental impact statement. Comments previously submitted during the comment period need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on the proposal.

DATES: The original comment period is scheduled to close on January 13, 2003. The comment period is hereby extended until January 27, 2003. Comments from all interested parties must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: If you wish to comment, you may submit your comments by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216.

2. You may hand-deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to 904/232–2404.

3. You may send comments by electronic mail (e-mail) to *manatee@fws.gov.* For directions on how to submit electronic comment files, *see* the ''Public Comments Solicited'' section.

We request that you identify whether you are commenting on the proposed rule or draft environmental impact statement. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m. Monday through Friday, at the above address. You may obtain copies of the draft environmental impact statement from the above address or by calling 904/232–2580, or from our Web site at *http://northflorida.fws.gov.* Information regarding this proposal is available in alternative formats upon request.

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, Assistant Field Supervisor (*see* **ADDRESSES** section), telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361–1407) sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product

unless authorized. ''Take'' as defined by the MMPA and its implementing regulations (50 CFR part 18) means ''to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following—the collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal.''

''Harassment'' is defined under the MMPA as, ''any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.''

The prohibitions on take apply to all persons, including Federal, State, and local government agencies, with the exception of humane taking (including euthanasia) by government officials while engaged in their official duties (16 U.S.C. 1379(h)).

Section 101(a)(5)(A) of the MMPA allows the Secretary of the Department of the Interior, through the Director of the Fish and Wildlife Service (Service), upon request, to authorize by specific regulation the incidental unintentional take of a small number of marine mammals by U.S. citizens engaged in specific identified activities (other than commercial fishing) within specific geographic areas. On November 14, 2002, the Service published a proposed rule and notice of availability of a draft Environmental Impact Statement regarding regulations that would authorize for the next five years the incidental unintentional take of a small number of Florida manatees (*Trichechus manatus latirostris*) resulting from government activities related to watercraft and watercraft access facilities within three regions of Florida (67 FR 69078).

Public Comments Solicited

Any final action resulting from this proposal will be based on the best available information. 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 welcome any and all suggestions, materials, and recommendations to assist and guide us in this endeavor. Specifically, we are seeking:

1. Information regarding manatee population studies/data, particularly for the Southwest Florida Stock;
2. Information regarding measures, including technological measures, that would result in the least practicable impact on manatees and their habitat;
3. Information regarding the effectiveness of mitigating measures currently in place;
4. Information regarding the potential social and economic effects of the proposed regulations;
5. Information regarding means of minimizing potential social and economic effects of the negative finding for the Southwest Stock;
6. Suggested means and measures to report and monitor the effects of incidental take on manatees;
7. Suggested additional research efforts related to the findings of this rule; and
8. Nominations for participants to serve on the Working Group on Watercraft-related Incidental Take.

Additionally, we are requesting specific public comment on the following issues pertaining to the economic analysis, which is printed in its entirety in the EIS for this action:

1. Information to better model the change in boater behavior and/or the economic surplus impacts of changes in marine access;
2. Additional estimates of the difference in residential property values with and without the potential to construct private boat docks;
3. Information to estimate the number and regional distribution of out-of-state boaters who use their boats in Florida waters; and
4. Alternative regional impact models (*i.e.*, alternatives to IMPLAN) that would more accurately capture changes in sector outputs and employment resulting from the rule.

Please submit comments as a DOS text file format and avoid the use of special characters and encryption. Please also include ''Attn—RIN 1018–AH86'' and your name and return address in your email message. If you do not receive a confirmation from the system that we have received your email message, contact us directly by calling the Jacksonville Field Office (*see* **ADDRESSES** section).

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 name and home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. 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.

Our final determination on the proposed regulations will take into consideration comments and any additional information received by the date specified above. Previous comments and information submitted during the comment period need not be resubmitted. The comment period is extended to January 27, 2003.

Author

The primary author of this notice is Stefanie Barrett, U.S. Fish and Wildlife Service (*see* **ADDRESSES**).

Authority

The authority to establish regulations that would authorize for the next five years the incidental, unintentional take of small numbers of Florida manatees is provided by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

Dated: December 27, 2002.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–357 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 6

Thursday, January 9, 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.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber From Korea: Notice of Extension of Time Limit for 2001–2002 Administrative Review

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

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the current review of the antidumping duty order on certain polyester staple fiber from Korea. The period of review is May 1, 2001 through April 30, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Jarrod Goldfeder, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1174 or (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On June 25, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on certain polyester staple fiber (''PSF'') from Korea, covering the period May 1, 2001, through April 30, 2002 (67 FR 42753). The preliminary results for the antidumping duty administrative review of certain PSF from Korea are currently due no later than January 31, 2003.

Extension of Time Limits for Preliminary Results

The respondents in this proceeding have outstanding original and supplemental questionnaire responses. Because the Department requires time to review and analyze these responses once they are received, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, January 31, 2003). Therefore, the Department of Commerce is extending the time limit for completion of the preliminary results to not later than June 2, 2003, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 31, 2002.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 03–430 Filed 1–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms from Indonesia: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of Partial Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Sophie Castro or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0588 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2002, the Department published in the **Federal Register** (67 FR 4945) a notice of ''Opportunity To Request Administrative Review'' of the antidumping duty order on certain preserved mushrooms from Indonesia for the period February 1, 2001, through January 31, 2002 (third review period). On February 28, 2002, the respondents, PT Dieng Djaya (''Dieng'') and PT Surya Jaya Abadi Perkasa (''Surya'')[1], PT Indo Evergreen Agro Business Corporation (''Evergreen''), and PT Zeta Agro Corporation (''Zeta'') requested an administrative review of their sales for the above-mentioned period. The petitioner, the Coalition for Fair Preserved Mushroom Trade,[2] did not comment. On March 27, 2002, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 14696.

Partial Recission of Review

On May 20, 2002, Dieng/Surya withdrew its request for an administrative review of its sales for the third review period. Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request within 90 days of the date of publication of

[1] In accordance with 19 CFR 351.401(f), PT Dieng Djaya and PT Surya Jaya Abadi Perkasa were determined to be affiliated companies in the original less-than-fair-value investigation and are henceforth referred to as Dieng/Surya.

[2] The Coalition for Fair Preserved Mushroom Trade includes the American Mushroom Institute; L.K. Bowman, Inc.; Modern Mushrooms Farms, Inc.; Monterey Mushrooms, Inc.; Mount Laurel Canning Corp.; Mushroom Canning Company; Southwood Farms; Sunny Dell Foods, Inc.; and United Canning Corp.

notice of initiation of the requested review. In this case, Dieng/Surya has withdrawn its request for review within the 90-day period. We have received no other submissions regarding Dieng/Surya's withdrawal of its request for review. Therefore, we are rescinding, in part, this administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia as to Dieng/Surya. This review will continue with respect to Evergreen and Zeta.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: January 3, 2003.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–431 Filed 1–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Transformed Bacteria Producing CS6 Antigens as Vaccines

AGENCY: Department of the Army, (DoD).

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/479,877 entitled ''Transformed Bacteria Producing CS6 Antigens as Vaccines,'' file January 10, 2000. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention is related to a CS6 antigen for use in vaccines to protect from pathological effects of enterotoxigenic E. coli.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–435 Filed 1–8–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army (DoD).

ACTION: Notice.

SUMMARY: This notice amends Performance Review Boards Membership, published November 25, 2002 (67 FR 70584), for the Department of the Army. The following name is added to the Performance Review Board for the U.S. Army Corps of Engineers (USACE): Mr. Joseph Tyler, Chief, Programs Management Division, Directorate of Military Programs, Headquarters, USACE.

EFFECTIVE DATE: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–433 Filed 1–8–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, (DoD).

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting

Name of Committee: Inland Waterways Users Board (Board).

Date: February 13, 2003.

Location: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue NW., Washington, DC (1–202–628–2100).

Time: Registration will begin at 8:30 a.m. and the meeting is scheduled to adjourn at 11 a.m.

Agenda: The Board will hear briefings on the status of both the funding for inland navigation projects and studies, and the Inland Waterways Trust Fund. The Board will also consider its priorities for the next fiscal year.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, 441 G Street, NW., Washington, DC 20314–1000; Ph: (202) 761–4559.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Luz D. Ortiz,

Army Federal Registration Liaison Officer.

[FR Doc. 03–434 Filed 1–8–03; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Cancellation of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of cancellation of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the cancellation of Financial Assistance Solicitation No. DE–PS26-03NT41716 entitled ''Gasification Technologies Fundamental Research'' which was published in the **Federal Register** on December 02, 2002 (67 FR 71544).

FOR FURTHER INFORMATION CONTACT: Keith L. Carrington, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880, E-mail Address: *keith.carrington@netl.doe.gov,* Telephone Number: (304) 285–4456.

Issued in Pittsburgh, Pennsylvania, on December 19, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–383 Filed 1–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41463 entitled ''2003 Climate Change Fuel Cell Buy-Down Program. The objective of the cost-shared program is to simultaneously stimulate commercialization of stationary fuel cell power plants and reduce greenhouse gas emissions through the efficient use of fossil fuels.

DATES: The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about December 30, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Michael Nolan, Contract Specialist, MS I07, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507–0880, E-mail Address: *michael.nolan@netl.doe.gov*, Telephone Number: (304) 285–4149.

SUPPLEMENTARY INFORMATION: With support from the Department of Defense (DoD), DOE, through the National Energy Technology Laboratory, will issue a financial assistance solicitation for grant applications from qualifying applicants proposing demonstrations of stationary fuel-cell powered plants. The Federal support will not exceed the lower of $1,000/kW or one-third of the total project costs which includes unit cost, installation, and one year of operation. The solicitation will be issued on or about December 30, 2002, and applications will be due on or about June 1, 2003. Awards are projected for September 2003 with all project work (including one calendar year of operation and a final report) to be completed by September 30, 2006. Once released, the solicitation will be available for downloading from the IIPS Internet page at *http://e-center.doe.gov*. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Morgantown, WV, on December 6, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–384 Filed 1–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 6, 2003, 9 a.m.–5 p.m.

Friday, February 7, 2003, 8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hotel Hanford House, 802 George Washington Way, Richland, WA, Phone: (509) 946–7611, Fax: (509) 943–8564.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA, 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Thursday, February 6, 2003

- Introduction and discussion of Draft Advice on the Notice of Intent to Prepare an Environmental Impact Statement for Accelerated Retrieval, Treatment and Disposal of Tank Waste and Closure of Tanks at the Hanford site.
- Strategic Initiative #4, Accelerated Waste Disposal, Performance Management Plan for Accelerated Cleanup of the Hanford Site and emerging issues on off-site waste shipments.
- 116N Trench Determination of Significance.
- Introduction and discussion of Draft Advice on Transuranic Waste from EM SSAB Transuranic Waste Management Workshop

Friday, February 7, 2003.

- Adoption of Draft Advice.
- Hanford Exposure Scenarios Task Force Final Report.
- Hanford Advisory Board Annual Report for 2002.
- Hanford Advisory Board Self Evaluation.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC, on December 31, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–379 Filed 1–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, January 23, 2003; 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport, Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Review and finalize recommendation on proposed modifications to Rocky Flats Cleanup Agreement.

2. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on January 6, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–380 Filed 1–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Tuesday, January 21, 2003, 8 a.m.–6 p.m.

Wednesday, January 22, 2003, 8 a.m.–5 p.m.

Public participation sessions will be held on:

Tuesday, January 21, 2003, 12:15–12:30 p.m, 5:45–6 p.m.

Wednesday, January 22, 2003, 11:45–12 noon, 4 p.m.–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: West Coast Hotel in the Teton/Bonneville Rooms, 475 River Parkway, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 545 Shoup Avenue, Suite 335B, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet Home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda Topics: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *http://www.ida.net/users/cab/.*)

- Potential new missions under the Idaho National Engineering and Environmental Laboratory (INEEL)'s new Nuclear Energy mission.
- The status of cleanup at Waste Area Group 7, including the Revised Work Plan and the major findings of the Remedial Investigation and the Baseline Risk Assessment.
- The status of the INEEL Environmental Management Program and implementation of the Performance Management Plan for Accelerating Cleanup at the INEEL.
- The waste acceptance criteria for the Waste Isolation Pilot Plant, (including criteria for remote-handled transuranic waste) that need to be changed to receive INEEL waste.
- The Record of Decision for the High-Level Waste and Facilities Disposition Environmental Impact Statement.
- The Public Involvement Plan to support the phased Record of Decision for the High-Level Waste and Facilities Disposition Environmental Impact Statement.
- DOE's efforts to address ''problematic wastes'' for which there is no clear treatment and disposal path.
- Board member reactions and concerns related to the V-Tank contents treatment and disposal options.
- Lessons learned from the 3,100 cubic meter project.
- Transuranic Waste Performance Management Plan.

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or tele-phone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate

the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Penny Pink, INEEL CAB Administrator, North Wind Environmental, Inc., PO Box 51174, Idaho Falls, ID 83405 or by calling (208) 528–8718.

Issued at Washington, DC, on December 31, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–381 Filed 1–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, January 22, 2003, 6 p.m.–9 p.m.

ADDRESSES: Crosby Senior Center, 8910 Willey Road, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6 p.m. Call to Order

6–6:15 p.m. Chair's Remarks and Ex Officio Announcements

6:15–6:30 p.m. Final Closure CAB Mission Statement

6:30–6:45 p.m. Prepare for SSAB Workshop

6:45–7:30 p.m. Silos Update and Feedback from Roundtable

7:30–7:45 p.m. Discussion of DOE Risk-based End State Policy

7:45–8 p.m. Comments on Fernald Stewardship Plan

8–8:45 p.m. Planning for Stewardship and Future Sites

8:45–9 p.m. Public Comment

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on December 31, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–382 Filed 1–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–246–000]

Order Establishing Procedures Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell

Issued December 30, 2002.

1. On December 6, 2002, the United States Department of Energy (DOE) referred to the Commission (Referral) the matter of compensation for costs incurred pursuant to an emergency order issued under section 202(c) of the Federal Power Act (FPA). DOE requests that the Commission ''conduct such proceedings as it determines to be appropriate and issue a final order resolving these matters.'' In this order the Commission initiates procedures as requested. This order establishes procedures which will enable the Commission to resolve the issues in a timely manner.

2. In order to provide notice to interested parties, this order will be published in the **Federal Register**. Motions to intervene are due on or before 10 days after the date of publication.

3. On August 26, 2002, pursuant to section 202(c) of the FPA [1] and section 301 of the DOE Organization Act,[2] the Secretary of Energy issued Order No. 202–02–1 (Emergency Order). In the Emergency Order, the Secretary determined that an emergency existed on Long Island ''due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, a shortage of facilities for the transmission of electric energy and other causes.'' Further, the Secretary determined that the issuance of the Emergency Order would alleviate the emergency and serve the public interest. Therefore, the Secretary directed Cross-Sound Cable Company, LLC (CSC) ''to operate the Cross-Sound Cable and related facilities in order to transmit and deliver electric capacity and/or energy when, as and in such amounts as may be scheduled and purchased by the Long Island Power Authority (LIPA).'' The Emergency Order further directed CSC ''to take such actions as are necessary in order to energize the [CSC] facilities.''

4. As noted in the Referral, CSC and LIPA have not been able to reach agreement on appropriate compensation relating to the Emergency Order. Therefore, pursuant to 10 CFR 205.376 (2002), DOE requests that the Commission apply such standards and procedures as it considers appropriate to resolve this matter.

5. In order to ascertain the positions of CSC, LIPA and any other interested party regarding the appropriate compensation for the emergency period, the Commission orders the filing of Initial Briefs on or before January 31, 2003 explaining the party's position and providing evidentiary support for that position. Parties may rebut each other's positions in Reply Briefs, which are due on or before February 28, 2003. Parties

[1] 16 U.S.C. 824a(c) (2000).

[2] 42 U.S.C. 7151(b) (2001).

do not need to file Initial Briefs in order to file Reply Briefs.

6. In authorizing the emergency transmission and delivery of electric capacity and energy, the Emergency Order limited the service provided by CSC for LIPA as follows:

> [T]his order * * * shall be limited to requiring the transmission and delivery of such electric capacity and/or energy as is necessary in the judgment of the New York Independent System Operator to meet the supply and essential reserve margin needs of LIPA * * * and * * * prior to exercising its judgment as required by this order, the New York Independent System Operator must consult with ISO–New England, Inc. to ensure that the *scheduling* of such electric capacity and/or energy will not violate system *operating criteria* * * * (Emphasis added.)

7. The documents in the Referral indicate that ''the day that DOE issued the [Emergency] Order, LIPA contacted the NYISO and remained in almost daily telephone and e-mail communication with NYISO to determine what those emergency operating and scheduling protocols would be.'' The documents further indicate that the ''Implementation Protocol for Emergency Operation of the Cross Sound Cable'' (Protocol for Emergency CSC Operation) was not made available to LIPA until NYISO sent a facsimile transmission to LIPA on September 23, 2002, one week before the Emergency Order expired.

8. To help the Commission understand the reasons for the delay in establishing the Protocol for Emergency CSC Operation as ordered by the Secretary, and to help the Commission ensure that such a delay does not occur again, NYISO and ISO–New England are hereby directed to answer the following questions on or before January 31, 2003:

A. Explain in detail why NYISO and ISO-New England did not establish the Protocol for Emergency CSC Operation within a week or less of the issuance of the Secretary's Emergency Order.

B. Explain in detail the processes followed and the reasons why it took 38 days to issue the Protocol for Emergency CSC Operation.

C. Explain whether the same processes would be used if the Secretary issued another emergency order. If not, what changes would be made?

D. The fourth paragraph of the Protocol for Emergency CSC Operation states:

All costs associated with energy provided pursuant to the [Emergency] Order and this Protocol shall be governed by the Emergency Transactions Agreement entered into between the NYISO and the New England Power Pool on August 14, 2000.

(1) Identify and support all costs associated with providing energy under the Emergency Order including expenses associated with establishing the Protocol for Emergency CSC Operation.

(2) Provide a copy of the August 14 Emergency Transactions Agreement and the protocols used to support such agreement.

E. Is there a scheduling and operating protocol which will be used if another emergency order is issued or when the CSC is fully operational?

9. Any comments parties have with respect to the answers provided by the ISOs may be included in separate sections of the Initial or Reply Briefs.

The Commission Orders

(A) Procedures for Commission action on the Referral are hereby established as discussed in the body of this order.

(B) The NYISO and ISO–NE are hereby directed to submit responses, as discussed in the body of this order.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–365 Filed 1–8–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7437–2]

EPA Public Meeting—Closing the Gap: Innovative Responses for Sustainable Water Infrastructure; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is hosting a one-day public forum to discuss water and wastewater infrastructure in the United States. EPA's goal is to bring together stakeholders, including those from business, government, and academia, to exchange information and views on management and sustainable financing of the nation's water and wastewater infrastructure. The meeting will be in Washington, DC, on January 31, 2003, starting at 9 a.m. This meeting is open to the public.

The forum will be composed primarily of two moderated expert panels who will offer their insights. At the forum, the audience will have an opportunity to provide questions to be discussed by the experts.

DATES: The meeting will begin at 9 a.m. on January 31, 2003.

ADDRESSES: The meeting will be held in the ballroom at the Marriott at Metro Center at 775 12th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: For more information on the location and agenda of this meeting, and general background information including related documents and reports on water and wastewater infrastructure needs, please see the Office of Water Web Page at *http://www.epa.gov/ow/* or contact the Safe Drinking Water Hotline, phone: (800) 426–4791 or (703) 285–1093. To assist in making arrangements for the number of attendees, please send an e-mail to *closingthegap@cadmusgroup.com* with the name, title, and organization of each person attending. Seating is limited to 300 people. If you need special accommodations at this meeting, including signing, you should contact Shawna Bergman at (202) 564–3641 by January 24, 2003, so that we can make appropriate arrangements.

Dated: January 3, 2003.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 03–392 Filed 1–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0340; FRL–7287–7]

Folpet; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0340, must be received on or before February 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection

Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7740; e-mail address: *giles-parker.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0340. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0340. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or

other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0340. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0340.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0340. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:January 2, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Makhteshim-Agan of North America Inc.

2E6512

EPA has received a pesticide petition (2E6512) from Makhteshim-Agan of North America Inc. (MANA), 551 Fifth Ave., Suite 1100 New York, NY 10176 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of folpet *N*-[(trichloromethyl)]thiophthalimide in or on the raw agricultural commodity hop at 120 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residue of folpet in plants is adequately understood based on acceptable avocado, grape and wheat metabolism studies. The metabolism of folpet in livestock is adequately understood. Based on the results observed in the metabolism studies, secondary residues such as phthalimide and phthalic acid are not expected to be of toxicological concern. The residue of concern is folpet per se.

2. *Analytical method*. An adequate gas chromatography/electron capture detector (GC/ECD) analytical method is available for enforcing tolerances of folpet in or on plant commodities. The method of detection had a limit of detection (LOD) of 0.01 mg/kg (ppm) and a limit of quantitation (LOQ) of 0.02 milligrams/kilogram (mg/kg) (ppm) in dried hops.

3. *Magnitude of residues*. Five residue trials have been conducted in Bavaria, Germany during 1996 and 1997. The hops were treated up to 8 times per season at a rate of up to 4.3 kg active ingredients/hectare (a.i./ha) (up to 23 kg a.i./ha per season), considering a 14 day PHI. After kiln drying, the measured residues in hops ranged from 25 to 65 ppm. Folpet was not detectable in any of the processed hop commodities (LOD for spent hops = 0.01 ppm; beer = 0.003 ppm). The generated data support the requested tolerance.

B. Toxicological Profile

1. *Acute toxicity*. In studies using laboratory animals, in general folpet has been shown to be of low acute toxicity: The acute oral LD_{50} and the acute dermal LD_{50} in rats were greater than 5,000 mg/kg. The acute rat inhalation LC_{50} (4-hour) was 0.48 mg/l. Folpet was irritating to the eyes of rabbits. It was not irritating to rabbit skin in a standard dermal irritation study but was a dermal sensitizer in a guinea pig maximization study. Based on these results, folpet is expected to be classified as TOXICITY CATEGORY IV for acute oral and dermal toxicity, and skin irritation, and as TOXICITY CATEGORY II for acute inhalation toxicity, and eye irritation.

2. *Genotoxicty*. Folpet was tested for genotoxic effects in several standard tests. Folpet is neither mutagenic nor genotoxic in mammals. In some of the *in vitro* studies mutagenic events were observed, such as gene mutations/DNA damage in bacteria and mammalian cells, chromosomal aberrations in mammalian cells and mitotic recombination in yeast. However, folpet does not present a genotoxic risk based on the fact that folpet degrades with a half-life of 0.97 seconds *in vivo*. This fast detoxification effectively eliminates systemic exposure to folpet or thiophosgene.

3.*Reproductive and developmental toxicity*. In an oral developmental study with New Zealand rabbits, the maternal and developmental no observed adverse effect level (NOAEL) was 10 mg/kg/day based on decreased food consumption, increased number of fetuses and litters with hydrocephalus and associated skull malformations at the lowest observed adverse effect level (LOAEL) of 20 mg/kg/day. In the rat developmental study the developmental no observed effect level (NOEL) was 60 mg/kg and the lowest observed effect level (LOEL) was 360 mg/kg.

A two-generation reproductive study in rats produced a parental NOEL of 34.5 mg/kg/day. There was a marginal decrease in the body weight of the F_1 offspring at birth and during lactation but no other changes in physical, functional, or behavioral endpoints were observed. The NOEL in the F_2 of 40 mg/kg/day was based on decreased body weight gain and decreased fertility of the males. The LOEL in this study was 180 mg/kg.

For both developmental and reproductive bioassays, the effects elicited by folpet are considered secondary to its primary effect: irritancy of the gastrointestinal tract. Folpet is absent in the systemic circulation and its initial ring degradate, phthalimide, has been shown not to be a developmental toxin.

4. *Subchronic toxicity*. In a 90-day feeding study in rats, the NOEL was established at 3,000 ppm and the LOEL was 10,000 ppm. Noted effects were decreased brain weight and decreased total blood protein including albumin.

In a subchronic dermal toxicity study, folpet was applied to rats at dose levels of 0, 1, 10, and 30 mg/kg body weight for 6 hours per day, 5 days a week, for a total of 21 days over a period of 30 days. All folpet treated rats developed pronounced dermal irritation in a dose-related manner. Systemic toxicity based on decreased body weight gain was observed at 10 and 30 mg/kg dose levels, but without clearly separating this effect to the severe skin damage.

5. *Chronic toxicity*. A 2-year feeding chronic toxicity/carcinogenicity study in rats was conducted with folpet at dietary concentrations of 0, 200, 800, or 3,200 ppm. For chronic toxicity, the NOAEL was 200 ppm (9 mg/kg/day) and the LOAEL was 800 ppm (35 mg/kg) based on hyperkeratosis/acanthosis and ulceration/erosion of the non-glandular stomach in males and females. No evidence of carcinogenicity was observed in this study.

A 2-year feeding chronic toxicity/carcinogenicity study in CD-1 mice showed a statistically significant, dose-related increase in the incidence of duodenal adenocarcinomas with an increase of about 50% at the highest dose tested (1,429 mg/kg/day). A similar response was seen in a chronic feeding study with B6C3F1 mice at the highest dose tested (HDT) of 1,000 mg/kg.

In previous assessments, the Agency has concluded that folpet is a Group B2 carcinogen, based on the increased incidences of duodenal adenomas and carcinomas in males and females of two strains of mice.

6. *Animal metabolism*. Results from the livestock and rat metabolism studies showed that orally administered folpet was rapidly absorbed, hydrolized and metabolized, followed by rapid elimination, predominantly via the urine. The major fecal degradate was phthalamic acid, while phthalic acid was a minor degradate. Most of the applied dose was excreted within 24 hours.

7. *Metabolite toxicology*. There are no folpet metabolites identified in plant or animal commodities, which require regulation.

8. *Endocrine disruption*. The standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. There is no evidence which suggests that folpet is an endocrine disrupter. The existing studies are generally considered to be sufficient to detect any endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*. Potential dietary exposures from food under the existing tolerances for domestic uses (avocados) and imported commodities (apples, cranberries, cucumbers, grapes, lettuce, melons, onions, strawberries, and tomatoes), were estimated using the Dietary Exposure Evaluation Model (DEEM) for acute and chronic exposure based on the U.S. Department of Agriculture's (USDA) 1989–1992 individual consumption data. Residue data were based on field trials and percent crop information along with processing factors from submitted studies. No data from USDA's Pesticide Data Program (PDP) were available for folpet.

i. *Food*. Acute dietary exposure was compared to the acute population adjusted dose (aPAD), which utilizes 25.3% for females (15–50 years) at the 99th percentile, the only population group of concern for the acute Reference Dose (aRfD = 0.03 mg/kg/day, using the NOAEL of 10 mg/kg from the rabbit study, and the FQPA safety factor of 3X).

The results of the chronic (non-cancer) dietary analysis indicate that the chronic Population Adjusted Dose (cPAD) was below 1% for the U.S. population and its most sensitive subgroups based on a cRfD of 0.09 mg/kg/day.

Concerning the dietary cancer risk, the Agency's calculated upper bound risk was 9.8×10^{-8}, based on a Q* of 0.00186 mg/kg/day^{-1}, using field trial data, processing factors and percent crop treated information. This risk level is far less than EPA's level of concern of 1×10^{-6}.

Based on USDA's consumption data not more than 0.0022% of the U.S. population diet is constituted of hops

(**Federal Register** of June 1, 2000, Vol.65, No 106, p. 35069–35090, Table 10; Guidance on Pesticide Import Tolerances and Residue Data for Imported Food). Furthermore, USDA's import statistics show that not more than 38% of beer consumed in the USA is imported and/or contains imported hops, which translates into a diet contribution from imported hops of not more than 0.0007%. For the purposes of this risk assessment, it was also demonstrated in brewing studies using hops treated with folpet at maximum label rates (range of residues: 25 to 65 ppm) and exaggerated hopping rates (0.002% or up to 2 g per liter wort) that no folpet residues could be measured in the finished beer (LOD = 0.003 ppm). Hopping rates in beer production are usually less than 0.001% in brew water (wort). Even considering that trace amounts of folpet would enter the brewing process, it will be rapidly hydrolyzed and completely degraded by the end of the beer brewing.

In view of this information and assumptions, the resulting dietary risk contribution via imported hops is negligible, even if 100% of the imported hops would be treated with folpet at maximum label rates.

ii. *Drinking water*. The potential for folpet to leach into groundwater or contaminate surface water is very limited considering that folpet is currently only registered for the use on avocados in two counties in Florida. Based on the available information, the predicted residues in drinking water do not indicate an unacceptable contribution to acute or chronic dietary exposure at this time. Since the proposed petition does not add any new uses or exposures to it, contribution of any folpet residues in drinking water to the total dietary intake is negligible.

2. *Non-dietary exposure*. Not applicable.

D. Cumulative Effects

There is a common mechanism of toxicity that folpet shares with captan with regard to its carcinogenicity in the mouse. Folpet and captan share the common metabolite, thiophosgene, which contributes to the irritancy of the duodenum in mice along with the parent compounds, leading (at dose levels above the established threshold and for administration with sufficient time) to adenomas. Thiophosgene reacts not only with thiol groups, as does folpet and captan, but also with a variety of other functional groups. This instability results in its rapid loss. The cumulative effect of captan and folpet oral exposure is of theoretical interest only, as the threshold for irritancy in the mouse duodenum is above 60 mg/kg/day (captan) or 50 mg/kg/day (folpet). If the mouse test system reflected human susceptibility, a 70 kg individual would need to consume more than 3.5 grams folpet plus captan in order to approach the NOEL of 50 mg/kg/day. Given the expected residue levels of folpet and those of captan, this is not possible.

E. Safety Determination

1. *U.S. population*. Using the exposure assumptions described above, MANA concludes that the total dietary exposure to folpet is acceptable. According to import information statistics from the USDA and under the conservative (worst-case) dietary exposure assumption described above, not more than 0.0022% of the U.S. population diet is constituted of hops, which means not more than 0.0007% can potentially be contributed to imported hops. Based on these insignificant dietary contributions, MANA considers the potential folpet residue contribution negligible, concluding that the most sensitive population group of concern are still females (15–50 years) with an aPAD of 25% and a cPAD of <1%. There is generally no concern for exposures below 100% of the PAD since it represents the level at or below which no appreciable risks to human health is posed. The upper bound calculated dietary cancer risk was 9.8×10^{-8}, based on a Q* of 0.00186 $mg/kg/day^{-1}$, which is far less than EPA's level of concern of 1×10^{-6}.

Thus, there is reasonable certainty that no harm will result to the U.S. population in general or to any of its subgroups of concern from aggregate exposure to folpet residues in or on imported hops.

2. *Infants and children*. Data from rat and rabbit development toxicity studies and rat multigeneration reproduction studies are generally used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposure to the pesticide.

FFDCA Section 408 provides that the Agency may apply an additional safety factor for infants and children to account for pre- and post-natal toxicity or incompleteness of the database. However, the toxicology database for folpet regarding potential pre- and post-natal effects in offspring is complete according to existing Agency data requirements and does not indicate any particular developmental or reproductive concerns.

EPA assigned an FQPA safety factor of 3x in the 1999 Reregistration Eligibility Decision (RED). This was based on the apparent hydrocephaly seen in New Zealand rabbits. Subsequently, additional data were provided to the Agency that showed folpet does not induce hydrocephaly. The Agency agreed with the assessment contained in the submitted document and rescinded its request for a new rabbit study. The Agency has not, as of yet, removed the FQPA 3x safety factor. A FQPA safety factor of 1x would be also consistent with that of captan. The appropriate acute Reference Dose (aRfD) for folpet, calculated with a FQPA safety factor of 1x, would be 0.01 mg/kg/day. This aRfD should be used in future assessments concerning the potential risks to infants and children. However, for the purpose of this assessment, MANA used the existing aRfD of 0.03 mg/kg/day, as it was done in the 1999 RED.

MANA concludes that there is a reasonable certainty that no harm will result to infants and children from the anticipated dietary exposure to residues of folpet and considering that the proposed import tolerance does not affect foods and beverages legally consumed by children and infants.

F. International Tolerances

Germany has established an MRL (maximum residue limit) of 120 ppm for residues of folpet in dried hops. No CODEX MRL for hops exists.

[FR Doc. 03–389 Filed 1–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7437–1]

Proposed CERCLA Section 122(h)(1) Administrative Agreement for Recovery of Response Costs for the City Chemical Corporation Site, Hudson County, Jersey City, NJ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a

proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of response costs concerning the City Chemical Corporation site (''Site'') located in Hudson County, Jersey City, New Jersey. The settlement requires the settling parties, City Chemical Corporation and Peter Wolpert, the former Site-operators, and City Chemical, LLC, City Chemical Corporation's corporate successor, to pay $300,000 in reimbursement of EPA's response costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), in exchange for their payment of monies. For 30 days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before February 10, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866.

Comments should reference the City Chemical Corporation Site located in Hudson County, Jersey City, New Jersey, Index No. CERCLA–02–2002–2032.

To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Frances M. Zizila, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3135.

Dated: December 23, 2002.

George Pavlou, Director,

Emergency & Remedial Response Division.

[FR Doc. 03–393 Filed 1–8–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 9, 2003, Meeting open to the public. This meeting was cancelled.

* * * * *

DATE AND TIME: Tuesday, January 14, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, January 16, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2002–14: Libertarian National Committee, Inc. by Counsel, William W. Hall.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–558 Filed 1–7–03; 3:53 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0405]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by February 10, 2003.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting (OMB Control Number 0910–0437)—Extension

Section 519(a), (b), and (c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i (a), (b), and (c)) requires user facilities, manufacturers, and importers of medical devices to report adverse events involving medical devices to FDA. On December 11, 1995 (60 FR 63578 at 63597), FDA issued part 803 (21 CFR part 803) that implemented section 519 of the act. The regulation was amended to conform with the changes reflected in the 1997 FDA Modernization Act.

Information from these reports will be used to evaluate risks associated with medical devices and to enable FDA to take appropriate regulatory measures to protect the public health.

Respondents to this collection of information are businesses or other for profit and non-profit organizations including user facilities, manufacturers, and importers of medical devices.

In the **Federal Register** of Tuesday, October 1, 2002 (67 FR 61638), FDA requested public comment on the proposed collection of information. FDA received one comment, but it was not directly related to the information collection.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
803.19	25	1	25	1	75
803.30	1,000	3	3,000	1	3,000
803.33 FDA Form 3419	1,000	1	1,000	1	1,000
803.40	50	10	500	1	500
803.50	1,500	34	51,000	1	51,000
803.55 FDA Form 3417	700	5	3,500	1	3,500
Total					59,075

[1] There are no capitol costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
803.17	3,200	1	3,200	3.3	10,560
803.18[2]	39,000	1	39,000	1.5	58,500
Total					69,060

[1] There are no capitol costs or operating and maintenance costs associated with this collection of information.
[2] Include an estimated 35,000 medical device distributors. Although they do not submit medical device reports, they must maintain records of complaints.

The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information to meet the medical device report (MDR) requirements as part of their internal quality control system.

Part 803 requires user facilities to report incidents where a medical device caused or contributed to a death or serious injury to the device manufacturer and to FDA (in case of death). Manufacturers of medical devices are required to report to FDA when they become aware of information indicating that one of their devices may have caused or contributed to death or serious injury or has malfunctioned in such a way that should the malfunction recur, it would be likely to cause or contribute to death or serious injury. Device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers, unless they are unknown. If the manufacturer is unknown, the importer sends the reports to FDA.

The agency has estimated that on average, 1,800 entities annually would be required to establish new procedures or revise existing procedures in order to comply with MDR provisions. For those entities, a one-time burden of 10 hours is estimated for establishing written MDR procedures. The remaining manufacturers, user facilities, and importers which are not required to revise their written procedures to comply with this provision are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered ''usual and customary'' under 5 CFR 1320.3(b)(2).

Dated: January 2, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–361 Filed 1–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0509]

International Conference on Harmonisation; Draft Guidance on the M4 Common Technical Document—Quality: Questions and Answers/Location Issues; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of December 30, 2002 (67 FR 79639). The document announced the availability of a draft guidance entitled ''Common Technical Document—Quality: Questions and Answers/Location Issues.'' The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–32852, appearing on page 79639 in the **Federal Register** of Monday, December 30, 2002, the following correction is made:

1. On page 79639, in the first column, in the heading of the document, ''[Docket No. 02N–0509]'' is corrected to read ''[Docket No. 02D–0509]''.

Dated: January 3, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–360 Filed 1–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of Availability of the Draft Cactus Ferruginous Pygmy-Owl Recovery Plan for Review and Public Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: We the U.S. Fish and Wildlife Service (Service) announce the availability for public review of a Draft Recovery Plan for the Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*) (Draft Plan). The species is currently known to occur on Federal, state, tribal, and private lands in Pima and Pinal Counties in southern Arizona. We solicit review and comment from the public on this Draft Plan.

DATES: Comments on the Draft Plan must be received on or before April 9, 2003 to ensure our consideration.

ADDRESSES: Persons wishing to review the Draft Recovery Plan may obtain a copy by accessing the Service's Arizona Ecological Service Field Office internet web page at *Arizonaes.fws.gov* or by contacting the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951 (602/242–0210) to obtain a copy via the mail or in person at the address above. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the address above, faxed to 602/242–2513, or emailed to *cfpo_recovery@fws.gov.* Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Richardson, Arizona Ecological Services Tucson Suboffice, U.S. Fish and Wildlife Service, 110 South Church Avenue, Suite 3450, Tucson, Arizona, 85701 (520/670–4643).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant species to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. We, along with other Federal agencies, will take these comments into account in the course of implementing approved recovery plans.

The Draft Plan describes the status, current management, recovery objectives and criteria, and actions needed to reclassify the pygmy-owl from endangered to threatened. The Draft Plan was developed in coordination with the Service and by an appointed Recovery Team which includes a group of scientists with expertise in the ecology of the pygmy-owl and other raptors (Technical Group) together with a team of stakeholders (the Implementation Group), which includes members of affected parties (*i.e.*, tribes, state agencies, counties, towns, developers, environmental groups, ranchers, mining, and private property rights groups). The Draft Plan has undergone peer review by scientists, conservation biologists, range experts, and others experienced in reviewing recovery plans. This Draft Plan incorporates their comments where applicable. Additional peer review will be conducted during the current public comment period.

The pygmy-owl occurs in a variety of scrub and woodland communities, including riverbottom woodlands, woody thickets, Sonoran desertscrub, and semidesert grasslands. The pygmy-owl occurs in areas with fairly dense woody thickets or woodlands with trees and/or cacti large enough to support nesting cavities. They are found below 1,200 meters (4,000 feet). We determined in 1997 that the distinct population segment in Arizona of the pygmy-owl was endangered (62 FR 10730) primarily because of habitat destruction. Factors identified included (1) present or threatened destruction of their habitat and range, (2) inadequate existing regulatory mechanisms, and (3) other natural or manmade factors affecting their continued existence. The Draft Plan contains actions to address these factors.

Public Comments Solicited

We solicit written comments on the Draft Plan. In particular, we are soliciting specific comments on:

1. Any information on the numbers and distribution of the pygmy-owl not considered in the Draft Plan and their relation to proposed recovery actions;
2. Whether we have looked at the right biological factors and other relevant data related to the quantity and quality of available pygmy-owl habitat and what habitat is necessary to the recovery of the species;
3. Land use practices and current or planned activities within Recovery Areas and their possible impacts on proposed recovery actions.

All comments received by us on or before the date specified in the **DATES** section above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 15, 2002.

Geoffrey L. Haskett,

Acting Regional Director.

[FR Doc. 03–46 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Programmatic Environmental Impact Statement for the Proposed Navajo Ten-Year Forest Management Plan, Navajo Nation, Arizona/New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of cancellation.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs is canceling the notice of intent to file a final programmatic Environmental Impact Statement for the proposed Navajo Nation Ten-Year Forest Management Plan that we published in the **Federal Register** on November 20, 2002 (67 FR 70090). We are withdrawing the document because it duplicates a previously issued Environmental Impact Statement for the same proposed action.

EFFECTIVE DATE: January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Donald Sutherland, Bureau of Indian

Affairs, Office of Trust Responsibilities, Environmental and Cultural Resources Management, 1849 C Street, NW., Washington, DC 20240; (202) 208–4791.

Dated: December 18, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–429 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Integrated Resource Management Plan for the Spokane Indian Reservation, Stevens County, WA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) and the Spokane Tribe of Indians, as co-lead agencies, intend to prepare an Environmental Impact Statement (EIS) on a proposed update to the Integrated Resource Management Plan (IRMP) for the Spokane Indian Reservation. The purpose of updating the IRMP is to develop long-term resource management policies that will ensure direction and stability for needed sustained growth of reservation economics, compatible with traditional values and needs for a quality human environment. Details on the project area and the proposed action are provided in the **SUPPLEMENTARY INFORMATION** section. This notice also announces a public scoping meeting for the content of the EIS.

DATES: Comments on the scope and content of the EIS must arrive by February 7, 2003. The public scoping meeting will be held on Thursday, January 23, 2003, at 6 p.m.

ADDRESSES: You may mail or hand carry written comments to Rudy Peone, Spokane Tribe Department of Natural Resources, P.O. Box 480, Wellpinit, Washington 99040; or to Ted Hensold, Bureau of Indian Affairs, Spokane Agency, P.O. Box 389, Wellpinit, Washington 99040. You may also telefax comments to Rudy Peone at (509) 258–9600. Please include your name and mailing address with your comments so documents pertaining to this project may be sent to you.

The public meeting will be held at the Fire Management Conference Room, 6290 Ford-Wells Road, Wellpinit, Washington.

FOR FURTHER INFORMATION CONTACT: Rudy Peone, 509–258–9042, extension 14.

SUPPLEMENTARY INFORMATION: The boundaries of the Spokane Indian Reservation encompass approximately 157,000 acres, located in southern Stevens County, Washington. These include 110,500 acres of tribal trust lands, 1,400 acres of tribal fee lands, 24,800 acres of individually owned trust (allotment) lands, 14,400 acres of private fee lands, 1,100 acres of Bureau of Reclamation (BOR) lands above the Lake Roosevelt high pool line, and about 4,800 acres covered by Lake Roosevelt, under BOR administration. The lands range from dry, ponderosa pine steppe on the southern boundary of the Spokane River at 1,300 foot elevation to moist, inland coniferous forest on the northern portion of the reservation where elevation reaches about 4,000 feet.

Major land uses include timber management, livestock grazing, agriculture, hunting and fishing, recreation, and cultural practices. Timber harvesting occurs on about 108,000 acres of commercial forest lands.

The Spokane Tribe first enacted an IRMP in 1994. Its purpose was to provide a holistic framework to guide all land management of the reservation. It is now approaching its useful end. While the IRMP served an important role in managing resources during the formative stages of the Tribe's natural resource programs, human population growth and various economic activities have placed new and competing demands on reservation resources. These changes include encroachment of housing into formerly unpopulated areas; local shortages of drinking water during dry periods; increased demand for employment related to natural resource extraction and use; larger areas impacted by economic development; increased visitor and tourist traffic; increasing threats to surface and ground water resources by solid waste, sewage discharge, timber harvesting and other economic activities; and aesthetic degradation.

The proposed update of the IRMP will integrate more specific policies for land uses, natural resources, economic development and cultural resources and values on all lands within the boundaries and/or under the jurisdiction of the reservation. Services that affect natural resources and are affected by land use designations (such as housing, utilities, and roads) are also included. The proposed action includes specifically and accurately identifying the current needs that affect the natural resources on the reservation, projecting needs over the next 10 years, and developing the range of feasible alternatives to address those needs.

In addition to no action (continued management under the current IRMP), the alternatives will include a mix of possibilities for change which relate to each specific resource. Timber harvest options may range from a diminished harvest level to allow maximum protection of soil, water, cultural and aesthetic resources to an increased harvest level to meet economic demands of the Tribe. Housing options may range from unrestricted locating of housing through various forms of restrictions to protect natural areas. Recreation options may range from commercial development of recreation opportunities to attract vacationers from around the region to creating opportunities for tribal members alone. Range management options may include terminating the open range policies versus restricting open range to limited areas or pasture leases. Water resources options may include a more flexible approach to the current fixed riparian buffers or increasing those buffers. Cultural resource management options may range from protecting only those resources which are defined in the National Historic Preservation Act to defining standards for protection of cultural properties and cultural landscapes which are uniquely important to the Spokane Tribe.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 5 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the

Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: December 18, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–427 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent to Prepare an Environmental Impact Statement for a Proposed Tribal Light Industrial Park, Umatilla Indian Reservation, Umatilla County, OR

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA), with the cooperation of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), intends to gather the information necessary for preparing an Environmental Impact Statement (EIS) for the proposed lease of up to 100 acres of land held in trust by the United States for the benefit of the CTUIR in Umatilla County, Oregon, for the construction and operation of a 400,000 square foot warehouse distribution center or similar sized light manufacturing facility. The purpose of the proposed action is to help meet the economic development needs of the CTUIR. Details on the project location and proposed action are provided in the **SUPPLEMENTARY INFORMATION** section. This notice also announces a public scoping meeting to identify potential issues to include in the EIS, identify which issues to analyze in depth, and eliminate issues that are not significant.

DATES: Comments on the scope and content of the EIS must arrive by February 7, 2003. The public scoping meeting will be held on Thursday, January 23, 2003, at 6 p.m.

ADDRESSES: You may mail or hand carry written comments to Philip Sanchez, Superintendent, Bureau of Indian Affairs, Umatilla Agency, P.O. Box 520, Pendleton, Oregon 97801.

You may obtain a map displaying the proposed project location from Jerry L. Lauer, Natural Resource Officer, Bureau of Indian Affairs, Umatilla Agency, P.O. Box 520, Pendleton, Oregon 97801, telephone (541) 278–3790.

FOR FURTHER INFORMATION CONTACT: Jerry L. Lauer, (541) 278–3790.

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of BIA approval of a lease between the developer of a 400,000 square foot warehouse and distribution center or light manufacturing facility (lessee) and the CTUIR (lessor), of parts of the South Half of the North Half and the North Half of the South Half, Section 21, Township 2 North, Range 33 East, Willamette Meridian, Umatilla County, Oregon. The property encompasses approximately 100 acres on the Umatilla Indian Reservation, adjacent to and south of Exit 216 on Interstate 84.

The proposed project has several components. These include construction of below-ground water, sewer, storm water drainage, and electric power service on the site; construction of a 40-foot-wide industrial access road; extension of utilities from current access points north of Interstate 84, including below grade crossing of Interstate 84; construction of a 400,000-square-foot warehouse or light manufacturing facility; and operation of the warehouse or light manufacturing facility with approximately 150 employees. In the case of the warehouse and distribution center, there will be approximately 100 outgoing and 100 inbound semi-trailers each day.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 5 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: December 16, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–428 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rate adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns, or has an interest in, irrigation facilities located on various Indian reservations throughout the United States where rates are established to recover its costs to administer, operate, maintain, and rehabilitate those facilities. We request your comments on the proposed rate adjustments.

DATES: Interested parties may submit comments on the proposed rate adjustments on or before March 10, 2003.

ADDRESSES: All comments on the proposed rate adjustments must be in writing and addressed to: Larry Scrivner, Acting Director, Office of Trust Responsibilities, Attn.: Irrigation and Power, MS–3061–MIB, Code 210, 1849 C Street, NW., Washington, DC 20240, Telephone (202) 208–5480.

FOR FURTHER INFORMATION CONTACT: For details about a particular irrigation project, please use the tables in **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project is located.

SUPPLEMENTARY INFORMATION: The tables in this notice list the irrigation project contacts where the BIA recovers its costs for local administration, operation, maintenance, and rehabilitation, the current irrigation assessment rates, and the proposed rates for the 2003 irrigation season and subsequent years where applicable.

What Are Some of the Terms I Should Know for This Notice?

The following are terms we use that may help you understand how we are applying this notice.

Administrative costs means all costs we incur to administer our irrigation projects at the local project level. Local project level does not normally include the Agency, Region, or Central Office costs unless we state otherwise in writing.

Assessable acres means lands designated by us to be served by one of our irrigation projects and to which we provide irrigation service and recover our costs. (See *Total assessable acres*)

BIA means the Bureau of Indian Affairs.

Bill means our statement to you of the assessment charges and/or fees you owe the United States for administration, operation, maintenance, and/or rehabilitation. The date we mail or hand deliver your bill will be stated on it.

Costs means the costs we incur for administration, operation, maintenance, and rehabilitation to provide direct support or benefit to an irrigation facility.

Customer means any person or entity that we provide irrigation service to.

Due date is the date on which your bill is due and payable. This date will be stated on your bill.

I, me, my, you, and your means all interested parties, especially persons or entities that we provide irrigation service to and receive beneficial use of our irrigation projects affected by this notice and our supporting policies, manuals, and handbooks.

Irrigation project means, for the purposes of this notice, the facility or portions thereof, that we own, or have an interest in, including all appurtenant works, for the delivery, diversion, and storage of irrigation water to provide irrigation service to customers for which we assess periodic charges to recover our costs to administer, operate, maintain, and rehabilitate. These projects may be referred to as facilities, systems, or irrigation areas.

Irrigation service means the full range of services we provide customers of our irrigation projects, including, but not limited to, water delivery. This includes our activities to administer, operate, maintain, and rehabilitate our projects.

Maintenance costs means all costs we incur to maintain and repair our irrigation projects and equipment of our irrigation projects and is a cost factor included in calculating your operation and maintenance (O&M) assessment.

Must means an imperative or mandatory act or requirement.

Operation and maintenance (O&M) assessment means the periodic charge you must pay us to reimburse our costs.

Operation or operating costs means costs we incur to operate our irrigation projects and equipment and is a cost factor included in calculating your O&M assessment.

Past due bill means a bill that has not been paid by the close of business on the 30th day after the due date, as stated on the bill. Beginning on the 31st day after the due date we begin assessing additional charges accruing from the due date.

Rehabilitation costs means costs we incur to restore our irrigation projects or features to original operating condition or to the nearest state which can be achieved using current technology and is a cost factor included in calculating your O&M assessment.

Total assessable acres means the total acres served by one of our irrigation projects.

Total O&M cost means the total of all the allowable and allocatable costs we incur for administering, operating, maintaining, and rehabilitating our irrigation projects serving your farm unit.

Water means water we deliver at our projects for the general purpose of irrigation and other purposes we agree to in writing.

Water delivery is an activity that is part of the irrigation service we provide our customers when water is available.

We, us, and our means the United States Government, the Secretary of the Interior, the BIA, and all who are authorized to represent us in matters covered under this notice.

Does This Notice Affect Me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects, or you have a carriage agreement with one of our irrigation projects.

Where Can I Get Information on the Regulatory and Legal Citations in This Notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov.*

Why Are You Publishing This Notice?

We are publishing this notice to notify you that we propose to adjust one or more of our irrigation assessment rates. This notice is published in accordance with the BIA's regulations governing its operation and maintenance of irrigation projects, specifically, 25 CFR 171.1. These sections provide for the fixing and announcing of the rates for annual assessments and related information for our irrigation projects.

What Authorizes You To Issue This Notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual and by memorandum dated January 25, 1994, from the Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

When Will You Put the Rate Adjustments Into Effect?

We will put the rate adjustments into effect for the 2003 irrigation season and subsequent years where applicable.

How Do You Calculate Irrigation Rates?

We calculate irrigation assessment rates in accordance with 25 CFR 171.1(f) by estimating the cost of normal operation and maintenance at each of our irrigation projects. The cost of normal operation and maintenance means the expenses we incur to provide direct support or benefit for an irrigation project's activities for administration, operation, maintenance, and rehabilitation. These costs are then applied as stated in the rate table in this notice.

What Kinds of Expenses Do You Include in Determining the Estimated Cost of Normal Operation and Maintenance?

We include the following expenses:

(a) Personnel salary and benefits for the project engineer/manager and project employees under their management control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(e) Capitalization expenses;

(f) Acquisition expenses;

(g) Maintenance of a reserve fund available for contingencies or emergency expenses for, and insuring, reliable operation of the irrigation project; and

(h) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

When Should I Pay My Irrigation Assessment?

We will mail or hand deliver your bill notifying you of the amount you owe to the United States and when such amount is due. If we mail your bill, we will consider it as being delivered no later than 5 business days after the day we mail it. You should pay your bill no later than the close of business on the 13th day after the due date stated on the bill.

What Information Must I Provide for Billing Purposes?

We must obtain certain information from you to ensure we can properly process, bill for, and collect money owed to the United States. We are required to collect the taxpayer identification number or social security number to properly bill the responsible party and service the account under the authority of, and as prescribed in, Public Law 104–143, the Debt Collection Improvement Act of 1996.

(a) At a minimum, this information is:

(1) full legal name of person or entity responsible for paying the bill;

(2) adequate and correct address for mailing or hand delivering our bill; and

(3) the taxpayer identification number or social security number of the person or entity responsible for paying the bill;

(b) It is your responsibility to ensure we have correct and accurate information for (a) above.

(c) If you are late paying your bill due to your failure to furnish such information or comply with (b), you cannot appeal your bill on this basis.

What Can Happen if I Do Not Provide the Information Required for Billing Purposes?

We can refuse to provide you irrigation service.

If I Allow My Bill To Become Past Due, Could This Affect My Water Delivery?

If we do not receive your payment before the close of business on the 13th day after the due date stated on your bill, we will send you a past due notice. Your bill will have additional information concerning your rights. We will consider your past due notice as delivered no later than 5 business days after the day we mail it. We have the right to refuse water delivery to any of your irrigated land on which the bill is past due. We can continue to refuse water delivery until you pay your bill or make payment arrangements that we agree to. Our authority to demand payment of your past due bill is 31 CFR 901.2, ''Demand for Payment.''

Are There Any Additional Charges if I Am Late Paying My Bill?

Yes. We will assess you interest on the amount owed and use the rate of interest established annually by the Secretary of the United States Treasury (Treasury) to calculate what you will be assessed (31 CFR 901.9(b)). You will not be assessed this charge until your bill is past due. However, if you allow your bill to become past due, interest will accrue from the due date, not the past due date. Also, you will be charged an administrative fee of $12.50 for each time we try to collect your past due bill. If your bill becomes more than 90 days past due, you will be assessed a penalty charge of 6 percent per year and it will accrue from the date your bill initially became past due. Our authority to assess interest, penalties, and administration fees on past due bills is prescribed in 31 CFR 901.9, ''Interest, penalties, and costs.''

What Else Can Happen to My Past Due Bill?

If you do not pay your bill or make payment arrangements that we agree to, we are required to send your past due bill to the Treasury for further action. We must send your bill to Treasury no later than 180 days after the original due date of your irrigation assessment bill. The requirement for us to send your unpaid bill to Treasury is prescribed in 31 CFR 901.1, ''Aggressive agency collection activity.''

Who Can I Contact for Further Information?

The following tables are the regional and project/agency contacts for our irrigation facilities.

Project name	Project agency contacts
Northwest Region Contacts	
Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, Telephone (503) 231–6702.	
Flathead Irrigation Project	Ernest T. Moran, Superintendent, Flathead Agency Irrigation Division, P.O. Box 40, Pablo, Montana 59855–5555, Telephone: (406) 675–2700.
Fort Hall Irrigation Project	Eric J. LaPointe, Superintendent, Fort Hall Agency, P.O. Box 220, Fort Hall, Idaho 83203–0220, Telephone: (208) 238–2301.
Wapato Irrigation Project	Pierce Harrison, Project Administrator, Wapato Irrigation Project, P.O. Box 220, Wapato, WA 98951–0220, Telephone: (509) 877–3155.
Rocky Mountain Region Contacts	
Keith Beartusk, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Ross Denny, Superintendent, Cliff Hall, Irrigation Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent, (406) 338–7519, Irrigation.
Crow Irrigation Project	Gordon Jackson, Superintendent, Dan Lowe, Irrigation Manager, P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672 Superintendent, (406) 638–2863 Irrigation.
Fort Belknap Irrigation Project	Cleo Hamilton, Superintendent, Dan Spencer, Irrigation Manager, R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901 Superintendent, (406) 353–2905 Irrigation.
Fort Peck Irrigation Project	Ed Lone Fight, Acting Superintendent, P.O. Box 637, Poplar, MT 59255, Marvin Azure, Irrigation Manager (acting), 602 6th Avenue North, Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent, (406) 653–1752, Irrigation.

Project name	Project agency contacts
Wind River Irrigation Project	Clark Madison, Acting Superintendent, Sheridan Nicholas, Irrigation Manager, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810 Superintendent, (307) 332–2596 Irrigation.
Southwest Region Contacts	
Rob Baracker, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 615 First Street, NW, Albuquerque, New Mexico 87102, Telephone (505) 346–7590/91.	
Pine River Irrigation Project	Michael Stancampiano, Superintendent, John Formea, Irrigation Engineer, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511 Superintendent, (970) 563–1017 Irrigation.
Western Region Contacts	
Wayne Nordwall, Regional Director, Bureau of Indian Affairs, Western Regional Office, P.O. Box 10, Phoenix, Arizona 85001, Telephone (602) 379–6600.	
Colorado River Irrigation Project	Allen Anspach, Superintendent, R.R. 1 Box 9–C, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Paul Young, Superintendent, 1555 Shoshone Circle, Elko, Nevada 89801, Telephone: (775) 738–0569, Superintendent.
Fort Yuma Irrigation Project	William Pyott, Land Operations Officer, P.O. Box 11000, Yuma, Arizona, Telephone: (520) 782–1202.
San Carlos Irrigation Project Joint Works	Randy Shaw, Supervisory General Engineer, 13805 N. Arizona Boulevard, Coolidge, AZ 85228, Telephone: (520) 723–6216.
San Carlos Irrigation Project Indian Works	Joe Revak, Supervisory General Engineer, Pima Agency, Land Operations, Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3372.
Uintah Irrigation Project	Lynn Hansen, Irrigation Manager, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4341.
Walker River Irrigation Project	Robert Hunter, Superintendent, 1677 Hot Springs Road, Carson City, Nevada 89706, Telephone: (775) 887–3500.

What Irrigation Assessments or Charges Are Proposed for Adjustment by This Notice?

The rate table below contains the current rates for all of our irrigation projects where we recover our costs for operation and maintenance. The table also contains the proposed rates for the 2003 season and subsequent years where applicable. The irrigation projects where rates are proposed for adjustment are noted by an asterisk immediately following the name of the project.

NORTHWEST REGION RATE TABLE

Project name	Rate category	Current 2002 rate	Proposed 2003 rate	Proposed 2004 rate
Flathead Irrigation Project*	Basic per acre	$19.95	$19.95	$21.45
Fort Hall Irrigation Project*	Basic per acre	20.00	22.00	To be Determined.
Fort Hall Irrigation Project Minor Units	Basic per acre	14.00	14.00	Do.
Fort Hall Irrigation Project* Michaud	Basic per acre	28.00	30.00	Do.
	Pressure per acre	41.00	43.50	Do.
Wapato Irrigation Project* Simcoe Units	Billing Charge Per Tract	5.00	5.00	Do.
	Farm unit/land tracts up to one acre (minimum charge).	10.40	13.00	Do.
	Farm unit/land tracts over one acre—per acre	10.40	13.00	Do.
Wapato Irrigation Project* Ahtanum Units	Billing Charge Per Tract	5.00	5.00	Do.
	Farm unit/land tracts up to one acre (minimum charge).	10.35	13.00	Do.
	Farm unit/land tracts over one acre—per acre	10.35	13.00	Do.
Wapato Irrigation Project* Satus Unit	Billing Charge Per Tract	5.00	5.00	Do.
	Farm unit/land tracts up to one acre (minimum charge).	41.40	51.00	Do.
	''A'' farm unit/land tracts over one acre—per acre.	41.40	51.00	Do.
	Additional Works farm unit/land tracts over one acre—per acre.	45.76	56.00	Do.
	''B'' farm unit/land tracts over one acre— per acre.	49.68	61.00	Do.
	Water Rental Agreement Lands—per acre	50.96	62.00	Do.

ROCKY MOUNTAIN REGION RATE TABLE

Project name	Rate category	Current 2002 rate	Proposed 2003 rate
Blackfeet Irrigation Project	Basic-per acre	$13.00	$13.00
Crow Irrigation Project (See note below)	Basic-per acre	16.00	16.00
Fort Belknap Irrigation Project*	Indian per acre	6.25	7.00
	Non-Indian per acre	12.50	14.00
Fort Peck Irrigation Project	Basic-per acre	14.00	14.00
Wind River Irrigation Project*	Basic-per acre	12.00	13.00

SOUTHWEST REGION RATE TABLE

Project name	Rate category	Current 2002 rate	Proposed 2003 rate
Pine River Irrigation Project	Minimum Charge per tract	$25.00	$25.00
	Basic-per acre	8.50	8.50

WESTERN REGION RATE TABLE

Project name	Rate category	Current 2002 rate	Proposed 2003 rate	Proposed 2004 rate
Colorado River Irrigation Project* (See note #1 below).	Basic per acre up to 5.0 acre-feet	$37.00		To be Determined.
	Excess Water per acre foot 5.0–5.5 acre-feet	7.40		Do.
	Excess Water per acre-foot over 5.5 acre-feet	17.00		Do.
	Basic per acre up to 5.75 acre-feet		$47.00	Do.
	Excess Water per acre-foot over 5.75 acre-feet.		17.00	Do.
Duck Valley Irrigation Project	Basic-per acre	5.30	5.30	Do.
Fort Yuma Irrigation Project (See note #2 below).	Basic-per acre up to 5.0 acre-feet	60.00	60.00	Do.
	Excess Water per acre-foot over 5.0 acre-feet	10.50	10.50	Do.
San Carlos Irrigation Project (Joint Works)	Basic-per acre	20.00	20.00	20.00
San Carlos Irrigation Project (Indian Works)	Basic-per acre	56.00	56.00	To be Determined
Uintah Irrigation Project* (See note #2 below)	Basic-per acre	8.50	11.00	Do.
Walker River Irrigation Project	Indian per acre	7.32	7.32	Do.
	Non-Indian per acre	15.29	15.29	Do.

Note #1—For the Colorado River Irrigation Project, pursuant to a reconciliation of the operation and maintenance financial records as of December 31, 2002, funds in excess of the 700,000 reserve fund will be refunded to the excess water users in proportion to the amount of excess water purchased by each water user. The refund will be a credit against the 2003 irrigation season assessment for eligible excess water users.

Note #2—The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation (Reclamation). The irrigation rates assessed for operation and maintenance are established by Reclamation and are provided for informational purposes only. The BIA only collects the irrigation assessments on behalf of Reclamation.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The BIA irrigation projects are vital components of the local agriculture economy of the reservations on which they are located. To fulfill its responsibilities to the tribes, tribal organizations, water user organizations, and the individual water users, the BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, costs of administration, operation, maintenance, and rehabilitation. This is accomplished at the individual irrigation projects by Project, Agency, and Regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of the BIA's overall coordination and consultation process to provide notice and request comments from these entities on adjusting our irrigation rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA owned and operated irrigation projects, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Act of 1995

These rate adjustments impose no unfunded mandates on any governmental or private entity and are

in compliance with the provisions of the Unfunded Mandates Act of 1995.

Takings (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant ''takings'' implications. The rate adjustments do not deprive the public, state, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant Federalism effects because they pertain solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires February 28, 2003.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Dated: November 20, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–437 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–DES–02–51]

Banks Lake Drawdown, Columbia Basin Project, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings for the Banks Lake Drawdown, Washington, draft Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a draft Environmental Impact Statement (Draft EIS) to examine the impacts of alternatives to lower the minimum surface elevation for Banks Lake in August from 1,565 feet to 1,560 feet.

The action alternative describes the resource conditions that would occur between Banks Lake surface elevations of 1,570 feet and 1,560 feet, while the no action alternative describes the conditions that would occur without the proposed action, between surface elevation 1,570 feet and 1,565 feet. Both the no action and action alternatives include four potential operational scenarios that could occur within their respective ranges.

The action alternative includes a refill of the reservoir to elevation 1,565 feet, beginning September 1 and ending no later than September 10.

DATES: Written comments on the draft EIS must be received no later than March 10, 2003, at the address listed under the **ADDRESSES** section below.

Public hearings will be held to accept oral comments on the draft EIS at:

- Coulee City, Washington, on February 11, 2003, from 7 to 9 p.m. and,
- Moses Lake, Washington, on February 12, 2003, from 1:30 to 3:30 p.m.

The public hearing facilities are physically accessible. Please contact Mr. Blanchard at the telephone, fax or TTY relay numbers listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice for accessibility accommodations, including sign language interpreters or other auxiliary aids. Requests should be made by January 31, 2003, to allow sufficient time to arrange for accommodation.

ADDRESSES: The public hearings will be held at:

- Coulee City Elementary School, 410 W. Locust, Coulee City, Washington, and,
- District 5 Fire Station Training Facility, 12801 Nelson Road, Moses Lake, Washington.

Written comments on the draft EIS should be submitted to Mr. Jim Blanchard, Special Projects Officer, Bureau of Reclamation, 32 C Street, P.O. Box 815, Ephrata, WA 98823–0815; or by fax 509–754–0239, or by e-mail at: *jblanchard@pn.usbr.gov.*

See the **SUPPLEMENTARY INFORMATION** section below for locations where copies of the DEIS are available for public review and inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Blanchard, Special Projects Officer, at 509–754–0226 (relay users may dial 711). Those wishing to obtain a copy of the draft EIS in the form of a printed document or on compact disk (CD–ROM with reader included) or a summary of the draft EIS may contact Mr. Blanchard.

SUPPLEMENTARY INFORMATION:

Public Disclosure

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Hearing Process Information

Requests to make oral comments at the public hearings may be made at each hearing. Comments will be recorded by a court reporter. Speakers will be called in the order of their requests. In the interest of available time, each speaker will be asked to limit oral comments to five minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the public hearing or identified as hearing comments and mailed to be received by Mr. Blanchard no later than March 10, 2003.

Background

Since its creation in the early 1950s, Banks Lake has been operated and maintained for the storage and delivery of irrigation water drawn from the Columbia River to Columbia Basin Project (CBP) lands. At Dry Falls Dam, the Main Canal flows south from the Banks Lake outlet works to the northern portion of the CBP's irrigable area. Reclamation operates the reservoir within established constraints on water surface elevation to met contractual obligations, ensure public safety, and protect property. Reclamation considers other resource needs as feasible within existing operational constraints.

In December of 2000, the National Marine Fisheries Service issued a Biological Opinion (BIOP) to the Bureau

of Reclamation, the U.S. Army Corps of Engineers, and Bonneville Power Administration for the operation of the Federal Columbia River Power System. The BIOP included a Reasonable and Prudent Alternative (RPA), of which action 31 advised Reclamation to ''assess the likely environmental effects of operation of Banks Lake up to 10 feet down from full pool during August.''

Reclamation proposes to complete RPA action 31 by preparing the Banks Lake Drawdown draft Environmental Impact Statement to describe and analyze the environmental effects of lowering the August surface elevation of Banks Lake to elevation 1560 feet, which is 10 feet below full pool.

Review and Inspection of the DEIS

Copies of the DEIS are available for public review and inspection at the following locations:

- Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 18th and C Streets, NW., Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, Colorado 80225.
- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234.
- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington 98901.
- Bureau of Reclamation, Ephrata Field Office, 32 C Street, Ephrata, Washington 98823.

Libraries

- Bridgeport Community Library, Douglas County, 1206 Columbia St., Bridgeport, WA 509–686–7281.
- Coulee City Community Library, 405 W. Main St., Coulee City, WA 509–674–2313.
- Des Moines Library, 21620 11th Ave S, Des Moines, WA 206–824–6066.
- East Wenatchee Community Library, Douglas County, 271 9th St NE, East Wenatchee, WA 509–886–7404.
- Ephrata Public Library, 45 Alder NW, Ephrata, WA 509–754–3971.
- Grand Coulee Community Library, 225 Federal, Grand Coulee, WA 509–633–0972.
- Moses Lake Public Library, 418 E. 5th Ave, Moses Lake, WA 509–765–3489.
- Quincy Community Library, 108 B St SW., Quincy, WA 509–787–2359.
- Royal City Community Library, 356 Camelia, Royal City, WA 509–346–9281.
- Seattle Public Library, 800 Pike St, Seattle, WA 206–386–4636.
- Soap Lake Community Library, 32 E. Main, Soap Lake, WA 509–246–1313.
- Warden Community Library, 305 S. Main, Warden, WA 509–349–2226.
- Wenatchee Public Library, Chelan County, 310 Douglas St, Wenatchee, WA 509–662–5021.

Internet

The DEIS is also available on the Internet at *http://www.pn.usbr.gov.*

Dated: December 20, 2002.

J. William McDonald,

Regional Director, Pacific Northwest Region, Bureau of Reclamation.

[FR Doc. 03–387 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (the AMWG), a technical work group (the TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

Date and Location: The Glen Canyon Dam Adaptive Management Work Group will conduct the following public meeting:

Phoenix, Arizona—January 28–29, 2003. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss experimental flows, non-native fish control, status of the temperature control device risk assessment, 2000 Low Steady Summer Flow (LSSF) reports, FY 2004 Annual Work Plan and Budget, basin hydrology and 602a storage, information needs associated with the Strategic Plan, public outreach, environmental compliance, and other administrative and resource issues pertaining to the AMP.

Date and Location: The Glen Canyon Dam Technical Work Group will conduct the following public meeting:

Phoenix, Arizona—February 26–27, 2003. The meeting will begin 9:30 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at 2 p.m. on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the experimental flow status, non-native fish control, FY 2004 budget changes, the target development process, environmental compliance, address assignments from the AMWG meeting held in January 2003, and other administrative and resource issues pertaining to the AMP.

Agenda items may be revised prior to any of the meetings. Final agendas will be posted 15 days in advance of each meeting and can be found on the Bureau of Reclamation Web site under Environmental Programs at *http://www.uc.usbr.gov/amp*. Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings.

To allow full consideration of information by the AMWG or TWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3758; faxogram (801) 524–3858; e-mail at *rpeterson@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members at their respective meetings.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; or via e-mail at *rpeterson@uc.usbr.gov*.

Date: December 18, 2002.

Randall V. Peterson,

Manager, Adaptive Management and Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 03–371 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–MN–O

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 20, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158, or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Request to be Selected as Payee.

OMB Number: 1215–0166.

Affected Public: Business or other-for-profit; individuals or households; and not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 2,000.

Number of Annual Responses: 2,000.

Estimated Time Per Response: 20 minutes.

Total Burden Hours: 667.

Total Annualzied Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $800.00.

Description: Benefits are payable by the Department of Labor to miners who are totally disabled due to pneumoconiosis and to certain survivors of a miner under the Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 901). If a beneficiary is incapable of handling his affairs, the person or institution responsible for his care is required to apply to receive the benefits payment on the beneficiary's behalf. The CM–910 is used to obtain information about prospective representative payees to determine whether they are qualified to handle monetary benefits on behalf of the beneficiary. If this information were not collected, the Department would be unable to evaluate the applicant's ability to be a representative payee.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–424 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 20, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158) or E-mail *Howze-Marlene@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Requirements of *Bona Fide* Thrift or Savings Plan (29 CFR part 547) and Requirements of a Bona Fide Profit-Sharing Plan or Trust (29 CFR part 549).

OMB Number: 1215–0119.

Affected Public: Business or other for-profit; individuals or households; not-for-profit institutions; and State, local or tribal government.

Frequency: On occasion.

Number of Respondents: 462,000.

Number of Annual Responses: 462,000.

Total Burden Hours (Recordkeeping): 2.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 7(e)(3)(b) of the Fair Labor Standards Act permits the exclusion from an employee's regular rate of pay, payments on behalf of an employee to a ''*bona fide*'' thrift or savings plan, profit-sharing plan or trust. Regulations, 29 CFR part 547 and 549, set forth the requirements for a ''*bona fide*'' thrift or savings plan, profit-sharing plan or trust. The maintenance of the records required by the regulations enables the Department of Labor (DOL) investigators to determine whether a given thrift or savings plan, profit-sharing plan or trust, is in compliance with section 7(e)(3)(b) of the FLSA. Without these records, such a determination could not be made.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–425 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 26, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158), or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those whoa re to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Notice of Controversion of Right to Compensation.

OMB Number: 1215–0023.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 900.

Number of Annual Responses: 18,900.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 4,725.

Total Annualzied Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $7,985.25.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act. This Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. Pursuant to section 14(d) of the Act, and 20 CFR 702.251, if an employer controverts the right to compensation, he shall file with the district director in the affected compensation district on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the Secretary, stating that the right to compensation is controverted.

Form LS–207 is used by insurance carriers and self-insured employers to controvert claims under the act. OWCP district offices use this information to determine the basis for not paying benefits in a case. It also informs the injured claimant of the reason(s) for not paying compensation benefits. If the information were not collected, our district offices and claimants would have no way of knowing the reason(s) for controverting the right to compensation.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–426 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,357; Consol Energy, Reno Lake Mine, Sesser, IL.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,154; Dana Corp., Traction Technologies Group, Jonesboro, AR.

The investigation revealed that criterion (a)(2)(A) (1.B) (Sales or production, or both did not decline) and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,008; Storage Technology Corp., Minneapolis Research and Development Center, Brooklyn Park, MN.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.A and B) (No employment declines; No shift in production to a foreign country) have not been met.

TA–W–50,056; Ehlert Tool Company, New Berlin, WI.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–50,276; SuperValu, Belle Vernon, PA.

TA–W–50,184; Corning Cable Systems, LLC, Business Operation.

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not a supplier or downstream producer for trade-affected companies.

TA–W–50,255 & A,B; Aurora Systems, Inc., Erie, PA, Rochester, NY and Buffalo, NY.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,345; General Electric Industrial Systems Components Plant, Plainville, CT: October 7, 001.

TA–W–42,341; Pomona Paper Co., a Subsidiary of APC Paper Co., Inc., Pomona, CA: October 24, 2001.

TA–W–42,318; Eagle Clothing Co., Los Angeles, CA: October 15, 2001.

TA–W–42,282; Ohmite Manufacturing Co., C.T. Gamble Acquisition Corp., d/b/a C.T. Gamble Industries, Delanco, NJ: October 4, 2001.

TA–W–42,176; Georgia-Pacific Lumber Corp., Western Lumber Operations, Fort Bragg, CA: August 23, 2001.

TA–W–42,077; Bijur Lubricating Corp., Bennington, VT: August 20, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–50,305; Burgess Norton Manufacturing Co., Div. of Amsted Industries, DeKalb, IL: December 11, 2001.

TA–W–50,284; Newell Rubbermaid Corp., Levelor Hardware Group, Amerock Hardware Div., Bulldog Hardware Div., Ogdenburg, NY: November 27, 2001.

TA–W–50,216; Carney Products Co., LTD, a Subsidiary of Flannery-Comerford, Inc., St. Maries, ID: November 13, 2001.

TA–W–50,175 and A; T.L. Diamond and Company, Inc., New York and Eagle Zinc Co., a Subsidiary of T.L. Diamond and Co., Inc., Hillsboro, IL: November 22, 2001.

TA–W–50,171; J K. Tool and Die, Inc., Apollo, PA: November 22, 2001.

TA–W–50,094; Chiquola Industrial Products Group LLC, Honea Path, SC: November 5, 2001.

TA–W–50,012; PD Wire and Cable, a Subsidiary of Phelps Dodge Industries, a Subsidiary of Phelps Dodge Corp., Laurinburg, NC: November 5, 2001.

TA–W–50,009 and A; Dodger Industries, Inc., Eagle Grove, IA and Eldora, IA: November 4, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–50,226; Technicolor Virginia, Ruckersville, VA and Charlottesville, VA: November 21, 2001.

TA–W–50,202; General Electric Co., Glass Plant, Bridgeville, PA: November 19, 2001.

TA–W–50,155; PCC Airfoils, LLC, Douglas, GA: November 18, 2001.

TA–W–50,110; Emerson Motor Co., Sturgeon Bay, WI: November 12, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–07558; Dana Corp., Traction Technologies Group, Jonesboro, AR.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–07653; Genesis Communications, Inc., San Diego, CA.

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

NAFTA–TAA–06912; State of Alaska Commercial Fisheries Entry Commission Permit #57954M, New Stuyahok, AK.

NAFTA–TAA–07451; Permit #58117F, South Naknek, AK.

NAFTA–TAA–06884; Permit #64750, Naknek, AK.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–07661; Hawker Power Systems, Inc., a Subsidiary of Enersys, Inc., Springfield, MO: September 18, 2001.

NAFTA–TAA–07629; Shipping Systems, Inc., a Subsidiary of Bancroft Bag, Crossett, AR: October 21, 2001.

NAFTA–TAA–07589; Georgia-Pacific Lumber Corp., Western Lumber Operations, Fort Bragg, CA: September 27, 2001.

NAFTA–TAA–06209; Schlumberger Oilfield Services, Webster, TX: May 16, 2001.

I hereby certify that the aforementioned determinations were issued during the months of December, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 2, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–415 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,311; New England Iron, LLC, Springfield, MA.

TA–W–42,159; Landis Gardner, Div. of Unova Industrial Automation Systems, Inc., Waynesboro, PA.

TA–W–42,162; Forney, Inc., Hermitage, PA.

TA–W–42,328; Stratex Newtworks, Inc., San Jose, CA.

TA–W–42,288; Warp Knit Mills, Inc., Lincolnton, NC.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,229 & A; Dana Corp., Traction Technologies Group, Department 606, Syracuse, IN and Department 782, Syracuse, IN.

TA–W–42,106; Pyramid Industries, Inc., a Wholly Owned Subsidiary of Lamson and Sessions, Inc., Erie, PA.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–50,240 & A; Erie Industrial Maintenance, Berea, OH and Erie Industrial Insulation, Berea, OH.

TA–W–50,232; Roxio, Inc., Maple Grove, MN.

TA–W–50,229; Electronic Data Systems Corp., Rochester, NY.

TA–W–52,236; Consolidated Freightways, York, PA.

TA–W–42,283; Facility Pro, Columbus, OH.

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–42,208; Englehard Corp., a Div. of The Process Technologies Group, Erie, PA.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,351; Johnstown Corp., Johnstown, PA: August 16, 2002.

TA–W–42,343; Wolverine World Wide, Inc., Formerly Frolic Footwear, a Div. of Wolverine Manufacturing Group, Arkansas Operations, Monette, AR: October 23, 2001.

TA–W–41,596; Carton Craft Corp., Buffalo, NY: May 8, 2001.

TA–W–42,212; Deluxe Craft Photo Albums, Inc., Chicago, IL: September 17, 2001.

TA–W–42,196; Hy-Tec Manufacturing, Stator Reclaim Line, Ada, OK: September 13, 2001.

TA–W–42,266; Presto Manufacturing Co., Jackson, MS: October 3, 2001.

TA–W–41,741; Weyerhaeuser Co., Woodburn Engineered Wood Products Div., Woodburn, OR: June 17, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–50,078 & a; Auburn Hosiery Mills, Inc., a Subsidiary of Kellwood Co., Auburn, KY and Adairville, KY: November 5, 2001.

TA–W–50,203 & A; SMS Eumuco, Inc., a Subsidiary of SMS Eumuco, GMBH, a Subisidiary of SM–AG, Pittsburgh, PA and Bellefonte, PA: November 21, 2001.

TA–W–50,153; Triangle Apparel, Inc., Parson, TN: November 20, 2001.

TA–W–50,033; CMAC of America, d/b/a Carolina Circuits, Greenville, SC: November 6, 2001.

TA–W–50,039; Vista Wood Products, Lafayette, TN: November 7, 2001.

TA–W–50,054; Universal Automotive, Inc., Cuba, MO: November 8, 2001.

TA–W–50,259; Alfred Angelo, Inc., Delray Beach, FL: November 20, 2001.

TA–W–50,238; Island Manufacturing Co., Inc., North Bergen, NJ: November 27, 2001.

TA–W–50,162; Magnivision, Inc., Miramar, FL: November 14, 2001.

TA–W–50,160; Edward Vogt Valve Co., A Branch of Flowserve, Jeffersonville, IN: November 18, 2001.

TA–W–50,157; Durango-Georgia Paper Co., St. Mary's, GA: November 14, 2001.

TA–W–50,149; New Roan Corp., Hialeah, FL: November 5, 2001.

TA–W–50,130; Lakeview Forge Co., Erie, PA: November 18, 2001.

TA–W–50,102; MMG North America, a Subsidiary of TT Electronics, Paterson, NY: November 7, 2001.

TA–W–50,099; Sweater Project, Inc., Bergen, NJ: November 7, 2001.

TA–W–50,098; Interstate Foam Processors, Inc., Passaic, NJ: November 4, 2001.

TA–W–50,088; Charles and Sons Apparel, Inc., West New York, NJ: November 7, 2001.

TA–W–50,083; Rayonier, Southeast Wood Productions Div., Lumber City, GA: November 8, 2001.

TA–W–50,067; Advanced Glassfiber Yarns, Aiken, SC: November 8, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–50,022; Andrew Corp., Richardson, TX: November 4, 2001.

TA–W–50,137; SL Outer Banks, LLC, Lumberton, NC: November 18, 2001.

TA–W–50,085; Pass and Seymour, a Subsidiary of Legrand, Concord, NC: November 12, 2001.

TA–W–50,168; Square D Company, Raleigh Plant Knightdale, NC: November 20, 2001.

TA–W–50,186; Don Shapiro Industries, Inc., d/b/a Action West, El Paso, TX: December 27, 2002.

TA–W–50,119; U.S. Repeating Arms Co., Inc., New Haven, CT: November 8, 2001.
TA–W–50,023; Andrew Corp., Burlington, IA: November 4, 2001.
TA–W–50,357; Dixon Ticonderoga Co., Inc., Sandusky Div., Sandusky, OH: December 9, 2001.
TA–W–50,269; Pass and Seymour/Legrand, Greensboro Manufacturing Plant, Whitsett, NC: December 2, 2001.
TA–W–50,267; Concise Fabricators, Inc., Tucson, AZ: October 29, 2001.
TA–W–50,236; Stryker Howmedica Osteonics Corp., a Subsidiary of Stryker Corp., Rutherford, NJ: December 4, 2001.
TA–W–50,136; Bissell Homecare, Inc., Walker, MI: November 2, 2001.
TA–W–50,096; Burlington Industries, Inc., Reidsville Weaving Plant, Reidsville, NC: November 8, 2001.
TA–W–50,068; Velvet Drive Transmission, New Bedford, MA: November 7, 2001.
TA–W–50,065; Rawlings Sporting Goods Co., Inc., Licking, MO: November 11, 2001.
TA–W–50,026; Andrew Corp., Addison, IL: November 4, 2001.
TA–W–50,047; Andrew Corp., Denton, TX: November 4, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06126; Furnimex Products USA, Inc., Charm House Manufacturing, Sumter, SC.
NAFTA–TAA–07654; Stratex Networks, Inc., San Jose, CA.
NAFTA–TAA–07597; Dana Corp., Traction Technologies Group, Department 606, Syracuse, IN.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–07645; Findlay Industries, Inc., Eagle Pass Warehouse, Eagle Pass, TX.

The investigation revealed that criteria (2) has not been met. Sales or production, or both, did not decline during the relevant period as required for certification.

NAFTA–TAA–07660; Engelhard Corp., a Div. of The Process Technologies Group, Erie, PA.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–07593; Deluxe Craft Photo Albums, Inc., Chicago, IL: September 17, 2001.
NAFTA–TAA–06292; Weyerhaeuser Co., Woodburn Engineered Wood Products Div., Woodburn, OR: June 19, 2001.
NAFTA–TAA–07372; Permit #64414M, Naknek, AK: September 5, 2001.
NAFTA–TAA–07597A; Dana Corp., Traction Technologies Group, Department 782, Syracuse, IN: September 30, 2001.

I hereby certify that the aforementioned determinations were issued during the months of December, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 23, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–414 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Workers Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 21, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 21, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 13th day of December, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 12/02/2002 and 12/06/2002]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,223	Alcoa Fujikura, LTD (Wkrs)	Allentown, PA	12/02/2002	12/02/2002
50,224	Upstate Printed Circuits (Wkrs)	Syracuse, NY	12/02/2002	11/30/2002
50,225	Unitek Electronics, Inc. (Comp)	Tigard, OR	12/02/2002	11/29/2002
50,226	Technicolor Virginia (Comp)	Ruckersville, VA	12/02/2002	11/21/2002
50,226A	Technicolor Virginia (CAO)	Charlottesville, VA	12/02/2002	11/21/2002
50,227	Fabricating source, Inc. (The) (Comp)	Youngstown, OH	12/02/2002	11/19/2002
50,228	Lau Industries, Inc. (USWA)	Indianapolis, IN	12/03/2002	12/02/2002
50,229	Electronic Data Systems (Wkrs)	Rochester, NY	12/03/2002	11/21/2002
50,230	Mount Vernon Mills, Inc. (Comp)	Johnston, SC	12/03/2002	12/02/2002
50,231	Snorkel/Omni Equipment Textron (Wkrs)	Elwood, KS	12/03/2002	12/02/2002
50,232	Roxio, Inc. (Wkrs)	Maple Grove, MN	12/03/2002	12/02/2002
50,233	Bombardier Mass Transit Corp. (Wkrs)	Barre, VT	12/03/2002	12/03/2002
50,234	BiPhase Technologies (Wkrs)	Lake Lillian, MN	12/03/2002	11/25/2002
50,235	Baker Enterprises, Inc. (Wkrs)	Alpena, MI	12/03/2002	11/08/2002
50,236	Stryker Howmedica Osteonics Corp. (Comp)	Rutherford, NJ	12/04/2002	12/03/2002
50,237	Pass and Seymour/Legrand (Comp)	Dallas, NC	12/04/2002	11/25/2002
50,238	Island Manufacturing Company (NJ)	North Bergen, NJ	12/04/2002	11/27/2002
50,239	Nestle Purina (RWDSU)	St. Joseph, MO	12/04/2002	11/26/2002
50,240	Erie Industrial Maintenance (Comp)	Berea, OH	12/04/2002	11/24/2002
50,240A	Erie Industrial Insulation (Co.)	Berea, OH	12/04/2002	11/24/2002
50,241	National Spinning Company, Inc. (Comp)	Washington, NC	12/04/2002	11/25/2002
50,242	Beres Industrial, Inc. (Comp)	Lakewood, NJ	12/04/2002	11/20/2002
50,243	Worthington Steel (IBT)	Jackson, MI	12/04/2002	11/26/2002
50,244	Medtronic Corporation (FL)	Sunrise, FL	12/04/2002	11/27/2002
50,245	Wolverine World Wide (Comp)	Kirksville, MO	12/04/2002	12/03/2002
50,246	Orcom (OR)	Bend, OR	12/04/2002	12/03/2002
50,247	Holland USA (Comp)	Denmark, SC	12/04/2002	11/26/2002
50,248	Howmet Casting (NJ)	Dover, NJ	12/04/2002	11/21/2002
50,249	Alpha Mills Corporation (Comp)	Annville, PA	12/04/2002	12/02/2002
50,250	Polyone Corporation (NJ)	Farmingdale, NJ	12/04/2002	11/19/2002
50,251	Voith Fabrics, Inc. (Compt)	Frankfort, KY	12/04/2002	12/03/2002
50,252	General Mills (Comp)	Hillsdale, MI	11/26	12/04/2002
50,253	Johns Manville (Wkrs)	Natchez, MS	12/04/2002	12/03/2002
50,254	Precision Tool and Design (Wkrs)	Erie, PA	12/06/2002	11/27/2002
50,255	Aurora Systems, Inc. (Comp)	Erie, PA	12/06/2002	11/28/2002
50,255A	Aurora Systems, Inc. (Co.)	Rochester, NY	12/06/2002	11/28/2002
50,255B	Aurora Systems, Inc. (Co.)	Buffalo, NY	12/06/2002	11/28/2002
50,256	E.J. Snyder and Company, Inc. (Comp)	Albemarle, NC	12/06/2002	12/05/2002
50,257	Electric Steel Castings (USWA)	Speedway, IN	12/06/2002	12/05/2002
50,258	Weyerhaeuser Cascade Operations (Comp)	Enumclaw, WA	12/06/2002	12/02/2002
50,259	Alfred Angelo (Wkrs)	Delray Beach, FL	12/06/2002	11/20/2002
50,260	Motorola (Wkrs)	Mesa, AZ	12/06/2002	12/05/2002
50,261	Advanced Power Technology, Inc. (Orr)	Bend, OR	12/06/2002	12/05/2002
50,262	Engineered Polymers Corporation (MN)	Mora, MN	12/06/2002	12/03/2002
50,263	OMG Fidelity (NJ)	Newark, NJ	12/06/2002	12/04/2002
50,264	Atlantic Metal Products (NJ)	Springfield, NJ	12/06/2002	12/04/2002
50,265	HBK Industries (UNITE)	Blackwood, NJ	12/06/2002	12/03/2002
50,266	Parker Hannifin (Wkrs)	Minneapolis, MN	12/06/2002	12/04/2002
50,267	Concise Fabricators, Inc. (Comp)	Tucson, AZ	12/06/2002	10/29/2002
50,268	American Tool Companies (Comp)	Lexa, AR	12/06/2002	12/04/2002
50,269	Pass and Seymour / Legrand (Comp)	Whitsett, NC	12/06/2002	12/02/2002
50,270	Kreuter Manufacturing Company (Wkrs)	New Paris, IN	12/06/2002	11/22/2002

[FR Doc. 03–421 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,312]

Analog Devices, Inc., Norwood, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 28, 2002 in response to petition filed on behalf of workers at Analog Devices, Inc., Norwood, Massachusetts.

The three workers filing the petition worked in different divisions of the firm: Corporate Marketing, ASC, Analog Semiconductor, and Corporate Sales. The petition regarding the investigation has been deemed invalid because the three petitioners are not within the same appropriate subdivision of the firm. Consequently, the investigation has been terminated.

Signed in Washington, DC this 13th day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–406 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,263]

Arkansas Metal Castings, Inc., Ft. Smith, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 9, 2002 in response to a worker petition which was filed on behalf of workers at Arkansas Metal Castings, Inc., Ft. Smith, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, DC this 20th day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–402 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,321]

Baxter Healthcare Corporation, Mountain Home, AR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 12, 2002 in response to a worker petition filed by the State of Arkansas Employment Security Department on behalf of workers at Baxter Healthcare Corporation, Mountain Home, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 31st day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–419 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,299]

CSI Employment Services, Mt. Pleasant, IA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 12, 2002, in response to a worker petition filed by a company official on behalf of workers at CSI Employment Services, Mt. Pleasant, Iowa.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of December, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–405 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,181]

Eagle Zinc Company, Hillsboro, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 25, 2002, in response to a worker petition filed by the company on behalf of workers at Eagle Zinc Company, Hillsboro, Illinois.

The petitioning group of workers is covered by an earlier petition (TA–W–50,175) filed on November 25, 2002 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case (TA–W–50,181), would duplicate efforts and serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 9th day of December, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–408 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,344]

Hitachi High Technologies America, Inc., San Jose, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 1, 2002, in response to a worker petition filed by the company on behalf of workers at Hitachi High Technologies America, Inc., San Jose, California.

The subject firm requested that the existing petition be terminated. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 20th day of December, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–403 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,067]

Huntsman Polymers Corporation Utilities Division, Odessa, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application of October 16, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on October 7, 2002 and published in the **Federal Register** on November 5, 2002 (67 FR 67418).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on the finding that the subject firm workers did not produce an article within the meaning of section 222(3) of the Trade Act of 1974. The affected workers managed water and raw materials utilized in the various manufacturing processes performed at the subject firm.

The petitioner alleges that the Utility Division was in direct support of a Trade Adjustment Assistance (TAA) certified facility (Huntsman Polymer Corporation, Odessa, Texas (TA–W–39,780) and thus believes the worker group should be certified eligible to receive TAA.

Upon examination of the initial investigation and further contact with the company, it has been determined that only a small portion of the work performed by the subject workers was directed towards that certified TAA facility. The overwhelming majority of the support activities were directed towards other plant product lines, which are not under existing TAA certifications.

The investigation further revealed that the Utilities Division required the same number of workers whether it was at full operating capacity or at a reduced operating level.

The dominant factor leading to the declines in employment at Huntsman Polymers Corporation, Utilities Division, Odessa, Texas was related to a ''Feasibility Study'' in which it was determined that in order to reduce company costs, the Utilities Division would be merged with another facility at the Odessa site.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 23rd day of December, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–413 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,111]

Osram Sylvania Products, Inc., Bangor, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 18, 2002 in response to a worker petition filed by a company official on behalf of workers at OSRAM SYLVANIA Products, Inc., Bangor, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 16th day of December, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–404 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 21, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 21, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 20th day of December, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 12/09/2002 and 12/13/2002]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,271	Partminer, Inc. (Wkrs)	Englewood, CO	12/09/2002	12/04/2002
50,272	Hitachi Magnetics Corp. (UAW)	Edmore, MI	12/09/2002	12/03/2002
50,273	Harvard Industries, Inc. (NJ)	Lebanon, NJ	12/09/2002	11/06/2002
50,274	Neenah Foundry (GMP)	Neenah, WI	12/09/2002	12/06/2002
50,275	Chinook Sailing Products (Comp)	Casscade Locks, OR	12/09/2002	12/25/2002
50,276	SuperValu, Inc. (Wkrs)	Belle Vernon, OA	12/09/2002	11/18/2002
50,277	Heico-Ohmite, LLC (Comp)	Skokie, IL	12/09/2002	12/03/2002
50,278	Dennis Windings (Wkrs)	Wilkes-Barre, PA	12/09/2002	12/03/2002
50,279	Pfaltzgraff Co. (The) (Comp)	Thomasville, PA	12/09/2002	11/06/2002
50,280	Holmes Group (The) (Wkrs)	Clinton, MO	12/09/2002	12/09/2002
50,281	U.S. Manufacturing (Wkrs)	Bad Axe, MI	12/09/2002	12/03/2002
50,282	Cusolar Industries, Inc. (MI)	Chesterfield, MI	12/09/2002	12/09/2002
50,283	Advanced Micro Devices (Wkrs)	Austin, TX	12/10/2002	11/23/2002
50,284	Newell Rubbermaid (USWA)	Ogdensburg, NY	12/10/2002	11/27/2002
50,285	Fiber-Line, Inc. (Comp)	Hickory, NC	12/10/2002	11/22/2002
50,286	Indiana Glass Company (Comp)	Dunkirk, IN	12/10/2002	12/06/2002
50,287	Corning Cables Systems (Wkrs)	Hickory, NC	12/10/2002	11/05/2002
50,288	Lancaster Malleable Castings Company (Comp).	Lancaster, PA	12/10/2002	12/02/2002
50,289	Metolius Mountain Products, Inc. (Comp)	Bend, OR	12/10/2002	11/22/2002
50,290	Sipex Corporation (Wkrs)	Billerica, MA	12/10/2002	11/06/2002
50,291	Intelicoat (Comp)	Spartanburg, SC	12/10/2002	12/04/2002
50,292	Gorham/Lenox (Comp)	Smithfield, RI	12/10/2002	12/09/2002
50,293	Mitsubishi Electric Automation (Comp)	Vernon Hills, IL	12/10/2002	12/09/2002
50,294	Gates Rubber Company (Comp)	Denver, CO	12/10/2002	12/04/2002
50,295	Vaughan Furniture Company (Comp)	Galax, VA	12/10/2002	12/06/2002
50,296	TRW Valve Division (SVAA)	Danville, PA	12/10/2002	12/09/2002
50,297	Progressive Die and Automation (Wkrs)	Grand Rapids, MI	12/12/2002	11/14/2002
50,298	SPX Valves/Controls (Comp)	Sartell, MN	12/12/2002	11/15/2002
50,299	CSI Employment Services (IA)	Mt. Pleasant, IA	12/12/2002	12/10/2002
50,300	Nexfor Fraser Levesque Operations (Comp)	Ashland, ME	12/12/2002	12/10/2002
50,301	DeLong Sportswear, Inc. (Comp)	Quanah, TX	12/12/2002	12/11/2002
50,302	Union Tank Car (IBB)	E. Chicago, IN	12/12/2002	12/01/2002
50,303	Profuse Services, Inc. (Comp)	Merkel, TX	12/12/2002	12/05/2002
50,304	Defiance Metal Products of PA (Comp)	Bedford, PA	12/12/2002	11/27/2002
50,305	Burgess Norton Manufacturing Company (Comp).	DeKalb, IL	12/12/2002	12/11/2002
50,306	Nevamar Company (Wkrs)	Stuart, VA	12/12/2002	12/04/2002
50,307	Xerox Corporation (Wkrs)	Yukon, OK	12/12/2002	12/03/2002
50,308	Helicopter Aviation Services Corporation (Wkrs).	Mt. Pleasant, PA	12/12/2002	11/05/2002
50,309	Parkdale Mills, Inc. (Comp)	Belmont, NC	12/12/2002	12/10/2002
50,310	Mossberg Reel, LLC (Comp)	Cumberland, RI	12/12/2002	12/06/2002
50,311	Relizon (Comp)	Newark, OH	12/12/2002	12/02/2002
50,312	Intertape Polymer Group (Comp)	Menasha, WI	12/12/2002	12/09/2002
50,313	Mike Dent Enterprises (Comp)	Burns, OR	12/12/2002	11/13/2002
50,314	Electroglas, Inc. (Wkrs)	San Jose, CA	12/12/2002	12/09/2002
50,315	Capital City Press (GCIU)	Berlin, VT	12/12/2002	12/10/2002
50,316	Gem Case, LLC (Comp)	Cranston, RI	12/12/2002	11/22/2002
50,317	FMC (USWA)	S. Charleston, WV	12/12/2002	12/05/2002
50,318	Fairfield Manufacturing Co., Inc. (UAW)	Lafayette, IN	12/12/2002	12/11/2002
50,319	ACS (Wkrs)	Liberty, KY	12/12/2002	12/10/2002
50,320	American Bag Corp. (Comp)	Stearns, KY	12/12/2002	11/25/2002
50,321	Baxter Health Care Corp. (AR)	Mountain Home, AR	12/12/2002	12/12/2002
50,322	Temp Associates (IA)	Mount Pleasant, IA	12/12/2002	12/10/2002
50,323	Potlatch Corporation (ID)	Lewiston, ID	12/12/2002	12/10/2002
50,324	Smiths Aerospace (Wkrs)	Malvern, PA	12/12/2002	12/09/2002
50,325	Successful Futures (IA)	Mt. Pleasant, IA	12/12/2002	12/10/2002
50,326	Jordan Fashions Corp. (UNITE)	New York, NY	12/12/2002	12/12/2002
50,327	Jo La Foundation (UNITE)	Brooklyn, NY	12/12/2002	12/09/2002
50,328	Crane Manufacturing and Service Corp. (Comp).	Cudahy, WI	12/12/2002	12/05/2002
50,329	U.S. Forgecraft Corp. (AR)	Fort Smith, AR	12/12/2002	12/12/2002
50,330	Bardon Rubber Company (UAW)	Union Grove, WI	12/12/2002	12/11/2002
50,331	Suntec Industries (UAW)	Rockford, IL	12/12/2002	12/11/2002
50,332	Tetley USA, Inc. (Comp)	Williamsport, PA	12/12/2002	12/10/2002
50,333	Rockford Company (The) (Comp)	Rockford, IL	12/13/2002	11/04/2002
50,334	Sumco Phoenix Corporation (Comp)	Fremont, CA	12/13/2002	11/26/2002
50,335	Windless, Inc. (Wkrs)	Altoona, PA	12/13/2002	12/02/2002
50,336	Rhodes Collections, Inc. (Comp)	Garland, TX	12/13/2002	12/06/2002

APPENDIX—Continued

[Petitions instituted between 12/09/2002 and 12/13/2002]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,337	MacLean ESNA (AR)	Pocahontas, AR	12/13/2002	12/12/2002
50,338	Dana Corporation/Long Manufacturing (Comp).	Sheffield, PA	12/13/2002	12/10/2002
50,339	Tower Automotive, Inc. (DALU)	Milwaukee, WI	12/13/2002	12/09/2002
50,340	Lear (PACE)	Peru, IN	12/13/2002	12/09/2002
50,341	Cooper Standard (AR)	El Dorado, AR	12/13/2002	12/12/2002
50,342	Pechiney Plastic Packaging (Wkrs)	Neenah, WI	12/13/2002	12/12/2002
50,343	Fashion Technologies, Inc. (Comp)	Gaffney, SC	12/13/2002	12/10/2002
50,344	Rough and Ready Lumber Co. (Comp)	Cave Junction, OR	12/13/2002	12/12/2002
50,345	Gateway Forest Products (AK)	Ward Cove, AK	12/13/2002	12/12/2002
50,346	Square D Company (Wkrs)	Columbia, MO	12/13/2002	12/10/2002
50,347	Rayovac Corporation (Comp)	Madison, WI	12/13/2002	12/09/2002
50,348	Egger Steel Company (Wkrs)	Sioux Falls, SD	12/13/2002	12/05/2002

[FR Doc. 03–423 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,279]

Pfaltzgraff Company, Thomasville, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 9, 2002 in response to a worker petition which was filed on behalf of workers at Pfaltzgraff Company, Thomasville, Pennsylvania.

An active certification covering the petitioning group of workers is already in effect (TA–W–41,917, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of December 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–418 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,855, TA–W–40,855A]

Quebcor World Kingsport, Inc., Kingsport, Tennessee, Quebcor World Hawkins, Kinsport Press Road, Church Hill, Tennessee; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 5, 2002, the United Steelworkers of America, Local 299 requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Quebecor World Kingsport, Inc., Kingsport, Tennesse (TA–W–40,855) and Quebcor World Hawkins, Kingsport Press Road, Church Hill, Tennessee (TA–W–40,855A) was issued on May 2, 2002, and was published in the **Federal Register** on May 17, 2002 (67 FR 35143).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The investigation findings revealed that criterion (3) of the group eligibility requirements of section 222 of the Trade Act of 1974 was not met. Increased imports did not contribute importantly to worker separations at the subject firm. The preponderance in the declines in employment at Quebcor World Hawkins, Kingsport Press Road, Church Hill, Tennessee is the direct result of plant production being shifted to other domestic locations and related bumping into the Quebecor World Kingsport, Incorporated facility. The workers were engaged in activities related to the production of books and also provided warehouse and distribution functions.

The request for reconsideration alleges that the subject plant workers were impacted by company work being exported to foreign countries and then shipped back to the United States. The petitioner attached a copy of work orders in an attempt to depict this.

The Department of Labor requested that the company verify the work orders lost to foreign sources and the amount of business lost to foreign sources. The company summarized the information and indicated that the amount of the work exported and imported back to the United States was negligible.

The petitioner further states that during February 2002, the company shifted binding equipment (Koibus casing-in line and one Horauf casemaker) from Quebecor World Hawkings to Bogata, Columbia.

Based on information supplied by the company, all plant production was shifted to domestic sources. A shift in plant machinery to a foreign source does not meet the eligibility requirements of section 223 of the Trade Act of 1974. As already indicated, company imports of products like or directly competitive with what the subject plant produced were negligible and thus any shifts in plant machinery to a foreign source is irrelevant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 20th day of December, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–412 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,196]

The Rockford Company, Rockford Illinois; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 26, 2002, in response to a worker petition filed by a company official on behalf of workers at The Rockford Company, Rockford, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 13th day of December, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–407 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix of this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations begin or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 21, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 21, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 3rd day of January 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 12/16/2002 and 12/23/2002]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,349	Simmons Foods (AR)	Siloam Springs, AR	12/16/2002	12/01/2002
50,350	Leviton Manufacturing Co., Inc. (Comp)	Warwick, RI	12/16/2002	12/13/2002
50,351	Top Gun Tool, Inc. (Wkrs)	Erie, PA	12/16/2002	12/16/2002
50,352	Spherion Atlanta Enterprises, LLC (NC)	Wilmington, NC	12/16/2002	12/13/2002
50,353	Edinboro Molding, Inc. (Comp)	Edinboro, PA	12/16/2002	11/04/2002
50,354	Red-Wing Shoe Company (Wkrs)	Potosi, MO	12/16/2002	11/22/2002
50,355	Southwest Silica Flux (Wkrs)	Hanover, NM	12/16/2002	12/01/2002
50,356	Key Plastics, LLC (Wkrs)	Port Huron, MI	12/16/2002	12/01/2002
50,357	Dixon Toconderoga Co. (Comp)	Sandusky, OH	12/16/2002	12/09/2002
50,358	Jore Corp (Comp)	Edgerton, WI	12/16/2002	12/16/2002
50,359	General Chemical Group (Comp)	Manistee, MI	12/16/2002	12/13/2002
50,360	Ocean State Finishing Co. (Wkrs)	Woonsocket, RI	12/17/2002	12/02/2002
50,361	OEM Shades, Inc. (Comp)	Ford City, PA	12/17/2002	12/13/2002
50,362	Rosal Sportswear (UNITE)	Lehighton, PA	12/17/2002	12/10/2002
50,363	Miorasami Corporation (Comp)	Scottsdale, AZ	12/17/2002	12/12/2002
50,364	Reactive Metals and Alloys Corp. (Comp)	W. Pittsburg, PA	12/17/2002	12/12/2002
50,365	Amital Spinning Corporation (Wkrs)	Wallace, NC	12/18/2002	12/12/2002
50,366	Agere Systems, Inc. (IBEW)	Breinigsville, PA	12/18/2002	12/09/2002
50,367	Autoliv ASP (UNITE)	Indianapolis, IN	12/18/2002	12/12/2002
50,368	Flexaust (Wkrs)	El Paso, TX	12/18/2002	12/07/2002
50,369	Akzo Nobel Polymer Chemicals, LLC (Comp)	Burt, NY	12/18/2002	12/10/2002
50,370	Ultimate Tool, Inc. (Comp)	Erie, PA	12/18/2002	12/12/2002
50,371	Nestle Confections and Snacks (RWDSU)	Fulton, NY	12/18/2002	12/09/2002
50,372	Oneida Limited (Comp)	Oneida, NY	12/18/2002	12/10/2002
50,373	Chautauqua Hardware Corporation (Wkrs)	Jamestown, NY	12/18/2002	12/12/2002
50,374	SPX Valves and Controls (Comp)	Lake City, PA	12/18/2002	12/11/2002
50,375	Carlisle Food Service Products (Comp)	Erie, PA	12/18/2002	12/03/2002
50,376	Medtronic Perfusion Systems (Comp)	Anaheim Hills, CA	12/18/2002	12/15/2002
50,377	Trans World Connections, Ltd. (Wkrs)	Lynchburg, VA	12/18/2002	12/12/2002
50,378	NACCO Materials Handling Group, Inc. (Comp).	Lenoir, NC	12/18/2002	12/12/2002
50,379	B and D Resources (Wkrs)	Robinson, IL	12/18/2002	12/13/2002
50,380	Tri Star Refractions, Inc. (USWA)	Cincinnati, OH	12/18/2002	12/12/2002
50,381	Vishay Micro-Measurements (Comp)	Wendell, NC	12/18/2002	12/17/2002
50,382	Reddog Industries (Wkrs)	Erie, PA	12/18/2002	12/17/2002
50,383	Employment Control, Inc. (USWIB)	Easton, MD	12/18/2002	11/19/2002

APPENDIX—Continued

[Petitions instituted between 12/16/2002 and 12/23/2002]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,384	National Forge Company (IUNFE)	Irvine, PA	12/18/2002	12/14/2002
50,385	Santini Corporation (Comp)	Leoma, TN	12/18/2002	12/17/2002
50,386	Burelbach Industries (OR)	Rickreal, OR	12/18/2002	12/10/2002
50,387	Pittsburg Cut Flower (Comp)	Pittsburg, PA	12/18/2002	12/12/2002
50,388	Pasminco (USWA)	Gordonsville, TN	12/19/2002	12/18/2002
50,389	F/V Three Wind (Comp)	Dillingham, AK	12/19/2002	12/17/2002
50,390	Goodyear Tire and Rubber Company (USWA).	Lincoln, NE	12/19/2002	12/18/2002
50,391	Motorola, Inc. (Wkrs)	Deer Park, IL	12/19/2002	12/10/2002
50,392	Heckett Multi-Serv (Wkrs)	Koppel, PA	12/19/2002	12/02/2002
50,393	Tredegar Film Products (Wkrs)	Carbondale, PA	12/19/2002	11/07/2002
50,394	Micro Component Tech. (Wkrs)	Roseville, MN	12/19/2002	12/18/2002
50,395	Delafoil Ohio, Inc. (Comp)	Perrysburg, OH	12/19/2002	12/18/2002
50,396	Sherwood Tool, Inc. (Comp)	Kensington, CT	12/19/2002	12/11/2002
50,397	Clorox Products Manufacturing (ME)	Londonderry, NH	12/19/2002	12/17/2002
50,398	West Coast Automation, Corp. (Comp)	Goldendale, WA	12/19/2002	12/18/2002
50,399	Computer Horizons Corporation (Comp)	Irving, TX	12/19/2002	12/15/2002
50,400	Staktek Group L.P. (Comp)	Austin, TX	12/19/2002	12/13/2002
50,401	FPL Energy (IBEW)	Yarmouth, ME	12/19/2002	12/13/2002
50,402	Tillotson Healthcare Corp. (Wkrs)	Colebrook, NH	12/23/2002	11/21/2002
50,403	Badger Pattern Works, Inc. (Comp)	New Berlin, WI	12/23/2002	12/20/2002

[FR Doc. 03–422 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,322]

Temp Associates, Mount Pleasant, Iowa; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 19, 2002 in response to a worker petition filed by a state agency representative on behalf of workers at Temp Associates, Mount Pleasant, Iowa.

The petitioner has requested that this petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 19th day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–420 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,061, TA–W–50,061A]

VF Jeanswear, Limited Partnership, a Susidiary of VF Corporation, Woodstock, Virginia, VF Jeanswear, Limited Partnership, a Subsidiary of VF Corporation, Lebanon, Missouri; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 2, 2002, applicable to workers of VF Jeanswear, Limited Partnership, located in Woodstock, Virginia. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The Department found that the decision inadvertently omitted the workers of VF Jeanswear, Limited Partnership, located in Lebanon, Missouri, producing jeans and casual pants.

It is the Department's intent to provide coverage to all workers of VF Jeanswear, Limited Partnership, adversely affected by the shift in production to Mexico. Accordingly, the Department is amending the certification to expand coverage to the workers at VF Jeanswear, Limited Partnership, Lebanon, Missouri.

The amended notice applicable to TA–W–50,061 is hereby issued as follows:

All workers of VF Jeanswear, Limited Partnership, Woodstock, Virginia (TA–W–50,061), and Lebanon, Missouri (TA–W–50,061A), who became totally or partially separated from employment on or after November 6, 2001 through December 2, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of December 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–416 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,251]

Voith Fabrics, Inc., Frankfort, Kentucky; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 4, 2002 in response to a worker petition which was filed by the company on behalf of workers at Voith Fabrics, Inc., Frankfort, Kentucky.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 31st day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–417 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7608]

Arkansas Metal Castings, Inc., Ft. Smith, Arkansas; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on October 8, 2002, in response to a petition which was filed by a company official on behalf of workers at Arkansas Metal Castings, Inc., Ft. Smith, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 20th day of December, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–410 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7657]

Hitachi High Technologies America, Inc., San Jose, California; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 27, 2002 in response to a petition filed by a company official on behalf of Hitachi High Technologies America, Inc., San Jose, California.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 20th day of December, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–409 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—05245]

Eagle Picher Industries, Construction Equipment Division, Now Known as Noble Construction Equipment, Inc., Lubbock, Texas; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on January 23, 2002, applicable to workers of Eagle Picher Industries, Construction Equipment Division, Lubbock, Texas. The notice was published in the **Federal Register** on February 5, 2002 (67 FR 5294).

At the request of the State agency, the Department reviewed the revised determination for workers of the subject firm.

Information provided by the State and the company shows that Noble International purchased Eagle Picher Industries, Construction Equipment Division in December 2001 and is now known as Noble Construction Equipment, Inc.

Information also shows that workers separated from employment at the subject firm, had their wages reported under a separate unemployment insurance (UI) tax account for Noble Construction Equipment, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Eagle Picher Industries, Construction Equipment Division, now known as Noble Construction Equipment, Inc. who were adversely affected by the shift in the production of construction equipment to Mexico.

The amended notice applicable to NAFTA–05245 is hereby issued as follows:

All workers of Eagle Picher Industries, Construction Equipment Division, now known as Noble Construction Equipment, Inc., Lubbock, Texas, who became totally or partially separated from employment on or after August 22, 2000, through January 23, 2004, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of December 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–411 Filed 1–8–03; 8:45 am]

BILLING CODE 4510–30–P

LEGAL SERVICES CORPORATION

Limited English Proficiency Guidance—Request for Comments

AGENCY: Legal Services Corporation.

ACTION: Limited English Proficiency Guidance—request for comments.

SUMMARY: As part of their obligation to refrain from national origin discrimination, LSC grantees must ensure they are providing proper service to persons with limited English proficiency (LEP). LSC is considering whether guidance (formal or informal) from LSC on LEP compliance would assist grantees, or, alternately whether there is some other form of information sharing that LSC can facilitate among grantees to help ensure all grantees are in compliance with LEP related requirements. According, LSC is requesting public comment on this matter.

DATES: Written comments must be received on or before March 10, 2003.

ADDRESSES: Written comments may be submitted by mail, fax or email to Mattie C. Condray at the addresses listed below.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002–4250; 202–336–8817 (phone); 202–336–8952 (fax); *mcondray@lsc.gov*.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) is a private, non-profit corporation created by Congress and funded through annual appropriations from Congress. LSC's mission is to promote equal access to the system of justice and improve opportunities for low-income people

throughout the United States by making grants for the provision of high-quality civil legal assistance to those who would be otherwise unable to afford legal counsel.

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, prohibits the recipients of Federal assistance from, inter alia, discriminating on the basis of national origin. As part of a government-wide effort, the Justice Department has recently issued guidance regarding national origin discrimination affecting persons of limited English proficiency (LEP). The DOJ guidance notes that ''[i]n certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI * * * against national origin discrimination.'' 67 FR 41455, at 41457. The DOJ guidance is intended to provide assistance to DOJ grant recipients and to serve as a model to other Federal agencies, which are required by Executive Order 13166 to issue their own guidance on LEP.[1] LSC is not subject to the executive order (because LSC is not a department, agency or instrumentality of the Federal Government) and is not, therefore, required to issue guidance on this subject. However, to the extent that the Federal effort is intended to improve access to Federally funded services for LEP persons and help ensure compliance with Title VI, it is appropriate to consider whether our grantees could benefit from similar guidance from LSC.

At the outset, a question has been raised with LSC regarding whether our grantees are, in fact, even subject to the requirements of Title VI of the Civil Rights Act. The argument in this case is that LSC grantees should not be considered recipients of Federal financial assistance, and, therefore, not subject to Title VI. There is no single answer to the question of the ''Federal'' nature of LSC funds; LSC funds are considered ''Federal'' funds for some purposes and ''non-Federal'' for others.[2] This has been the case for the entire history of the Corporation and the differing answers are justified by reference to the laws governing the particular use of the funds in question.

In this instance, the most closely analogous law is Section 504 of the Rehabilitation Act of 1973, which prohibits against discrimination on the basis of handicap by recipients of Federal financial assistance. In adopting its regulations at 45 CFR Part 1624 implementing Section 504, the Corporation stated that its decision to adopt the regulations was based, in part, on the fact that Section 504 applied directly to LSC recipients as recipients of ''Federal financial assistance.'' 44 FR 55175 (Sept. 25, 1979). Unfortunately, the preamble to the regulation does not provide an analysis of how that conclusion was reached. Based on the discussion in the preamble, however, it does not appear that the conclusion that LSC grantees are recipients of Federal financial assistance for the purpose of Section 504 was challenged by any of the commenters and in the 23 years since the Part 1624 regulations were adopted no one has raised that issue with LSC.

LSC does not discern a meaningful difference between Section 504 and Title VI in this instance. Both are anti-discrimination laws applicable to recipients of Federal financial assistance. To the extent that LSC and its grantees have understood LSC funds to be Federal funds for the purpose of Section 504, LSC believes that LSC funds must also be considered Federal funds for the purpose of Title VI. However, the Corporation specifically invites comment on this issue.

Even if it were to be determined that Title VI is not directly applicable to LSC's grantees, it would remain appropriate at this time to consider LEP guidance. Each LSC grantee signs a grant assurance under which it promises not to discriminate on the basis of, among other things, national origin. Although the text of the grant assurance does not mention Title VI specifically, it is clear that the language of the grant assurance is based on the non-discrimination provisions of Federal civil rights laws, such as the Civil Rights Act, the Rehabilitation Act and the Americans with Disabilities Act. Thus, there is a contractual obligation on the part of each grantee to ensure it is not engaging in national origin discrimination, requiring it to properly serve LEP persons.

Moreover, LSC believes there are sound programmatic reasons to consider this issue at this time. A considerable portion of the LSC grantee client base has always been comprised of LEP persons; many of our grantees have extensive experience in providing services to LEP persons simply out of necessity. Due to changing demographics, and state planning efforts resulting in reconfigured service areas, however, many grantees are grappling with issues relating to serving LEP persons for the first time. It is, therefore, meant to consider whether guidance from LSC would assist these grantees, or, alternately whether there is some other form of information sharing that LSC can facilitate among grantees to help ensure that the knowledge and best practices of the grantees who have been leaders on this issue is available to all grantees and that all grantees are meeting their obligations in this regard.

LSC has identified several possible approaches it could take to this issue: LSC could issue regulations, as it did with Section 504; LSC could issue its own guidance (based on the DOJ guidance or otherwise); LSC could choose to refrain from issuing guidance, but could endorse the DOJ guidance; LSC could, either instead of or in conjunction with issuing guidance and/or endorsing the DOJ guidance, choose to engage in other activities to collect and distribute information of a best practices nature, illustrating what grantees with experience in dealing with LEP persons have been doing as an aid to other grantees needing assistance in this area; or LSC could choose to do nothing at all. Each of these approaches has advantages and disadvantages. Before determining a course of action, LSC, with this notice, is looking to the field for information on which option (or another course of action not identified above) would be most appropriate and helpful for grantees. LSC invites comment on the issues discussed below and on any other relevant consideration regarding service to LEP persons.

Issuing Regulations

LSC could issue its own regulations on the matter. Doing so would be analogous to LSC's action in issuing its Part 1624 regulations. LSC was not

[1] Under the DOJ Guidance, recipients are encouraged to undertake an individualized assessment that balances the following four factors: (1) The number of proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee/recipient; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. The guidance recommends that recipients consider adopting LEP plans or policies based on the results of their assessment. The guidance identifies the following elements which may be helpful in designing an LEP policy or plan: (1) identifying LEP persons who need language assistance; (2) identifying ways in which language assistance will be provided; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating LEP policy. The guidance also identifies a variety of language assistance services which recipients may consider using, including oral interpretation services, bilingual staff, telephone interpreter lines, written language services and community volunteers.

[2] For example, LEP funds are considered non-Federal funds for the purpose of matching Title III funds under the Older Americans Act, but they are considered Federal funds for the purpose of a federal prosecution for theft or embezzlement under Title 18 of the U.S. Code.

obligated to issue regulations implementing Section 504, but chose to do so because of the importance of the subject matter. Justifying the decision to issue 504 implementing regulations, the Corporation said (in the preamble to the rule) that ''discriminatory practices by legal services programs interfere directly with the ability of those programs to provide high quality legal assistance in an efficient and effective manner.'' 44 FR 55175. The same rationale could be said to be applicable in this situation as well.

The disadvantage of taking such an approach is that it would impose an additional regulatory burden on grantees and, given that LSC is not receiving significant complaints of discrimination by grantees related to service to LEP persons, it is does not appear to LSC that such an additional regulatory burden is warranted. Moreover, by issuing regulations, LSC would become obligated to monitor compliance with and enforce any such regulations adopted. Notwithstanding some expansion of its Office and Compliance and Enforcement staff, the Corporation nonetheless has limited resources and the OCE staff does not have the expertise in these matters as do EEOC and DOJ staff. In addition, as with claims of violation of Part 1624, LSC would be without statutory authority to direct a recipient to take any specific action to come into compliance, nor could LSC make any award to an aggrieved complainant; LSC would be limited to attempting to resolve problems informally and to punishing violations by considering suspension or termination of the grant. As such, LSC is not well suited to resolving such claims in the manner that most complainants would find helpful to them.

Issuing Non-Regulatory Guidance

The recent guidance issued by DOJ is not in the form of regulations, and LSC could follow suit with issuing its own non-regulatory guidance. Issuing non-binding guidance would avoid some of the disadvantages of issuing regulations, yet would still allow LSC provide assistance to its grantees as to what grantees can, at a minimum, be doing to ensure that they are in compliance with their obligations to refrain from national origin discrimination.

However, if LSC chooses to issue guidance, even taking care to make it clear that such guidance was in the nature of ''best practices'' and not mandatory standards, LSC could find itself obligated to investigate a claim that a grantee had discriminated against an LEP person (or persons). As noted above, the Corporation has long taken the position that it is not suited to undertaking such investigations. On the other hand, LSC is obligated by Part 1618 of its regulations to investigate claims of violations of grant assurances. Thus, to the extent the grant assurances prohibit discrimination LSC already has a duty to investigate claims of national origin discrimination. In such a case, issuing guidance on LEP would not impose any additional risks or obligations on LSC or its grantees.

In addition, to the extent that many of LSC grantees receive grants from Federal agencies, such as DOJ, the Department of Housing and Urban Development and the Internal Revenue Service, these grantees will already be subject to the Federal guidance issuing from those agencies. Additional guidance from LSC would, at best, be duplicative and, therefore, unnecessary, and, at worst, be inconsistent, putting grantees in a difficult spot in complying with both sets of standards. LSC is specifically interested in learning how many grantees will already be subject to the DOJ (or other Federal agency) guidance as a result of receipt of DOJ (or other Federal) grants.

Refraining from Issuing Guidance

LSC could decline to issue its own guidance, but could commend the DOJ guidance to grantees. Such a message would make clear that the DOJ guidance is not directly applicable to them (unless they also receive grants from DOJ), but might be helpful to them in ensuring that they are complying with their obligations to LEP persons. This approach would remind our recipients of their contractual obligations under the grant assurances as well as any applicable Title VI obligations and provide them with some potentially useful guidance, without injecting LSC directly into the issue. Moreover, as noted above, to the extent that grantees receive grants from Federal agencies, they will already be subject to the Federal guidance issuing from those agencies. Additional guidance from LSC would, at best, be duplicative and, therefore, unnecessary, and, at worst, be inconsistent, putting grantees in a difficult spot in complying with both sets of standards.

The disadvantage of this approach is that, as the DOJ guidance is aimed at a somewhat different grantee population, the guidance might not be as helpful as it would be if LSC developed its own policy guidance document tailored to the legal services community. Further, there is the possibility that if LSC recommended the DOJ guidance to grantees that such an action would be the functional equivalent to issuing its own guidance, with the attendant advantages and disadvantages outlines above.

Refraining from Taking Any Action

LSC could decline to take any action. As noted above, the Executive Order does not apply to LSC and LSC does not have direct responsibility for enforcing Title VI.[3] This approach is legally defensible and would avoid the potential disadvantages which might be generated by either developing LSC's own guidance or endorsing the DOJ guidance. On the other hand, although LSC is not bound to follow Federal initiatives such as this one, LSC often takes cues from them. As noted above, the rationale that led LSC to issue its regulations at Part 1624, would appear to be applicable also in this situation. Moreover, to the extent that LEP persons comprise a significant proportion of the legal services client community, it would appear that guidance in this area would be warranted and helpful to our grantees. LSC specifically invites comments on this issue.

Other Actions

Either in addition to, or in lieu of, any of the options above, LSC could collect and disseminate information on ideas and best practices from grantees who are already serving LEP persons. This would allow grantees to reap the benefits of others' experience to lead to an improvement of services throughout the country.

There are any number of ways this could be accomplished. LSC could gather and post information on its Legal Resource Initiative Web site, *http://www.lri.lsc.gov* and success stories could be published in Equal Justice Magazine. There are also resources external to LSC, such as the National LEP Advocacy Task Force, with which LSC could work to the benefit of grantees. LSC requests suggestions and ideas about the best ways for LSC to provide assistance in this area.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 03–364 Filed 1–8–03; 8:45 am]

BILLING CODE 7050–01–P

[3] Leaving aside the LSC's responsibility to enforce its grant assurances which prohibit national origin discrimination.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

PSEG Nuclear, LLC, Salem Nuclear Generating Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 55, Section 55.59(c) for Facility Operating License Nos. DPR–70 and DPR–75, issued to PSEG Nuclear LLC (PSEG or the licensee), for operation of the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), located in Salem County, New Jersey. 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 exempt the facility licensee on a one-time basis from the 24 month schedule requirement of 10 CFR 55.59(c) for completing the licensed operator requalification training program at Salem.

The proposed action is in accordance with the facility licensee's application for exemption docketed October 28, 2002.

The Need for the Proposed Action

The proposed action would extend the date for the facility licensee to complete the licensed operator requalification training program at Salem. The proposed action would extend the date for completing the training program from October 3, 2002, to January 9, 2003, therefore extending the training program by approximately 3 months over the schedule required by 10 CFR 55.59(c). This proposed action is needed to allow Salem to align their requalification training program with the training program at the Hope Creek Nuclear Generating station.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the extension of the licensed operator requalification program at Salem from October 3, 2002, to January 9, 2003.

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 non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological 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 Salem.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the New Jersey State official, Mr. D. Zannoni, on November 14, 2002, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of this 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 PSEG's letter dated October 28, 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 3rd day of January 2003.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–374 Filed 1–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nickel-Base Alloy, Vessel Head Penetration Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of conference.

SUMMARY: NRC Research will sponsor a three-day conference addressing issues of flaw detection and crack growth rate modeling and applications for nickel-base alloys used as vessel head penetrations (VHP) and other pressure boundary attachments. Participants will include a domestic and an international audience consisting of reactor operators, regulatory personnel, and researchers involved in the solution of the structural integrity issues arising from crack growth and leakage through Alloy 600 components, cladding and associated attachment welds. The conference will be structured to include presentations by industry, regulatory and laboratory representatives, as well as open discussion of the critical issues. There are no restrictions on attendance at this conference.

DATES: March 24–26, 2003.

ADDRESSES: Marriot Gaithersburg/Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Ken Natesan, Argonne National Laboratory, Telephone: (630) 252–5103, e-mail: *natesan@anl.gov,* or Bill Cullen, Mail Stop T–10 E10, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 415–6754, e-mail: *whc@nrc.gov.* Conference information will be posted on the NRC Web site: *http://www.nrc.gov,* under the public meetings section of both the

Alloy 600 and Vessel Head Degradation subheadings.

SUPPLEMENTARY INFORMATION: The proceedings will be published as Conference Proceedings of the Nuclear Regulatory Commission (NUREG/CP-series). Additional details, including lists of session chairpersons, and the contributed papers will be published on the NRC Web site: *http://www.nrc.gov* under the public meetings section of both the Alloy 600 and Vessel Head Degradation subheadings. Presentations at the conference will encompass vessel penetration cracking issues for all primary boundary locations, including upper head, lower head and pressurizer penetrations, and nickel-base alloy, or mixed metal welds used to join pressure boundary components.

The conference will consist of six sessions, chaired by domestic and international representatives of regulatory agencies, industry, and research organizations. Each session scheduled below includes invited and contributed papers on the following specific topics:

Monday, March 24, 2003—8:30 a.m.–12 Noon

Topics to be presented include flaw inspection procedures, descriptions of NDE results, and user experience with component mock-ups or other NDE training and certification procedures; visual inspection tools, programs underway to improve performance.

Monday, March 24, 2003—1:30–5 p.m.

Topics to be presented include descriptions of crack growth rate (CGR) experiments, interpretation and analysis of CGR data for Alloys 600, 690, 182/82 and 152/52.

Tuesday, March 25, 2003—8:30 a.m.–12 Noon

Topics to be presented include probabilistic fracture mechanics analysis of pressure boundary structural elements, including experimental or analytical stress analyses for axial and circumferential cracking of VHPs.

Tuesday, March 25, 2003—1:30–5 p.m.

Topics to be presented include programs that address the mitigation of the cracking or other corrective actions, especially repair procedures; future materials and fabrication techniques.

Wednesday, March 26, 2003—8:30 a.m.–12 Noon

Topics to be presented include application of these results in operating plants, including follow-on inspections of repaired components, and evaluations of success or failure of these methods.

Wednesday, March 26, 2003—1:30–5 p.m.

Wrap up and summaries by session chairs

The conference is open to the public, and there is no registration fee. Those who wish to attend are encouraged to contact Ken Natesan (*natesan@anl.gov*) or Bill Cullen (*whc@nrc.gov*). Further information, including forms for conference registration, and a final list of presentations, will be posted on the NRC website. Those attendees needing special services, such as for the hearing impaired, are requested to notify the conference organizers as far in advance as reasonably possible.

Dated at Rockville, Maryland, this 3rd day of January, 2003.

For the Nuclear Regulatory Commission.

Nilesh C. Chokshi,

Acting Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 03–375 Filed 1–8–03; 8:45 am]

BILLING CODE 7590–01–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The Commission on Ocean Policy will hold a meeting to discuss the development of recommendations for a coordinated national ocean policy. This will be the fourteenth public Commission meeting.

DATES: The public meeting will be held Friday, January 24, 2003 from 8:30 a.m. to 3:45 p.m.

ADDRESSES: The meeting location is the Amphitheater, Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Ave., NW., Washington DC 20004.

FOR FURTHER INFORMATION CONTACT: Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC 20036, 202–418–3442, *schaff@oceancommission.gov*.

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Pub. L. 106–256, Section 3(e)(1)(E)). The agenda will include discussions of policy options, a public comment session, and any required administrative discussions and executive sessions. Members of the public are requested to submit their statements for the record electronically by Tuesday, January 14, 2003 to the meeting Point of Contact. The meeting agenda, including the specific time for the public comment period, and guidelines for making public comments will be posted on the Commission's Web site at *http://www.oceancommission.gov* prior to the meeting.

Dated: January 3, 2003.

James D. Watkins, USN (ret.),

Chairman, Commission on Ocean Policy.

[FR Doc. 03–370 Filed 1–8–03; 8:45 am]

BILLING CODE 6820–WM–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34304]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—The Portland & Western Railroad, Inc.

On December 20, 2002, The Burlington Northern and Santa Fe Railway Company (BNSF) filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for overhead trackage rights between milepost 68.6 at Bush, OR, and milepost 96.5 at Albany, OR, a distance of 27.9 miles. The trackage rights operations would be conducted over part of a line owned by BNSF, which was leased to The Portland & Western Railroad, Inc. (P&WR), pursuant to a transaction exempted in *Portland & Western Railroad, Inc.—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34255 (STB served Jan. 3, 2003).

The transaction was scheduled to be consummated on or after December 27, 2002, the effective date of the exemption. The purpose of the trackage rights is to allow BNSF to operate over the leased line: (1) Moving trains containing loaded or empty cars interchanged with P&WR and other carriers having interchanges at Albany; or (2) for pre-positioning or storage of cars as agreed to between BNSF and P&WR.[1]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and*

[1] On December 23, 2002, BNSF filed a motion to dismiss this notice on the ground that separate Board approval of its trackage rights is unnecessary. John D. Fitzgerald, on behalf of the United Transportation Union—General Committee of Adjustment, replied on December 30, 2002. The motion to dismiss will be addressed in a separate decision.

Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

The notice is filed under 49 CFR 1180.2(d). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34304, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sarah W. Bailiff, The Burlington Northern and Santa Fe Railway Company, PO Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.''*

Decided: January 3, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–396 Filed 1–8–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 215X)]

Norfolk Southern Railway Company—Abandonment Exemption—Between Williamson and Cinderella, in Mingo County, WV

The Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 2.5-mile line of railroad between milepost FG–0.0 at Williamson and milepost FG–2.5 at Cinderella, in Mingo County, WV. The line traverses United States Postal Service Zip Code 25661.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government agency acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 8, 2003,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 17, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 29, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 14, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by January 9, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 2, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–395 Filed 1–8–03; 8:45 am]

BILLING CODE 4915–00–P

[1] NSR initially proposed a consummation date of February 6, 2003. NSR's representative has subsequently acknowledged that consummation cannot occur before February 8, 2003, based on the December 20, 2002 filing date of the notice of exemption. *See* 49 CFR 1152.50(d)(2).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Aviation Security Advisory Committee Meeting

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a closed meeting of the Aviation Security Advisory Committee (ASAC).

DATES: The meeting will take place on January 22, 2003, from 10 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dan Mullarkey, Office of Security Regulation and Policy, 400 7th St., SW., Washington, DC 20590, Room 3034, telephone 202–385–1236.

SUPPLEMENTARY INFORMATION: This meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Act) (Pub. L. 92–463; 5 U.S.C. App. 11). In accordance with section 10(d) of the Act, TSA has determined that this meeting will be closed in its entirety to the public in accordance with 5 U.S.C. 552b(c)(3).

The matters under discussion constitute sensitive transportation security information that is exempt from disclosure by 49 U.S.C. 40119(b), and include such items as a security briefing, a security technology briefing, and a discussion regarding possible tasks for ASAC. ASAC members will be required to sign a Sensitive Security Information non-disclosure form before attending the meeting.

Members of the public who wish to file a written statement with the ASAC may do so by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington DC, on January 3, 2003.

Thomas R. Blank,

Associate Under Secretary for Security Regulation and Policy.

[FR Doc. 03–388 Filed 1–8–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 2, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 10, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0913.

Regulation Project Number: FI–165–84 NPRM.

Type of Review: Extension.

Title: Below-Market Loans.

Description: Section 7872 recharacterizes a below-market loan as a market rate loan and an additional transfer by the lender to the borrower equal to the amount of imputed interest. The regulation requires both the lender and the borrower to attach a statement to their respective income tax returns for years in which they have either imputed income or claim imputed deductions under section 7872.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1,631,202.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: On occasion, Annually.

Estimated Total Reporting Burden: 481,722 hours.

OMB Number: 1545–0916.

Regulation Project Number: EE–96–85 NPRM and EE–63–84 Temporary.

Type of Review: Extension.

Title: Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984.

Description: These temporary regulations provide rules relating to effective dates and other issues arising under section 91, 223 and 511–561 of the Tax Reform Act of 1984.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 12,800.

Estimated Burden Hours Per Respondent: 31 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 6,500 hours.

OMB Number: 1545–1018.

Regulation Project Number: FI–27–89 Temporary and Final and FI–61–91 Final.

Type of Review: Extension.

Title: Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters (FI–27–89); Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements (FI–61–91).

Description: The regulations prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirements for REMICs and certain brokers.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 655.

Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 978 hours.

OMB Number: 1545–1041.

Regulation Project Number: PS–102–86 Final.

Type of Review: Extension.

Title: Cooperative Housing Corporations.

Description: This regulation provides an elective alternative to the proportionate share rule for allocating interest and taxes to the tenant-stockholders of cooperative housing corporations.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 2,500.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other (one-time election).

Estimated Total Reporting Burden: 625 hours.

OMB Number: 1545–1356.

Regulation Project Number: REG–248770–96 Final.

Type of Review: Extension.

Title: Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Description: The regulations provide guidance with respect to the recovery of administrative costs incurred in connection with an administrative proceeding before the Internal Revenue Service. Procedures that must be followed to recover such costs are set forth.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government.

Estimated Number of Respondents: 38.

Estimated Burden Hours Per Respondent: 2 hours, 16 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 86 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–366 Filed 1–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974; System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS), gives notice of a proposed alteration to the system of records entitled ''Claims and Inquiry

Records on Treasury Checks, and International Claimants,'' which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The system was last published in its entirety in the **Federal Register** on August 22, 2001, at 66 FR 44206.

DATES: Comments must be received no later than February 10, 2003. The proposed routine use will be effective February 18, 2003, unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments must be submitted to the Financial Management Service, Financial Accounting and Services Division, 3700 East West Highway, Room 630F, Hyattsville, Maryland 20782. Comments may be submitted via e-mail to: *judgment.fund@fms.treas.gov*. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rose Brewer, Financial Management Service, Financial Accounting and Services Division, (202) 874–9186.

SUPPLEMENTARY INFORMATION: FMS makes payment on awards certified by the Foreign Claims Settlement Commission. The purpose of this new routine use is to enable FMS to more efficiently publicize information about unpaid claimants under the War Claims Act and the International Claims Settlement Act. Upon receiving a certified claim from the Foreign Claims Settlement Commission, FMS sends notice to the claimant to arrange for payment. FMS makes several attempts to contact claimants, but some of these claimants do not respond. Many claimants continue to go unpaid indefinitely. Publicizing these unpaid claims by means such as a public database maintained on the Internet with (1) claimant name, (2) city and state of last known address, and (3) amount outstanding should result in payment of numerous claims. Claimants can pursue these claims directly without the assistance of an intermediary. This routine use is consistent with the purpose for which the information was collected, that is, making payment to award holders.

The report required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated November 30, 2000.

For the reasons set forth in the preamble, FMS proposes to alter system of records Treasury/FMS .003—Claims and Inquiry Records on Treasury Checks, and International Claimants, as follows:

Treasury/FMS .003

System Name: Claims and Inquiry Records on Treasury Checks, and International Claimants—Treasury/Financial Management Service.

* * * * *

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

* * * * *

Description of changes: The first word ''To'' and the last word ''and'' are removed in routine use (7). Replace the lowercase ''p'' in the word ''provide'' in routine use (7) with an uppercase ''P''. The comma '','' at the end of routine use (7) is replaced with a semicolon '';''. The period ''.'' at the end of routine use (8) is replaced with a semicolon '';'' followed by the word ''and'', and the following routine use is added at the end thereof:

''(9) Disclose information to the public when attempts by FMS to locate the claimant have been unsuccessful. This information is limited to the claimant's name and city and state of last known address, and the amount owed to the claimant. (This routine use does *not* apply to the Iran Claims Program or the Holocaust Survivors Claims Program or other claims programs that statutorily prohibit disclosure of claimant information.)''

* * * * *

Dated: December 31, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 03–266 Filed 1–8–03; 8:45 am]

BILLING CODE 4810–35–P

Corrections

Federal Register

Vol. 68, No. 6

Thursday, January 9, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34255]

Portland & Western Railroad, Inc.—Lease and Operations Exemption—The Burlington Northern and Santa Fe Railway Company

Correction

In notice document 03–9 beginning on page 396 in the issue of Friday, January 3, 2003 make the following correction:

On page 396, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C3–9 Filed 1–8–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 2002–64]

RIN 1550–AB55

Savings Associations—Transactions with Affiliates

Correction

In rule document 02–31782 beginning on page 77909 in the issue of Friday, December 20, 2002 make the following correction:

§ 563.41 [Corrected]

On page 77917, in the second column, in §563.41, in paragraph (a)(2), in the second line, ''defined '' should read, ''is defined ''.

[FR Doc. C2–31782 Filed 1–8–03; 8:45 am]

BILLING CODE 6720–01–D

Federal Register

Thursday,
January 9, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Three Plant Species From the Island of Lanai, Hawaii; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH10

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Three Plant Species From the Island of Lanai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for three of the 37 species known historically from the Hawaiian island of Lanai. The three species are *Bidens micrantha* ssp. *kalealaha, Portulaca sclerocarpa,* and *Tetramolopium remyi.* A total of approximately 320 hectares (789 acres) of land on Lanai fall within the boundaries of the six critical habitat units designated for the three species. This critical habitat designation provides additional protection under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on February 10, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation, used in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are 37 plant species that, at the time of listing, were reported from the island of Lanai (Table 1). Seven of these species are endemic to the island of Lanai, while 30 species are reported from one or more other islands, as well as Lanai. Each of the 37 species is described in more detail below in the section, ''Discussion of Plant Taxa.'' Although we considered designating critical habitat on Lanai for each of the 37 plant species, for the reasons described below, the final designation includes critical habitat for only 3 of 37 plant species. Species that also occur on other islands may have critical habitat designated on other islands in subsequent rulemakings.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 37 SPECIES FROM LANAI

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe, Niihau
Abutilon eremitopetalum (NCN)				C			
Adenophorus periens (pendant kihi fern).	C	H	C	R	R	C	
Bidens micrantha ssp. *kalealaha* (kookoolau).				C	C		
Bonamia menziesii (NCN)	C	C	H	C	C	C	
Brighamia rockii (pua ala)			C	H	H		
Cenchrus agrimonioides (kamanomano, sandbur, agrimony).		C		H	C	R	NW Isles (H)
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Clermontia oblongifolia ssp. *mauiensis* (oha wai).				C	C		
Ctenitis squamigera (pauoa)	H	C	C	C	C	H	
Cyanea grimesiana ssp. *grimesiana* (haha).		C	C	C	C		
Cyanea lobata (haha)				H	C		
Cyanea macrostegia ssp. *gibsonii* (NCN).				C			
Cyperus trachysanthos (puukaa)	C	C	H	H			Ni (C)
Cyrtandra munroi (haiwale)				C	C		
Diellia erecta (NCN)	C	C	C	H	C	C	
Diplazium molokaiense (NCN)	H	H	H	H	C		
Gahnia lanaiensis (NCN)				C			
Hedyotis mannii (pilo)			C	C	C		
Hedyotis schlechtendahliana var. *remyi* (kopa).				C			
Hesperomannia arborescens (NCN).		C	C	H	C		
Hibiscus brackenridgei (mao hau hele).	H	C	H	C	C	C	Ka (R)
Isodendrion pyrifolium (wahine noho kula).		H	H	H	H	C	Ni (H)
Labordia tinifolia var. *lanaiensis* (kamakahala).				C			
Mariscus fauriei (NCN)			C	H		C	
Melicope munroi (alani)			H	C			

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 37 SPECIES FROM LANAI—Continued

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe, Niihau
Neraudia sericea (NCN)			C	H	C		Ka (H)
Phyllostegia glabra var. *lanaiensis* (NCN).				H			
Portulaca sclerocarpa (poe)				C		C	
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Ni (H), Ka (C), NW Isles (C)
Silene lanceolata (NCN)	H	C	C	H		C	
Solanum incompletum (popolo ku mai).	H		H	H	H	C	
Spermolepis hawaiiensis (NCN)	C	C	C	C	C	C	
Tetramolopium lepidotum ssp. *lepidotum* (NCN).		C		H			
Tetramolopium remyi (NCN)				C	H		
Viola o-wahuensis (NCN)		H	C	C	C	C	Ni (H), Ka (C)
Viola lanaiensis (NCN)				C			
Zanthoxylum hawaiiense (ae)	C		C	H	C	C	

Key
C (Current)—occurrence last observed within the past 30 years.
H (Historical)—occurrence not seen for more than 30 years.
R (Reported)—reported from undocumented observations.
* NCN—No Common Name.

The Island of Lanai

Lanai is a small island totaling about 360 square kilometers (sq km) (139 sq miles (mi) in area. Hidden from the trade winds in the lee or rain shadow of the more massive West Maui Mountains, Lanai was formed from a single shield volcano built by eruptions at its summit and along three rift zones. The principal rift zone runs in a northwesterly direction and forms a broad ridge whose highest point, Lanaihale, has an elevation of 1,027 meters (m) (3,370 feet (ft)). The entire ridge is commonly called Lanaihale, after its highest point. Annual rainfall on the summit of Lanaihale is 760 to 1,015 millimeters (mm) (30 to 40 inches (in)), but is considerably less, 250 to 500 mm (10 to 20 in), over much of the rest of the island (Department of Geography 1998).

Geologically, Lanai is part of the four-island complex comprising Maui, Molokai, Lanai, and Kahoolawe, known collectively as Maui Nui (Greater Maui). During the last Ice Age about 12,000 years ago, when sea levels were about 160 m (525 ft) below their present level, these four islands were connected by a broad lowland plain. This land bridge allowed the movement and interaction of each island's flora and fauna and contributed to the present close relationships of their biota (Department of Geography 1998).

Changes in Lanai's ecosystem began with the arrival of the first Polynesians about 1,500 years ago. In the 1800s, goats (*Capra hircus*), pigs (*Sus scrofa*), and sheep (*Ovis aries*) were first introduced to the island. Native vegetation was soon decimated by these nonnative ungulates, and erosion from wind and rain caused further damage to the native forests. Formal ranching was begun in 1902, and by 1910, the Territorial forester helped to revegetate the island. By 1911, a ranch manager from New Zealand, George Munro, instituted forest management practices to recover the native forests and bird species which included fencing and eradication of sheep and goats from the mountains. Mouflon sheep (*Ovis musimon*) and axis deer (*Axis axis*) were introduced to Lanai in 1954 and 1920 respectively, leading to renewed impacts on the native vegetation. By the 1920s, Castle and Cooke had acquired more than 98 percent of the island and established a 6,500 ha (16,000 ac) pineapple plantation surrounding its company town, Lanai City. In the early 1990s, the pineapple plantation closed, and two luxury hotels were developed by the private landowner, sustaining the island's economy today (Hobdy 1993).

There are no military installations on the island of Lanai.

Discussion of Plant Taxa

Species Endemic to Lanai

Abutilon eremitopetalum (NCN)

Abutilon eremitopetalum is a long-lived shrub in the mallow family (Malvaceae) with grayish-green, densely hairy, and heart-shaped leaves. It is the only *Abutilon* species on Lanai whose flowers have green petals hidden within the calyx (the outside leaf-like part of the flower) (Bates 1999).

Abutilon eremitopetalum is known to flower during February. Little else is known about the life history of this species. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Abutilon eremitopetalum* was found in small, widely scattered colonies in the ahupuaa (geographical areas) of Kalulu, Mahana, Maunalei, Mamaki, and Paawili on the northern, northeastern, and eastern parts of Lanai. Currently, about seven individuals are known from a single occurrence on privately owned land in Kahea Gulch on the northeastern part of the island (Caum 1933; Geographic Decision Systems International (GDSI) 2000; Hawaii Natural Heritage Program (HINHP) Database 2000; Service 1995).

Abutilon eremitopetalum is found in lowland dry forest at elevations between 108 and 660 m (354 and 2,165 ft), on a moderately steep north-facing slope on red sandy soil and rock, usually near gulch bottoms. *Erythrina sandwicensis* (wiliwili) and *Diospyros sandwicensis* (lama) are the dominant trees in open forest of the area. Other associated native species include *Dodonaea viscosa* (aalii), Nesoluma polynesicum (keahi), *Psydrax odorata* (alahee), *Rauvolfia sandwicensis* (hao), *Sida fallax* (ilima), or *Wikstroemia* sp. (akia) (HINHP Database 2000; Service 1995).

The threats to *Abutilon eremitopetalum* are habitat degradation

and competition by encroaching nonnative plant species such as *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), and *Pluchea carolinensis* (sourbush); browsing by axis deer; soil erosion caused by feral ungulate grazing on grasses and forbs; and the small number of extant individuals, as the limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could destroy the only known existing occurrence. Fire is another potential threat because the area is dry much of the year (HINHP Database 2000; Service 1995; 56 FR 47686).

Cyanea macrostegia ssp. *gibsonii* (NCN)

Cyanea macrostegia ssp. *gibsonii,* a long-lived perennial and a member of the bellflower family (Campanulaceae), is a palm-like tree 1 to 7 m (3 to 23 ft) tall with elliptic or oblong leaves that have fine hairs covering the lower surface. The following combination of characters separates this species from the other members of the genus on Lanai: calyx lobes are oblong, narrowly oblong, or ovate in shape, and the calyx and corolla (petals of a flower) are both more than 5 mm (0.2 in) wide (Lammers 1999; 56 FR 47686).

Limited observations suggest *Cyanea macrostegia* ssp. *gibsonii* flowers during the month of July. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1995).

Cyanea macrostegia ssp. *gibsonii* has been documented from the summit of Lanaihale and the upper parts of Mahana, Kaiholena, and Maunalei Valleys of Lanai. There are currently only two occurrences containing 74 individuals. One occurrence is located north of Lanaihale and the second occurrence is north of Puu Aalii (puu = summit or hill) on privately owned land (GDSI 2000; HINHP Database 2000; Lammers 1999; 56 FR 47686).

The habitat of *Cyanea macrostegia* ssp. *gibsonii* is lowland wet *Metrosideros polymorpha* (ohia) forest or *Diplopterygium pinnatum* (uluhe lau nui)-*M. polymorpha* shrubland between elevations of 738 and 1,032 m (2,421 and 3,385 ft). It has been observed to grow on flat to moderate or steep slopes, usually on lower gulch slopes or gulch bottoms, often at edges of streambanks, probably due to vulnerability to ungulate damage at more accessible locations. Associated vegetation includes *Antidesma platyphyllum* (hame), *Broussaisia arguta* (kanawao), *Cheirodendron trigynum* (olapa), *Clermontia* sp. (oha wai), *Cyrtandra* sp. (haiwale), *Dicranopteris linearis* (uluhe), *Dubautia* sp. (naenae), *Freycinetia arborea* (ieie), *Hedyotis* sp. (NCN), *Ilex anomala* (kawau), *Labordia* sp. (kamakahala), *Melicope* sp. (alani), *Perrottetia sandwicensis* (olomea), *Pipturus albidus* (mamaki), *Pneumatopteris sandwicensis* (NCN), *Psychotria* sp. (kopiko), *Sadleria* sp. (amau), or *Scaevola chamissoniana* (naupaka kuahiwi) (HINHP Database 2000; Service 1995; Joel Lau, HINHP, pers. comm., 2001).

The threats to *Cyanea macrostegia* ssp. *gibsonii* are browsing by axis deer; competition with the nonnative plant *Hedychium gardnerianum* (kahili ginger); and the small number of extant individuals, as the limited gene pool may depress reproductive vigor, or any natural or man-caused environmental disturbance could destroy the existing occurrences (HINHP Database 2000; Service 1995; 56 FR 47686).

Gahnia lanaiensis (NCN)

Gahnia lanaiensis, a short-lived perennial and a member of the sedge family (Cyperaceae), is a tall (1.5 to 3 m (5 to 10 ft)), tufted, grass-like plant. This sedge may be distinguished from grasses and other genera of sedges on Lanai by its spirally arranged flowers, its solid stems, and its numerous, three-ranked leaves. *Gahnia lanaiensis* differs from the other members of the genus on the island by its achenes (seed-like fruits), which are 3.6 to 4.6 mm (0.14 to 0.18 in) long and purplish-black when mature (Koyama 1999).

July has been described as the ''end of the flowering season'' for *Gahnia lanaiensis.* Plants of this species have been observed with fruit in October. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Degener *et al.*, 1964; 56 FR 47686).

Gahnia lanaiensis is known from one occurrence containing 47 individuals on privately owned land along the summit of Lanaihale in the Haalelepaakai area and on the eastern edge of Hauola Gulch. The occurrence is found between 915 and 1,030 m (3,000 and 3,380 ft) in elevation. This distribution encompasses the entire known historic range of the species (GDSI 2000; HINHP Database 2000).

The habitat of *Gahnia lanaiensis* is lowland wet forest (shrubby rainforest to open scrubby fog belt or degraded lowland mesic forest), wet *Diplopterygium pinnatum-Dicranopteris linearis-Metrosideros polymorpha* shrubland, or wet *M. polymorpha-Dicranopteris linearis* shrubland at elevations between 737 and 1,032 m (2,417 and 3,385 ft). It occurs on flat to gentle ridgecrest topography in moist to wet clay or other soil substrate in open areas or in moderate shade. Associated species include native mat ferns, *Coprosma* sp. (pilo), *Doodia* sp. (okupukupu laulii), *Hedyotis terminalis* (manono), *Ilex anomala, Leptecophylla tameiameiae* (pukiawe), *Lycopodium* sp. (wawaeiole), *Sadleria* spp. (amau), *Scaevola* sp. (naupaka), or *Sphenomeris chinensis* (palaa) (Service 1995).

The primary threats to this species are the small number of plants and their restricted distribution, which increase the potential for extinction from naturally occurring events. In addition, *Gahnia lanaiensis* is threatened by habitat destruction resulting from the planned development of the island, and competition with *Leptospermum scoparium* (manuka), a weedy tree introduced from New Zealand, which is spreading along Lanaihale, but has not yet reached the area where *Gahnia* is found (HINHP Database 2000; Service 1995).

Hedyotis schlechtendahliana var. *remyi* (kopa)

Hedyotis schlechtendahliana var. *remyi,* a short-lived perennial and a member of the coffee family (Rubiaceae), is a few-branched subshrub from 0.6 to 6 m (2 to 10 ft) long, with weakly erect or climbing stems that may be somewhat square, smooth, and glaucous (with a fine waxy coating that imparts a whitish or bluish hue to the stem). The species is distinguished from others in the genus by the distance between leaves and the length of the sprawling or climbing stems, and the variety *remyi* is distinguished from *H. schlechtendahliana* var. *schlechtendahliana* by the leaf shape, presence of narrow flowering stalks, and flower color (Wagner *et al.*, 1999).

Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown for *Hedyotis schlechtendahliana* var. *remyi* (Service 2001).

Historically, *Hedyotis schlechtendahliana* var. *remyi* was known from five locations on the northwestern portion of Lanaihale. Currently, this species is known from eight individuals in two occurrences on privately owned land on Kaiholeha-Hulupoe Ridge, Kapohaku drainage, and Waiapaa drainage on Lanaihale (GDSI 2000; HINHP Database 2000; 64 FR 48307).

Hedyotis schlechtendahliana var. *remyi* typically grows on or near ridge crests in mesic windswept shrubland

with a mixture of dominant plant species that may include *Metrosideros polymorpha, Dicranopteris linearis,* or *Leptecophylla tameiameiae* at elevations between 558 and 1,032 m (1,830 and 3,385 ft). Associated plant species include *Dodonaea viscosa, Dubautia* spp., *Myrsine* sp. (kolea), *Sadleria* spp., or *Sphenomeris chinensis* (HINHP Database 2000; 64 FR 48307).

The primary threats to *Hedyotis schlechtendahliana* var. *remyi* are habitat degradation and destruction by axis deer; competition with nonnative plant species, such as *Leptospermum scoparium, Myrica faya* (firetree), *Psidium cattleianum* (strawberry guava), or *Schinus terebinthifolius* (Christmasberry); and random environmental events or reduced reproductive vigor due to the small number of remaining individuals and occurrences (HINHP Database 2000; 64 FR 48307).

Labordia tinifolia var. *lanaiensis* (kamakahala)

Labordia tinifolia var. *lanaiensis,* a short-lived perennial in the logan family (Loganiaceae), is an erect shrub or small tree 1.2 to 15 m (4 to 49 ft) tall. The stems branch regularly into two forks of nearly equal size. This subspecies differs from the other species in this endemic Hawaiian genus by having larger capsules (a dry, generally many seeded fruit) and smaller corollas (petals, whorl of flower parts) (Wagner *et al.*, 1999).

Little is known about the life history of *Labordia tinifolia* var. *lanaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001).

Labordia tinifolia var. *lanaiensis* was historically known from the entire length of the summit ridge of Lanaihale. Currently, *L. tinifolia* var. *lanaiensis* is known from only one occurrence on privately owned land at the southeastern end of the summit ridge of Lanaihale. This occurrence totals 3 to 8 scattered individuals (GDSI 2000; HINHP Database 2000; Service 2001).

The typical habitat of *Labordia tinifolia* var. *lanaiensis* is gulch slopes in lowland mesic forest. Associated native species include *Alyxia oliviformis* (maile), *Bobea elatior* (ahakea launui), *Clermontia* spp., *Coprosma* spp., *Cyrtandra grayana* (haiwale), *Dicranopteris linearis, Diospyros sandwicensis, Diplopterygium pinnatum, Freycinetia arborea, Hedyotis acuminata* (au), *Melicope* spp., *Myrsine lessertiana* (kolea), *Perrottetia sandwicensis, Pipturus albidus, Pittosporum confertiflorum* (hoawa), *Pleomele fernaldii* (hala pepe), *Pouteria sandwicensis* (alaa), *Psychotria* spp., *Sadleria cyatheoides* (amau), *Scaevola chamissoniana,* or *Xylosma hawaiiense* (maua) at elevations between 550 and 1,013 m (1,804 and 3,323 ft) (HINHP Database 2000; Service 2001; 64 FR 48307).

Labordia tinifolia var. *lanaiensis* is threatened by axis deer and several nonnative plant species. The species is also threatened by random environmental factors or reduced reproductive vigor because of the small population (Service 2001; 64 FR 48307).

Phyllostegia glabra var. *lanaiensis* (NCN)

Phyllostegia glabra var. *lanaiensis* is a robust, erect to decumbent (reclining, with the end ascending), glabrous, short-lived perennial herb in the mint family (Lamiaceae). Its leaves are thin and narrow, often red-tinged or with red veins, and toothed at the edges. The flowers are white, occasionally tinged with purple, and are variable in size, about 1 to 2.5 centimeters (cm) (0.4 to 1.0 in) long. This variety is very similar to *Phyllostegia glabra* var. *glabra;* it may be difficult to differentiate between the two species without flowers (Wagner *et al.*, 1999).

Little is known about the life history of *Phyllostegia glabra* var. *lanaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Phyllostegia glabra var. *lanaiensis* is known from only two collections from Lanai (one near Kaiholena) and was last collected in 1914 (two fertile specimens). A report of this plant from the early 1980s probably was erroneous and should be referred to as *Phyllostegia glabra* var. *glabra* (Robert Hobdy, Hawaii Division of Forestry and Wildlife (DOFAW), pers. comm., 1992; Service 1995).

Nothing is known of the preferred habitat of or native plant species associated with *Phyllostegia glabra* var. *lanaiensis* on the island of Lanai (Service 1995).

Nothing is known of the threats to *Phyllostegia glabra* var. *lanaiensis* on the island of Lanai (Service 1995).

Viola lanaiensis (NCN)

Viola lanaiensis, a short-lived perennial of the violet family (Violaceae), is a small, erect, unbranched or little-branched subshrub. The leaves, which are clustered toward the upper part of the stem, are lance-shaped with a pair of narrow, membranous stipules (leaf-like appendages arising from the base of a leaf) below each leaf axis. The flowers are small and white with purple-tinged or purple veins, and occur singly or up to four per upper leaf axil. The fruit is a capsule, about 1.0 to 1.3 cm (0.4 to 0.5 in) long. It is the only member of the genus on Lanai (Wagner *et al.*, 1999).

Little is known about the life history of *Viola lanaiensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Viola lanaiensis was known historically from scattered sites on the summit, ridges, and upper slopes of Lanaihale (from near the head of Kaiolena and Hookio Gulches to the vicinity of Haalelepaakai, a distance of about 4 km (2.5 mi)), at elevations of approximately 850 to 975 m (2,790 to 3,200 ft). An occurrence of *V. lanaiensis* was known in the late 1970s along the summit road near the head of Waialala Gulch where an occurrence of approximately 20 individuals flourished. That occurrence has since disappeared due to habitat disturbance. Two occurrences are currently known from privately owned land on southern Lanai: In Kunoa Gulch, between Kunoa and Waialala Gulches; and in the upper end of the northernmost drainage of Awehi Gulch, in Hauola Gulch and along Hauola Trail. It is estimated that the occurrences total less than 80 plants (GDSI 2000; HINHP Database 2000).

The habitat of *Viola lanaiensis* is *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or lowland mesic shrubland. The species has been observed on moderate to steep slopes from lower gulches to ridgetops, at elevations between 639 and 1,032 m (2,096 and 3,385 ft), with a soil and decomposed rock substrate in open to shaded areas. It was once observed growing from crevices in drier soil on a mostly open rock area near a recent landslide. Associated vegetation includes ferns and short windswept shrubs or other diverse mesic community members, such as *Antidesma* spp. (hame), *Carex* sp. (NCN), *Coprosma* spp., *Freycinetia arborea, Hedyotis centranthoides* (NCN), *Hedyotis terminalis, Ilex anomala, Leptecophylla tameiameiae, Myrsine* spp., *Nestegis sandwicensis* (olopua), *Psychotria* spp., *Scaevola chamissoniana,* or *Xylosma* sp. (Service 1995; 56 FR 47686).

The main threats to *Viola lanaiensis* include browsing and habitat disturbance by axis deer; encroaching

nonnative plant species, such as *Leptospermum* sp. (NCN); depressed reproductive vigor due to a limited local gene pool; the probable loss of appropriate pollinators; and predation by slugs (*Midax gigetes*) (Service 1995; 56 FR 47686).

Multi-Island Species

Adenophorus periens (pendent kihi fern)

Adenophorus periens, a member of the grammitis family (Grammitidaceae), is a small, pendant, epiphytic (not rooted on the ground), and short-lived perennial fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna (leaflet) margins, pinnae at right angles to the midrib axis, placement of the sori on the pinnae, and by 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 (minute, reproductive dispersal unit of ferns and fern allies) may be dispersed by wind, water, or perhaps on the feet of birds or insects. *Adenophorus periens* spores lack a thick resistant coat, which may indicate their longevity is brief, probably measured in days at most. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not known (Linney 1989; Service 1999).

Historically, *Adenophorus periens* was known from Kauai, Oahu, and the island of Hawaii, with undocumented reports from Lanai and Maui. Currently, it is known from several locations on Kauai, Molokai, and Hawaii. On Lanai, it was last seen in the 1860s (GDSI 2000; HINHP Database 2000; Service 1999; 59 FR 56333).

This epiphytic species, usually growing on *Metrosideros polymorpha* trunks, is found in riparian banks of stream systems in well-developed, closed canopy that provides deep shade or high humidity in *M. polymorpha-Dicranopteris linearis-Diplopterygium pinnatum* wet forests, open *M. polymorpha* montane wet forest, or *M. polymorpha-D. linearis* lowland wet forest at elevations between 763 and 1,032 m (2,503 and 3,385 ft). Associated native plant species include *Broussaisia arguta, Cheirodendron trigynum, Clermontia* spp., *Freycinetia arborea, Hedyotis terminalis, Machaerina angustifolia* (uki), *Melicope* spp., *Psychotria* spp., *Sadleria* spp., or *Syzygium sandwicensis* (ohia ha) (Linney 1989; Service 1999; 59 FR 56333; Kenneth Wood, National Tropical Botanical Garden, pers. comm., 2001).

Nothing is known of the threats to *Adenophorus periens* on the island of Lanai because the species was last seen there in the 1860s.

Bidens micrantha ssp. *kalealaha* (kookoolau)

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 (Ganders and Nagata 1999; 57 FR 20772).

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 and Maui. Currently, this species remains on East Maui and there is one Lanai occurrence in the Waiapaa Gulch area on privately owned land (Ganders and Nagata 1999; GDSI 2000; HINHP Database 2000; Service 1997; 57 FR 20772; HINHP Database 2000; R. Hobdy, pers. comm., 2002).

The habitat of *Bidens micrantha* ssp. *kalealaha* is gulch slopes in dry *Dodonaea viscosa* shrubland at elevations between 409 and 771 m (1,342 and 2,529 ft) (J. Lau, pers. comm., 2001).

The threats to this species on Lanai include habitat destruction by axis deer and mouflon sheep; competition from a variety of nonnative plant species; depressed reproductive vigor due to a limited local gene pool; and fire (Service 1997; 57 FR 20772).

Bonamia menziesii (NCN)

Bonamia menziesii, a short-lived perennial and a 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 (narrowed top of ovary), longer stems and petioles (a stalk that supports a leaf), and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Bonamia menziesii* was known from Kauai, Oahu, Molokai, West Maui, and Hawaii. Currently, this species is known from Kauai, Oahu, Maui, Hawaii, and Lanai. On Lanai, the three occurrences, containing a total of 14 individual plants, are found on privately owned land in the Ahakea and Kanepuu Units of Kanepuu Preserve, and on Puhielelu Ridge (GDSI 2000; HINHP Database 2000).

Bonamia menziesii is found in dry *Nestegis sandwicensis-Diospyros sandwicensis* forest and dry *Dodonaea viscosa* shrubland at elevations between 315 and 885 m (1,033 and 2,903 ft). Associated species include *Bobea* sp. (ahakea), *Dianella sandwicensis* (uki uki), *Diospyros sandwicensis, Erythrina sandwicensis, Hedyotis terminalis, Melicope* sp., *Metrosideros polymorpha, Myoporum sandwicense* (naio), *Nesoluma polynesicum, Nestegis sandwicensis* (olopua), *Pisonia* sp. (papala kepau), *Pittosporum* sp. (hoawa), *Pouteria sandwicensis, Psydrax odorata,* or *Rauvolfia sandwicensis* (HINHP Database 2000; 59 FR 56333).

The primary threats to this species on Lanai are habitat degradation and possible predation by mouflon sheep and axis deer; depressed reproductive vigor due to a limited local gene pool; competition with a variety of nonnative plant species, such as *Lantana camara, Leucaena leucocephala* or *Schinus terebinthifolius*; and a nonnative 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 male flower parts are produced before female parts, in this case, separated by several days; only five

percent of the flowers produce pollen; very few fruits are produced per inflorescence; there are 20 to 60 seeds per capsule; and plants in cultivation have been known to flower at nine months of age. 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 2000; Service 1996b; 57 FR 46325).

Historically, *Brighamia rockii* ranged along the northern coast of East Molokai from Kalaupapa to Halawa, may possibly have grown on Maui, and was last seen on Lanai in 1911. Currently, it is extant only on Molokai (HINHP Database 2000; Lammers 1999; Service 1996b; 57 FR 46325; K. Wood, *in litt.* 2000).

On Lanai, *Brighamia rockii* occurred on sparsely vegetated ledges of steep, rocky, dry cliffs, at elevations between 119 and 756 m (390 and 2,480 ft) with native grasses, sedges, herbs and shrubs (Service 1996b; 57 FR 46325; J. Lau, pers. comm., 2001).

Threats to *Brighamia rockii* on the island of Lanai included habitat destruction from axis deer and mouflon sheep, competition with nonnative plants, and depressed reproductive vigor due to a limited local gene pool (Service 1996b).

Cenchrus agrimonioides (kamanomano (= sandbur, agrimony))

Cenchrus agrimonioides is a short-lived perennial member of the grass family (Poaceae) with leaf blades that are flat or folded and have a prominent midrib. There are two varieties, *Cenchrus agrimonioides* var. *laysanensis* and *Cenchrus agrimonioides* var. *agrimonioides.* They differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. 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 Oahu, Lanai, Maui, and an undocumented report from the Island of Hawaii. Historically, *C. agrimonioides* var. *laysanensis* was known from Laysan, Kure, and Midway, all within what is now the Northwestern Hawaiian Islands National Wildlife Refuge. This variety was never known from the island of Lanai. Currently, *Cenchrus agrimonioides* var. *agrimonioides* is known from Oahu and Maui. On Lanai it was last seen in 1915 (HINHP Database 2000; Service 1999; 61 FR 53108).

Cenchrus agrimonioides var. *agrimonioides* was found on slopes in mesic *Metrosideros polymorpha* forest or shrubland at elevations between 583 and 878 m (1,912 and 2,880 ft) (HINHP Database 2000; Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001).

The major threats to *Cenchrus agrimonioides* var. *agrimonioides* on Lanai included competition with nonnative plant species; browsing and habitat degradation by axis deer, mouflon sheep, and cattle (*Bos taurus*); and depressed reproductive vigor due to a limited local gene pool (Service 1999; 61 FR 53108).

Centaurium sebaeoides (awiwi)

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *Centaurium erythraea,* which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.*, 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Occurrences are found in dry areas, and plants are more likely to be found following heavy rains. Little else is known about the life history of *Centaurium sebaeoides.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Centaurium sebaeoides was historically and is currently known from Kauai, Oahu, Molokai, Lanai, and Maui. On Lanai, there is one occurrence containing between 20 and 30 individual plants in Maunalei Valley on privately owned land (HINHP Database 2000).

This species is found on dry ledges at elevations between 39 and 331 m (128 and 1,086 ft). Associated species include *Hibiscus brackenridgei* (HINHP Database 2000).

The major threats to this species on Lanai are competition from nonnative plant species, grazing and habitat destruction caused by axis deer and mouflon sheep, 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 (HINHP Database 2000; Service 1999; R. Hobdy in *litt.* 2002).

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 with 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. *Clermontia oblongifolia* ssp. *mauiensis* is reported from Maui and Lanai, while the other two subspecies of this species are only known from Oahu and Molokai (Lammers 1988, 1999; 57 FR 20772).

Clermontia oblongifolia ssp. *mauiensis* is known to flower from November to July. Little else is known about the life history of *C. oblongifolia* ssp. *mauiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Rock 1919; Service 1997).

Clermontia oblongifolia ssp. *mauiensis* was historically and is currently known from Lanai and Maui. On Lanai, an unknown number of individuals has been reported from Kaiholena Gulch on privately owned land (HINHP Database 2000; Lammers 1999; 57 FR 20772).

This plant typically grows in gulch bottoms in mesic forests at elevations between 700 and 1,032 m (2,296 and 3,385 ft) (HINHP Database 2000).

The threats to this species on Lanai are its vulnerability to extinction from a single natural or human-caused environmental disturbance; depressed reproductive vigor; and habitat degradation by axis deer and mouflon sheep (Service 1997; 57 FR 20772).

Ctenitis squamigera (pauoa)

Ctenitis squamigera is a short-lived perennial fern and a member of the spleenwort family (Aspleniaceae). It has a rhizome (horizontal stem), creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. It can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering

of tan-colored scales on its frond (Wagner and Wagner 1992).

Little is known about the life history of *Ctenitis squamigera.* Its reproduction cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Ctenitis squamigera* was recorded from Kauai, Oahu, Molokai, Maui, Lanai, and the island of Hawaii. Currently, it is found on Oahu, Molokai, Maui, and Lanai. On Lanai, there are two occurrences totaling 42 individual plants on privately owned land in the Waiapaa-Kapohaku area on the leeward (southwestern) side of the island, and in the Lopa and Waiopa Gulches on the windward (northeastern) side (GDSI 2000; HINHP Database 2000; 59 FR 49025).

This species is found in the forest understory at elevations between 640 and 944 m (2,099 and 3,096 ft) in diverse mesic forest and scrubby mixed mesic forest. Associated native plant species include *Alyxia oliviformis, Antidesma* spp., *Blechnum occidentale* (NCN), *Boehmeria grandis* (akolea), *Carex meyenii* (NCN), *Coprosma* spp., *Cyrtandra* spp., *Doodia* spp., *Freycinetia arborea, Melicope* spp., *Metrosideros polymorpha, Microlepia* sp. (NCN), *Myrsine* spp., *Nephrolepis* sp. (kupukupu), *Nestegis sandwicensis, Peperomia* sp. (ala ala wai nui), *Perrottetia sandwicensis, Pipturus albidus, Pittosporum* spp., *Pneumatopteris sandwicensis, Psychotria* spp., *Sadleria* spp., *Selaginella* sp. (lepelepe a moa), *Syzygium sandwicensis, Wikstroemia* spp., or *Xylosma* sp. (HINHP Database 2000; 59 FR 49025).

The primary threats to this species on Lanai are habitat degradation by axis deer and mouflon sheep; competition with nonnative plant species, especially *Psidium cattleianum* and *Schinus terebinthifolius;* fire; decreased reproductive vigor; and extinction from naturally occurring events due to the small number of existing populations and individuals (Culliney 1988; HINHP Database 2000; Service 1998a; 59 FR 49025).

Cyanea grimesiana ssp. *grimesiana* (haha)

Cyanea grimesiana ssp. *grimesiana,* a short-lived perennial and a member of the bellflower family (Campanulaceae), is a shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1999).

On Molokai, flowering plants have been reported in July and August. Little else is known about the life history of *Cyanea grimesiana* ssp. *grimesiana.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Cyanea grimesiana ssp. *grimesiana* was historically and is currently known from Oahu, Molokai, Lanai, and Maui. Currently on Lanai there are two occurrences with at least three individuals on privately owned land in Kaiholena Gulch and Waiakeakua Gulch (HINHP Database 2000; Service 1999; 61 FR 53108;).

This species is typically found in mesic forest, often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa* (koa), or on rocky or steep slopes of streambanks, at elevations between 667 and 1,032 m (2,188 and 3,385 ft). Associated native species include *Antidesma* spp., *Bobea* spp., *Myrsine* spp., *Nestegis sandwicensis, Psychotria* spp., or *Xylosma* sp. (Service 1999; 61 FR 53108).

The threats to this species on Lanai are habitat degradation and/or destruction caused by axis deer and mouflon sheep; competition with various nonnative plants; random naturally occurring events causing extinction due to the small number of existing individuals; fire; landslides; and predation by rats (*Rattus rattus*) and various species of slugs (Service 1999; 59 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 (Degener 1936; Rock 1919; Service 1997; 57 FR 20772).

Historically, *Cyanea lobata* was known from Lanai and West Maui. It was last seen on Lanai in 1934 (GDSI 2000; HINHP Database 2000; Service 1997; 57 FR 20772).

This species occurs in gulches in mesic to wet forest and shrubland at elevations between 664 and 1,032 m (2,178 and 3,385 ft) and containing one or more of the following associated native plant species: *Antidesma* spp., *Athyrium* spp. (akolea); *Cyrtandra* spp., *Freycinetia arborea, Metrosideros polymorpha, Morinda trimera* (noni kuahiwi), *Peperomia* spp., *Pipturus albidus, Pleomele fernaldii* (halapepe), *Psychotria* spp., *Touchardia latifolia* (olona), or *Xylosma* spp. (HINHP Database 2000; Service 1997; 57 FR 20772; J. Lau, pers. comm., 2001; and R. Hobdy, pers. comm., 2001).

The threats to this species on Lanai included habitat degradation by axis deer and mouflon sheep (Service 1997; 57 FR 20772).

Cyperus trachysanthos (puukaa)

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a short-lived perennial grass-like plant with a short rhizome. The stems are densely tufted, obtusely triangular in cross-section, tall, sticky, and leafy at the base. This species is distinguished from others in the genus by the short rhizome, the leaf sheath with partitions at the nodes, the shape of the glumes (floral bracts), and the length of the stems (Koyama 1999).

Little is known about the life history of *Cyperus trachysanthos.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Cyperus trachysanthos* was known on Niihau and Kauai, and from scattered locations on Oahu, Molokai, and Lanai. Currently it is found on Kauai, Niihau and Oahu. It was last observed on Lanai in 1919 (GDSI 2000; HINHP Database 2000).

Cyperus trachysanthos is usually found in seasonally wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes in *Heteropogon contortus* (pili) grassland at elevations between 0 and 46 m (0 and 151 ft). *Hibiscus tiliaceus* (hau) is often found in association with this species (Koyama 1999; 61 FR 53108; J. Lau and K. Wood, pers. comms., 2001).

On Lanai, the threats to this species included the loss of wetlands and habitat degradation by axis deer and mouflon sheep (Service 1999; 61 FR 53108; R. Hobdy in litt. 2002).

Cyrtandra munroi (haiwale)

Cyrtandra munroi is a short-lived perennial and a member of the African

violet family (Gesneriaceae). It is a shrub with opposite, elliptic to almost circular leaves that 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).

The reproductive biology of some species of *Cyrtandra* has been studied, but not *C. munroi* specifically. The studies of other members of the genus suggest that a specific pollinator may be necessary for successful pollination. Seed dispersal may be via birds, which eat the fruits. Flowering time, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1995).

Cyrtandra munroi was historically and is currently known from Lanai and Maui. Currently on Lanai there are a total of two occurrences containing 17 individuals on privately owned land in the Kapohaku-Waiapaa area, and in the gulch between Kunoa and Waialala gulches (GDSI 2000; HINHP Database 2000).

The habitat of this species is diverse mesic forest, wet *Metrosideros polymorpha* forest, and mixed mesic *M. polymorpha* forest, typically on rich, moderately steep gulch slopes at elevations between 667 and 1,032 m (2,188 and 3,385 ft). It occurs on soil and rock substrates on slopes from watercourses in gulch bottoms and up the sides of gulch slopes to near ridgetops. Associated native species include *Alyxia oliviformis, Bobea elatior, Clermontia* spp., *Coprosma* spp., *Cyrtandra grayana, Dicranopteris linearis, Diospyros sandwicensis, Diplopterygium pinnatum, Freycinetia arborea, Hedyotis acuminata* (au), *Melicope spp., Myrsine lessertiana, Perrottetia sandwicensis, Pipturus albidus, Pittosporum confertiflorum, Pleomele fernaldii, Pouteria sandwicensis, Psychotria* spp., *Sadleria cyatheoides, Scaevola chamissoniana,* or *Xylosma hawaiiense* (HINHP Database 2000; Service 1995).

The threats to this species on Lanai are browsing and habitat disturbance by axis deer; competition with the nonnative plant species *Leptospermum scoparium, Melinis minutiflora* (molasses grass), *Myrica faya, Paspalum conjugatum* (Hilo grass), *Pluchea carolinensis, Psidium cattleianum,* or *Rubus rosifolius* (thimbleberry); depressed reproductive vigor; and loss of appropriate pollinators (Service 1995; 57 FR 20772).

Diellia erecta (NCN)

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 large brown or dark gray scales, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of *Diellia erecta.* Its reproduction cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. Currently, it is known from Oahu, Molokai, Maui, and the island of Hawaii and was recently rediscovered on Kauai. On Lanai it was last seen in 1929 (HINHP Database 2000; Service 1999).

This species is found in brown granular soil with leaf litter and occasional terrestrial moss on north-facing slopes in deep shade and on steep slopes or gulch bottoms in *Pisonia* spp. forest at elevations between 651 and 955 m (2,135 and 3,132 ft). Associated native plant species include native grasses or ferns (HINHP Database 2000; Service 1999; J. Lau and K. Wood, pers. comms., 2001).

The major threats to *Diellia erecta* on Lanai included habitat degradation by axis deer and mouflon sheep, and competition with nonnative plant species (Service 1999; 59 FR 56333).

Diplazium molokaiense (NCN)

Diplazium molokaiense, a short-lived perennial fern and a member of the spleenwort family (Aspleniaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* 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.* Its reproduction cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Maui. Currently, this species is known only from Maui. It was last seen on Lanai in 1914 (HINHP Database 2000).

This species occurs in shady, damp places in wet forests at elevations between 737 and 1,032 m (2,417 and 3,385 ft) (HINHP Database 2000; Service 1998a; J. Lau, pers. comm., 2001).

The primary threats to *Diplazium molokaiense* on Lanai included habitat degradation by axis deer and mouflon sheep, and competition with nonnative plant species (HINHP Database 2000; Service 1998a; 59 FR 49025).

Hedyotis mannii (pilo)

Hedyotis mannii is a short-lived perennial and a member of the coffee family (Rubiaceae). It has smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long, which are woody at the base and four-angled or -winged. It is distinguished from other species by its growth habit, its quadrangular or winged stems, the shape, size, and texture of its leaves, and its dry capsule, which opens when mature (Wagner *et al.*, 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b).

Hedyotis mannii was once widely scattered on Lanai, West Maui, and Molokai. After a hiatus of 50 years, this species was rediscovered in 1987 by Steve Perlman on Molokai. In addition, an occurrence was discovered on Maui and two occurrences, now numbering between 35 and 40 individual plants, were discovered on Lanai in 1991 on privately owned land in Maunalei and Hauola gulches (GDSI 2000; HINHP Database 2000; Service 1996b).

Hedyotis mannii typically grows on dark, narrow, rocky gulch walls and on steep streambanks in wet forests between 711 and 1,032 m (2,332 and 3,385 ft) in elevation. Associated plant species include *Carex meyenii, Dryopteris sandwicensis, Freycinetia arborea, Sadleria* spp., or *Scaevola chamissoniana* (HINHP Database 2000; Service 1996b; J. Lau, pers. comm., 2001).

The primary threats to *Hedyotis mannii* are the limited number of individuals which makes it extremely vulnerable to extinction from random environmental events; habitat degradation caused by axis deer and mouflon sheep; and nonnative plants, such as *Melinis minutiflora, Psidium cattleianum,* and *Rubus rosifolius* (57 FR 46325).

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 in 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 Oahu, Molokai, and Lanai. This species is now known from Oahu, Molokai, and Maui. It was last seen on Lanai in 1940 (GDSI 2000; HINHP Database 2000; Service 1998b; 59 FR 14482).

Hesperomannia arborescens is found on slopes or ridges in lowland mesic or wet forest at elevations between 737 and 1,032 m (2,417 and 3,385 ft) and containing one or more of the following associated native plant species: *Antidesma* spp., *Bobea* spp., *Cheirodendron* spp. (olapa), *Cibotium* spp. (hapuu), *Clermontia* spp., *Coprosma* spp., *Dicranopteris linearis, Freycinetia arborea, Isachne distichophylla* (ohe), *Machaerina* spp. (uki), *Melicope* spp., *Metrosideros polymorpha, Myrsine sandwicensis* (kolea), *Pipturus albidus, Psychotria* spp., *Sadleria* spp. (HINHP Database 2000; Service 1998b; 59 FR 14482; R. Hobdy, pers. comm., 2001).

The major threats to *Hesperomannia arborescens* on Lanai included habitat degradation by axis deer and mouflon sheep, and competition with nonnative plant species (HINHP Database 2000; Service 1998b; 59 FR 14482).

Hibiscus brackenridgei (mao 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 (leaf bracts) that fall off, leaving an elliptical scar.

Two subspecies are currently recognized, *Hibiscus brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1999).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be related to day length. Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, and the island of Hawaii. *Hibiscus brackenridgei* was collected from an undocumented site on Kahoolawe, though the subspecies has never been determined. Currently, *H. brackenridgei* ssp. *mokuleianus* is only known from Oahu. *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and the island of Hawaii. On Lanai, there are two occurrences containing an unknown number of individuals on privately owned land; one occurrence is known from Keamuku Road, one from a fenced area on the dry plains of Kaena Point. Outplanted individuals that were initially planted in Kanepuu Preserve now appear to be reproducing naturally (GDSI 2000; HINHP Database 2000; Service 1999; Wesley Wong, Jr., *in litt.* 1998).

Hibiscus brackenridgei ssp. *brackenridgei* occurs in lowland dry to mesic forest and shrubland between 0 and 645 m (0 and 2,116 ft) in elevation. Associated plant species include *Dodonaea viscosa, Isachne distichophylla, Psydrax odorata,* or *Sida fallax* (HINHP Database 2000; Service 1999).

The primary threats to *Hibiscus brackenridgei* ssp. *brackenridgei* on Lanai are habitat degradation; possible predation by axis deer, mouflon sheep, and rats; competition with nonnative plant species; fire; and susceptibility to extinction caused by naturally occurring events or reduced reproductive vigor (Service 1999; 59 FR 56333; R. Hobdy *in litt.* 2002).

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 has moderately hairy veins. Below the petiole are oval, hairy stipules. The fruit is a three-lobed, oval capsule. *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 one to two 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 was historically found on six of the Hawaiian Islands: Niihau, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. Currently it is found only on the island of Hawaii. It was last seen on Lanai in 1870 (GDSI 2000; HINHP Database 2000; Service 1996a; 59 FR 10305).

On Lanai, *Isodendrion pyrifolium* occurred in dry shrubland at elevations between 132 and 574 m (433 and 1,883 ft) with one or more of the following associated native plant species: *Dodonaea viscosa, Heteropogon contortus, Lipochaeta* or *Melanthera* spp. (nehe), or *Wikstroemia oahuensis* (akia) (Service 1996a; 59 FR 10305; J. Lau and R. Hobdy, pers. comms., 2001).

Nothing is known of the threats to *Isodendrion pyrifolium* on the island of Lanai because the species was last seen there in 1870.

Mariscus fauriei (NCN)

Mariscus fauriei, a member of the sedge family (Cyperaceae), is a short-lived perennial plant with somewhat enlarged underground stems and three-angled, single or grouped aerial stems 10 to 50 cm (4 to 20 in) tall. This species differs from others in the genus in Hawaii by its smaller size and its more narrow, flattened, and more spreading spikelets (flower clusters) (Koyama 1990; 59 FR 10305).

Little is known about the life history of *Mariscus fauriei.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (USFWS 1996a).

Historically, *Mariscus fauriei* was found on Molokai, Lanai, and the island of Hawaii. It currently occurs on Molokai and the island of Hawaii. It was last seen on Lanai in 1929 (GDSI 2000; HINHP Database 2000; Service 1996a; 59 FR 10305).

Nothing is known of the preferred habitat of or native plant species

associated with *Mariscus fauriei* on the island of Lanai (Service 1996a).

Nothing is known of the threats to *Mariscus fauriei* on the island of Lanai (Service 1996a).

Melicope munroi (alani)

Melicope munroi, a long-lived perennial of the rue (citrus) family (Rutaceae), is a sprawling shrub up to 3 m (10 ft) tall. The new growth of this species has minute hairs. This species differs from other Hawaiian members of the genus in the shape of the leaf and the length of the inflorescence (flower cluster) stalk (Stone *et al.*, 1999).

Little is known about the life history of *Melicope munroi.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001).

Historically, this species was known from the Lanaihale summit ridge of Lanai and above Kamalo on Molokai. Currently, *Melicope munroi* is known only from the Lanaihale summit ridge on Lanai. There are two occurrences totaling an estimated 35 individual plants on privately owned land on the Lanaihale summit, head of Hauola gulch, Waialala gulch, and the ridge of Waialala gulch (GDSI 2000; HINHP Database 2000; Service 2001; 64 FR 48307).

Melicope munroi is typically found on slopes in lowland wet shrublands, at elevations of 701 and 1,032 m (2,299 and 3,385 ft). Associated native plant species include *Broussaisia arguta, Cheirodendron trigynum, Coprosma* spp., *Dicranopteris linearis, Diplopterygium pinnatum, Machaerina angustifolia,* other *Melicope* spp., or *Metrosideros polymorpha* (HINHP Database 2000; Service 2001).

The major threats to *Melicope munroi* on Lanai are trampling, browsing, and habitat degradation by axis deer and competition with the nonnative plant species *Leptospermum scoparium* and *Psidium cattleianum.* In addition, the limited number of individuals in the two remaining occurrences makes it extremely vulnerable to extinction from random environmental events (HINHP Database 2000; Service 2001; 64 FR 48307).

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 lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. *Neraudia sericea* differs from the other four species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.*, 1999).

Little is known about the life history of *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 historically found on Molokai, Lanai, Maui, and Kahoolawe. Currently, this species is extant on Molokai and Maui. It was last seen on Lanai in 1913 (GDSI 2000; HINHP Database 2000; Service 1999; 59 FR 56333).

Neraudia sericea generally occurs in gulch slopes or gulch bottoms in dry-mesic or mesic forest at elevations between 693 and 869 m (2,273 and 2,850 ft). Associated native species include *Diospyros sandwicensis, Dodonaea viscosa, Metrosideros polymorpha,* or *Nestegis sandwicensis* (HINHP Database 2000; 59 FR 56333; J. Lau, pers. comm., 2001).

The primary threats to *Neraudia sericea* on Lanai included habitat degradation by pigs (*Sus scrofa*), and goats (currently axis deer and mouflon sheep), and competition with nonnative plant species (Service 1999; 59 FR 56333).

Portulaca sclerocarpa (poe)

Portulaca sclerocarpa of the purslane family (Portulacaceae) is a short-lived perennial herb with a tuberous taproot and has stems up to about 20 cm (8 in) long. The succulent, grayish-green leaves are almost circular in cross-section. The petals are white, pink, or pink with a white base. The hardened capsules open very late or not at all, and contain dark reddish-brown seeds. This species differs from other native and naturalized species of the genus in Hawaii by its woody taproot, its narrow leaves, and the colors of its petals and seeds. Its closest relative, *P. villosa,* differs mainly in its thinner-walled, opening capsule (Wagner *et al.*, 1999).

This species has been observed in flower during March, June, and December. The presence of juveniles indicated that pollination and germination were occurring. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1996a).

Portulaca sclerocarpa was historically and is currently found on the island of Hawaii, and on an islet (Poopoo Islet) off the south coast of the island of Lanai. The Lanai occurrence on privately owned land contains about 10 plants. Poopoo Islet is a small rocky outcrop, 1 ha (2.4 ac) in area and approximately 200 m (600 ft) from the south shoreline, and is considered part of the island of Lanai (GDSI 2000; HINHP Database 2000; Service 1996a).

This species grows on exposed ledges in thin soil in coastal communities at elevations between 0 and 82 m (0 and 269 ft) (HINHP Database 2000; Wagner *et al.*, 1999).

The major threats to *Portulaca sclerocarpa* on Lanai are herbivory by the larvae of a nonnative sphinx moth (*Hyles lineata*); competition from nonnative plants; and fire (Service 1996a; 59 FR 10305; Frank Howarth, Bishop Museum, *in litt.* 2000).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a member of the pea family (Fabaceae), is typically a sprawling short-lived perennial 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 a salmon color 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* has been studied by David Hopper, University of Hawaii. His findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus,* and that occurrences at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown (Service 1999).

Currently, *Sesbania tomentosa* occurs on six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and on two islands in the Northwestern Hawaiian Islands (Nihoa and Necker). Although once found on Niihau and Lanai, it is no longer extant on those islands. It was last seen on Lanai in 1957 (GDSI 2000; HINHP Database 2000; 59 FR 56333).

Sesbania tomentosa is found on sandy beaches, dunes, or pond margins at elevations between 44 and 221 m (144 and 725 ft). It commonly occurs in coastal dry shrublands or mixed coastal

dry cliffs with the associated native plant species *Chamaesyce celastroides* (akoko), *Cuscuta sandwichiana* (kaunaoa), *Dodonaea viscosa, Heteropogon contortus, Myoporum sandwicense, Nama sandwicensis* (hinahina kahakai), *Scaevola sericea* (naupaka kahakai), *Sida fallax, Sporobolus virginicus* (akiaki), *Vitex rotundifolia* (kolokolo kahakai), or *Waltheria indica* (uhaloa) (HINHP Database 2000; Service 1999; K. Wood, pers. comm., 2001).

The primary threats to *Sesbania tomentosa* on Lanai included habitat degradation caused by competition with various nonnative plant species; lack of adequate pollination; seed predation by rats, mice (*Mus musculus*) and, potentially, nonnative insects; and fire (Service 1999; 59 FR 56333).

Silene lanceolata (NCN)

Silene lanceolata, a member of the pink family (Caryophyllaceae), is an upright, short-lived perennial plant with stems 15 to 51 cm (6 to 20 in) long, which are woody at the base. The flowers are white with deeply lobed, clawed petals. This species is distinguished from *S. alexandri* by its smaller flowers and capsules and its stamens, which are shorter than the sepals (Wagner *et al.*, 1999).

Little is known about the life history of *Silene lanceolata.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b; 57 FR 46325).

The historical range of *Silene lanceolata* includes five Hawaiian Islands: Kauai, Oahu, Molokai, Lanai, and Hawaii. *Silene lanceolata* is presently extant on the islands of Molokai, Oahu, and Hawaii. It was last observed on Lanai in 1930 (GDSI 2000; Service 1996b; 57 FR 46325).

Nothing is known of the preferred habitat of or native plant species associated with *Silene lanceolata* on the island of Lanai (Service 1996b).

Nothing is known of the threats to *Silene lanceolata* on the island of Lanai (Service 1996b).

Solanum incompletum (popolo ku mai)

Solanum incompletum, a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in) long, and berries 1 to 2 cm (0.4 to 0.8 in) in diameter (Symon 1999).

Little is known about the life history of *Solanum incompletum.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Solanum incompletum* was known on Lanai, Maui, and the island of Hawaii. According to David Symon (1999), the known distribution of *Solanum incompletum* also extended to the islands of Kauai and Molokai. Currently, *Solanum incompletum* is only known from the island of Hawaii. It was last seen on Lanai in 1925 (HINHP Database 2000; Service 1999).

On Lanai, *Solanum incompletum* occurred on broad, gently sloping ridges in dry, *Dodonaea viscosa* shrubland, at elevations between 151 and 372 m (495 and 1,220 ft) with one or more of the following associated native plant species: *Heteropogon contortus, Lipochaeta* or *Melanthera* spp., or *Wikstroemia oahuensis* (Service 1999; J. Lau, pers comm., 2001).

On Lanai, the threats to *Solanum incompletum* included habitat destruction by goats and pigs (more recently axis deer) and competition with various nonnative plants (Service 1999).

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves are dissected into narrow, lance-shaped divisions. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis.* Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Spermolepis hawaiiensis* was known from Kauai, Oahu, Lanai, and the island of Hawaii. Based on recent collections, it is now known to be extant on those four islands, Molokai, and Maui. On Lanai, this species is known from three occurrences of 570 to 620 individuals on privately owned land in the southern edge of Kapoho Gulch, Kamiki Ridge, and approximately 274 m (900 ft) downslope of Puu Manu (HINHP Database 2000; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2000).

Spermolepis hawaiiensis is known from gulch slopes and ridge tops in dry forests dominated by *Diospyros sandwicensis* or shrublands dominated by *Dodonaea viscosa* at elevations between 402 and 711 m (1,319 and 2,332 ft). Associated native plant species include *Nesoluma polynesicum, Nestegis sandwicensis, Psydrax odorata,* or *Rauvolfia sandwicensis* (HINHP Database 2000; Service 1999; R. Hobdy, pers. comm., 2000; J. Lau, pers. comm., 2001).

The primary threats to *Spermolepis hawaiiensis* on Lanai are habitat degradation by axis deer, competition with various nonnative plants, such as *Lantana camara;* and erosion, landslides, and rockslides due to natural weathering, which result in the death of individual plants as well as habitat destruction (Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2000).

Tetramolopium lepidotum ssp. *lepidotum* (NCN)

Tetramolopium lepidotum ssp. *lepidotum,* a member of the aster family (Asteraceae), is an erect shrub 12 to 36 cm (4.7 to 14 in) tall, branching near the ends of the stems. The leaves are lance-shaped and wider at the leaf tip. This species can be distinguished from the other extant species on Oahu by its hermaphroditic disk flowers and its inflorescence of six to 12 heads (Lowrey 1999).

Tetramolopium lepidotum ssp. *lepidotum* is a short-lived perennial that has been observed producing flowers and fruit from April through July. No further information is available on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b; 56 FR 55770).

Historically, *Tetramolopium lepidotum* ssp. *lepidotum* was known from Oahu and Lanai. It currently occurs only on Oahu. It was last seen on Lanai in 1928 (Environmental Division of the Army Database 2001; GDSI 2000; HINHP Database 2000; Service 1998b; 56 FR 55770).

Nothing is known of the preferred habitat of or native plant species associated with *Tetramolopium lepidotum* ssp. *lepidotum* on the island of Lanai (Service 1998b).

Nothing is known of the threats to *Tetramolopium lepidotum* ssp. *lepidotum* on the island of Lanai (Service 1998b).

Tetramolopium remyi (NCN)

Tetramolopium remyi, a short-lived perennial member of the sunflower family (Asteraceae), is a many branched, decumbent or occasionally erect shrub up to about 38 cm (15 in) tall. 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. 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 by butterflies, bees, or flies. Seed dispersal agents, environmental requirements, and other limiting factors are unknown (Lowrey 1986; Service 1995).

Historically, the species was known from Maui and Lanai. Currently, *Tetramolopium remyi* is known only from one occurrence on Lanai on privately owned land near Awehi Road, with a total of approximately 150 plants (GDSI 2000; HINHP Database 2000).

Tetramolopium remyi is found in red, sandy, loam soil in dry *Dodonaea viscosa-Heteropogon contortus* communities at elevations between 65 and 485 m (213 and 1,591 ft). Commonly associated native species include *Bidens mauiensis* (kookoolau), *Melanthera lavarum* (nehe), *Waltheria indica,* or *Wikstroemia oahuensis* (HINHP Database 2000).

Browsing by axis deer and mouflon sheep and competition from nonnative species, primarily *Andropogon virginicus* (broomsedge) and *Panicum maximum* (guinea grass), are the main threats to the species on Lanai. Fire is also a potential threat (Service 1995; 56 FR 47686).

Vigna o-wahuensis (NCN)

Vigna o-wahuensis, a member of the legume family (Fabaceae), is a slender, twining, short-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets, which vary in shape from round to linear. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods, which may or may not be slightly inflated (Geesink *et al.*, 1999).

Little is known about the life history of *Vigna o-wahuensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, and Maui. Based on recent collections, *Vigna o-wahuensis* is now known to be extant on the islands of Molokai, Maui, Lanai, Kahoolawe, and Hawaii. On Lanai, one occurrence with at least one individual is known from Kanepuu on privately owned land (GDSI 2000; HINHP Database 2000; Service 1999; J. Lau, *in litt.* 2000).

On Lanai, *Vigna o-wahuensis* is found in *Nestegis sandwicensis* or *Diospyros sandwicensis* dry forest at elevations between 98 and 622 m (321 and 2,040 ft) (HINHP Database 2000; 59 FR 56333; J. Lau, pers. comm., 2001).

Threats to *Vigna o-wahuensis* on Lanai include habitat degradation by mouflon sheep and axis deer; competition with various nonnative plant species; fire; and random naturally occurring events causing extinction and or reduced reproductive vigor of the only remaining individual on Lanai (Service 1999).

Zanthoxylum hawaiiense (ae)

Zanthoxylum hawaiiense is a medium-sized tree in the rue (citrus) family (Rutaceae) with pale to dark gray bark, and lemon-scented leaves, composed of three small leaflets. A long-lived perennial tree, *Z. hawaiiense* is distinguished from other Hawaiian members of the genus by several characteristics: Three leaflets all of similar size, one joint on the lateral leaf stalk, and sickle-shaped fruits with a rounded tip (Stone *et al.*, 1999).

Little is known about the life history of *Zanthoxylum hawaiiense.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Historically, *Zanthoxylum hawaiiense* was known from five islands: Kauai, Molokai, Lanai, Maui, and the island of Hawaii. Currently, *Zanthoxylum hawaiiense* is found on Kauai, Molokai, Maui, and the island of Hawaii. It was last seen on Lanai in 1947 (GDSI 2000; HINHP Database 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Zanthoxylum hawaiiense* on the island of Lanai (Service 1996a).

Nothing is known of the threats to *Zanthoxylum hawaiiense* on the island of Lanai (Service 1996a).

A summary of occurrences and landownership for the 37 plant species reported from the island of Lanai is given in Table 2.

TABLE 2.—SUMMARY OF EXISTING OCCURRENCES ON LANAI, AND LANDOWNERSHIP FOR 37 SPECIES REPORTED FROM LANAI

Species	Number of current occurrences	Landownership		
		Federal	State	Private
Abutilon eremitopetalum	1			X
Adenophorus periens	0			
Bidens micrantha	1			X
Bonamia menziesii	3			X
Brighamia rockii	0			
Cenchrus agrimonioides	0			
Centaurium sebaeoides	1			X
Clermontia oblongifolia ssp. *mauiensis*	1			X
Ctenitis squamigera	2			X
Cyanea grimesiana ssp. *grimesiana*	2			X
Cyanea lobata	0			
Cyanea macrostegia ssp. *gibsonii*	2			X
Cyperus trachysanthos	0			
Cyrtandra munroi	2			X

TABLE 2.—SUMMARY OF EXISTING OCCURRENCES ON LANAI, AND LANDOWNERSHIP FOR 37 SPECIES REPORTED FROM LANAI—Continued

Species	Number of current occurrences	Landownership		
		Federal	State	Private
Diellia erecta	0			
Diplazium molokaiense	0			
Gahnia lanaiensis	1			X
Hedyotis mannii	2			X
Hedyotis schlechtendahliana var. *remyi*	2			X
Hesperomannia arborescens	0			
Hibiscus brackenridgei	3			X
Isodendrion pyrifolium	0			
Labordia tinifolia var. *lanaiensis*	1			X
Mariscus fauriei	0			
Melicope munroi	2			X
Neraudia sericea	0			
Phyllostegia glabra var. *lanaiensis*	0			
Portulaca sclerocarpa	1			X
Sesbania tomentosa	0			
Silene lanceolata	0			
Solanum incompletum	0			
Spermolepis hawaiiensis	3			X
Tetramolopium lepidotum ssp. *lepidotum*	0			
Tetramolopium remyi	1			X
Vigna o-wahuensis	1			X
Viola lanaiensis	2			X
Zanthoxylum hawaiiense	0			

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Bonamia menziesii, Brighamia rockii, Cyanea lobata* (as *C. baldwinii*), *Gahnia lanaiensis, Hedyotis mannii* (as *H. thyrsoidea* var. *thyrsoidea*), *Hesperomannia arborescens* (as *H. arborescens* var. *bushiana* and var. *swezeyi*), *Hibiscus brackenridgei* (as *H. brackenridgei* var. *brackenridgei*, var. *mokuleianus*, and var. ''from Hawaii''), *Neraudia sericea* (as *N. kahoolawensis*), *Portulaca sclerocarpa*, *Sesbania tomentosa* (as *S. hobdyi* and *S. tomentosa* var. *tomentosa*), *Silene lanceolata*, *Solanum incompletum* (as *S. haleakalense* and *S. incompletum* var. *glabratum*, var. *incompletum*, and var. *mauiensis*), *Tetramolopium lepidotum* ssp. *lepidotum*, *Vigna o-wahuensis* (as *V. sandwicensis* var. *heterophylla* and var. *sandwicensis*), *Viola lanaiensis*, and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *citiodora*) were considered endangered; *Cyrtandra munroi*, *Diellia erecta*, *Labordia tinifolia* var. *lanaiensis*, and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered threatened; and *Abutilon eremitopetalum*, *Bidens micrantha* ssp. *kalealaha* (as *B. distans* and *B. micrantha* ssp. *kalealaha*), *Ctenitis squamigera*, *Cyanea macrostegia* ssp. *gibsonii*, *Diplazium molokaiense*, *Isodendrion pyrifolium*, *Melicope munroi* (as *Pelea munroi*), *Phyllostegia glabra* var. *lanaiensis*, and *Tetramolopium remyi* were considered to be extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except *Cyrtandra munroi*, *Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication (40 FR 27823).

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated Notices of Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). We listed the 37 species as endangered between 1991 and 1999. A summary of the listing actions can be found in Table 3(a).

TABLE 3(a).—SUMMARY OF LISTING ACTIONS FOR 37 PLANT SPECIES FROM LANAI

Species	Federal status	Proposed rule		Final rule		Proposed designation or non-designation of critical habitat	
		Date	**Federal Register**	Date	**Federal Register**	Date	**Federal Register**
Abutilon eremitopetalum.	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
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 83158
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	11/7/00, 12/18/00, 12/27/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 82086, 67 FR 3940
Brighamia rockii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158
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, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940
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
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 82086, 65 FR 83158
Cyanea grimesiana ssp. *grimesiana*.	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00, 12/27/00, 12/29/00.	65 FR 79192, 65 FR 82086, 65 FR 83158
Cyanea lobata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192
Cyanea macrostegia ssp. *gibsonii*.	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Cyperus trachysanthos.	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00, 01/28/02	65 FR 66808, 67 FR 3940
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
Diellia erecta	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/29/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940
Diplazium molokaiense.	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00	65 FR 79192
Gahnia lanaiensis	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
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 83158
Hedyotis schlechtendahliana var. *remyi*.	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086
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 83158
Hibiscus brackenridgei.	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192
Isodendrion pyrifolium	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	01/28/02	67 FR 3940
Labordia tinifolia var. *lanaiensis*.	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086
Mariscus fauriei	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/29/00	65 FR 83158
Melicope munroi	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086
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 83158
Phyllostegia glabra var. *lanaiensis*.	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/29/00	65 FR 83158
Portulaca sclerocarpa	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/27/00	65 FR 82086
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/29/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940
Silene lanceolata	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158
Solanum incompletum.	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	01/28/02	67 FR 3940

TABLE 3(a).—SUMMARY OF LISTING ACTIONS FOR 37 PLANT SPECIES FROM LANAI—Continued

Species	Federal status	Proposed rule		Final rule		Proposed designation or non-designation of critical habitat	
		Date	**Federal Register**	Date	**Federal Register**	Date	**Federal Register**
Spermolepis hawaiiensis.	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00, 12/18/00, 12/27/00, 12/29/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940
Tetramolopium lepidotum ssp. *lepidotum*.	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770		
Tetramolopium remyi	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Vigna o-wahuensis ...	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00, 12/29/00 ..	65 FR 79192, 65 FR 83158
Viola lanaiensis	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686	12/27/00	65 FR 82086
Zanthoxylum hawaiiense.	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	11/07/00, 12/18/00, 12/29/00, 01/28/02.	65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940

Key: E= Endangered.

At the time each plant was listed, we found that designation of critical habitat was prudent for three of these plants (*Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi*) and not prudent for the other 34 plants because it would not benefit the plant or would increase the degree of threat to the species. The not prudent findings for these species, along with others, were challenged in *Conservation Council for Hawaii* v. *Babbitt,* 2F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency findings for 245 listed plant species in Hawaii, including 34 of the 37 species reported from Lanai. 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 *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi* (64 FR 48307), we found that designation of critical habitat was prudent and stated that we would develop critical habitat designations for these three taxa, along with seven others, by the time we completed designations for the other 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt,* Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed, however, 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, and ordered us to publish proposed critical habitat designations for the ten Maui Nui species with the first 100 plants from the group of 245 by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the State Division of Forestry and Wildlife (DOFAW), county governments, and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it would cause economic hardship, discourage cooperative projects, polarize

relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands, promote funding for management of these plants, educate the public and State government, and protect partnerships with landowners and build trust.

In early February 2000, we hand-delivered a letter to representatives of the private landowner on Lanai requesting any information considered germane to the management of any of the 37 plants on the island, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the plants on Lanai, and a handout containing general information on critical habitat. On April 4, 2000, we met with representatives of the landowner to discuss their current land management activities. In addition, we met with Maui County DOFAW staff and discussed their management activities on Lanai.

On December 27, 2000, we published the third of the court-ordered proposed critical habitat designations or non-designations for 18 Lanai plants (65 FR 82086). The prudency determinations and proposed critical habitat designations for Kauai and Niihau plants were published on November 7, 2000 (65 FR 66808), for Maui and Kahoolawe plants on December 18, 2000 (65 FR 79192), and for Molokai plants on December 29, 2000 (65 FR 83158). All of these proposed rules were sent to the **Federal Register** by or on November 30, 2000, as required by the court orders.

In those proposals, we proposed that critical habitat was prudent for 33 species (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Mariscus fauriei, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis,* and *Zanthoxylum hawaiiense*) that are reported from Lanai as well as on Kauai, Niihau, Maui, Kahoolawe, and Molokai. We proposed that critical habitat was not prudent for one species, *Phyllostegia glabra* var. *lanaiensis,* because it had not been seen recently in the wild, and no genetic material of this species is known to exist.

On December 27, 2000, we proposed designation of critical habitat on approximately 1,953 ha (4,826 ac) of land on the island of Lanai. The publication of the proposed rule opened a 60-day public comment period, which closed on February 26, 2001. On February 22, 2001, we published a notice (66 FR 11133) announcing the reopening of the comment period until April 2, 2001, on the proposal to designate critical habitat for plants from Lanai and a notice of a public hearing. On March 22, 2001, we held a public hearing at the Lanai Public Library Meeting Room, Lanai. On April 6, 2001, we published a notice (66 FR 18223) announcing corrections to the proposed rule. These corrections included changes to the map of general locations of units and new Universal Tranverse Mercator (UTM) coordinates and increased the total proposed critical habitat to 2,034 ha (5,027 ac).

On October 3, 2001, we submitted a joint stipulation with Earthjustice (representing the plaintiffs in *Hawaii Conservation Council* v. *Babbitt*) requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. On January 28, 2002, in the Kauai revised proposal, we proposed that designation of critical habitat was prudent for *Isodendrion pyrifolium* and *Solanum incompletum,* two species reported from Lanai as well as Kauai, Maui, and Molokai.

On March 4, 2002, we published a revised proposed rule for the 37 plant species from Lanai (67 FR 9806). Critical habitat for 32 (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Mariscus fauriei, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis*) of the 37 plant species from the island of Lanai was proposed on approximately 7,853 ha (19,504 ac) of land (67 FR 9806). Critical habitat was not proposed for *Mariscus fauriei, Phyllostegia glabra* var. *lanaiensis, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum,* and *Zanthoxylum hawaiiense* on the island of Lanai because these plants no longer occur on Lanai and we were unable to determine habitat which is essential to their conservation on this island.

The publication of the revised proposed rule opened a 60-day public comment period, which closed on May 3, 2002. On July 15, 2002, we published a notice (67 FR 46450) announcing the reopening of the comment period until August 30, 2002, and a notice of a public hearing. On July 16, 2002, we published a notice announcing the availability of the draft economic analysis on the proposed critical habitat (67 FR 46626). On July 22, 2002, we held a public information meeting at the Lanai Senior Center, Lanai. On August 1, 2002, we held a public hearing at the Lanai Public Library Meeting Room, Lanai. On July 11, 2002, we submitted joint stipulations with Earthjustice requesting extension of the court orders for the final rules to designate critical habitat for plants from Lanai (December 30, 2002), Kauai and Niihau (January 31, 2003), Molokai (February 28, 2003), Maui and Kahoolawe (April 18, 2003), Oahu (April 30, 2003), the Northwestern Hawaiian Islands (April 30, 2003), and the island of Hawaii (May 30, 2003), citing the need to conduct additional review of the proposals, address comments received during the public comment periods, and to conduct a series of public workshops on the proposals. The joint stipulations were approved and ordered by the court on July 12, 2002. On November 15, 2002, we published in the **Federal Register** (67 FR 69176) a notice reopening the public comment period for the proposed rule.

Summary of Comments and Recommendations

In the proposed rule published on March 4, 2002 (67 FR 9806), we requested that all interested parties submit written comments on the proposal. We also contacted all appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. We received one request for a public hearing. We announced the date and time of the public hearing in letters to all interested parties, appropriate State and Federal agencies, county governments, and elected officials, and in notices published in the *Honolulu Advertiser* and the *Maui News* on March 19, 2002. A transcript of the hearing held in Lanai City, Lanai on August 1, 2002, is available for inspection (see **ADDRESSES** section).

We received individually written letters from 19 parties, including three designated peer reviewers, four State agencies, and 12 individuals, and testimony from three individuals at the August 1, 2002, public hearing. Approximately 275 additional letters were submitted as part of a mailing campaign. Of the 22 parties who did not respond as part of the mailing campaign, five supported the proposed designation, eight were opposed, and nine expressed neither support nor opposition. The eight commenters who opposed the proposal specifically opposed designation of critical habitat on lands they own or manage, and requested that these areas be excluded from critical habitat designation.

We reviewed all comments received for substantive issues and new information regarding critical habitat for *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Mariscus fauriei, Melicope munroi, Neraudia sericea, Phyllostegia glabra* var. *lanaiensis, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepidotum, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis,* and *Zanthoxylum hawaiiense.* Similar comments were grouped into general issues and are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment:* One reviewer questioned whether loss of wetlands is a threat to *Cyperus trachysanthos* because wetlands are not known to exist on Lanai.

Our Response: Because *Cyperus trachysanthos* requires seasonally wet soils, we feel that the lack of such soils on Lanai does constitute a threat to the species. However, based on information received during the public comment period, we have revised the proposed critical habitat for *C. trachysanthos.* We are no longer proposing critical habitat for this species on Lanai because of the absence of wetland habitat. Furthermore, we were able to locate sites on other islands that: (1) Contain the primary constituent elements that are essential to the conservation of the species, (2) are within historical range, and (3) accommodate our recovery goals of 8–10 populations.

(2) *Comment:* One reviewer stated that deer and mouflon sheep are threats to *Centaurium sebaeoides, Cyperus trachysanthos,* and *Sesbania tomentosa,* and that mouflon sheep, not goats and pigs, are a threat to *Hibiscus brackenridgei.*

Our Response: Goats and pigs were replaced with mouflon sheep and axis deer as current threats throughout the ''Discussion of plant taxa'' section. Goats and pigs are no longer present on Lanai and were mistakenly included as current threats.

(3) *Comment:* One peer reviewer suggested that high nutrient runoff from a nearby golf course be included as a threat to Unit G.

Our Response: Unit G has been modified to exclude inland areas that do not contain the primary constituent elements for *Portulaca sclerocarpa.* Critical habitat is now proposed only for the cliff faces along the shore. These areas are not at risk of nutrient runoff from the nearby golf course.

(4) *Comment:* Several commenters expressed concern that *Phyllostegia glabra* var. *lanaiensis* be assumed extinct, as it is common for Hawaiian plant species that have not been seen for decades to be rediscovered. The recent rediscoveries of *Asplenium fragile* var. *insulare* on Maui and of *Phyllostegia waimeae* on Kauai are cases in point. Critical habitat should be designated for this species.

Our Response: We continue to believe that it would not be prudent to designate critical habitat for *Phyllostegia glabra* var. *lanaiensis,* a species known only from Kaiholena on Lanai. The species has not been seen on Lanai for over 80 years. This species was last observed on Lanai at Kaiholena in 1914. A report of this plant from the early 1980s was probably erroneous and should be referred to as *P. glabra* var. *glabra* (R. Hobdy, pers. comm., 1992). In addition, this species is not known to be in storage or under propagation. Given these circumstances, we have determined that designation of critical habitat for *P. glabra* var. *lanaiensis* is not prudent because such designation would not be beneficial to the species. If this species is rediscovered, we may reconsider designating critical habitat for this species as new information becomes available (see 16 U.S.C. 1532(5)(B); 50 CFR 424.13(f)).

(5) *Comment:* The Service should not designate critical habitat for *Adenophorus periens,* which was last seen on Lanai in the 1860s, because nothing is known about its threats. The Service must prove that the designated areas for critical habitat are essential to the conservation of *A. periens* before designating critical habitat.

Our Response: The Service believes that designation of critical habitat for *Adenophorus periens* is prudent because information about the habitat requirements of *A. periens* exists in the historical literature and, unlike the case of *Phyllostegia glabra,* individuals of this species are currently in cultivation, allowing populations to be restored. According to recovery goals, reestablishment of wild populations within historical range is essential to the recovery of this species (USFWS 1999). However, the Service excluded proposed unit Lanai D, proposed in part as critical habitat for *A. periens* because we believe the benefits of exclusion outweigh the benefits of inclusion. The landowner has entered into a voluntary memorandum of agreement with the Service to manage the lands in proposed Unit D, as well as adjacent lands, for the conservation benefit of the 28 listed species for which it was proposed as critical habitat. We believe the benefits of these management actions would not occur if critical habitat is designated, are greater than the benefits of including the area as critical habitat. See *Exclusions Under Section 4(b)(2)* for a more detailed discussion of the exclusions. Critical habitat for *A. periens* has been proposed within historical range on Kauai, Molokai, Hawaii, and Oahu.

(6) *Comment:* One peer reviewer suggested that a recommendation to

discontinue federally supported hunting programs and remove nonnative animals, particularly axis deer, be incorporated into the proposal.

Our Response: The Service recognizes that populations of many game mammal species affect the distribution and abundance of many listed endangered plant and animal species to varying degrees, either directly or indirectly. We also recognize that game mammal hunting is a highly valued activity to a portion of the present-day Hawaiian culture. We recognize hunting as an important tool to manage wild populations of game and support hunting as a recreational activity and the maintenance of game mammal hunting programs within the state of Hawaii. However, Federal and state law dictate that hunting programs must be designed and executed in a way that is compatible with endangered species conservation. Game mammal hunting programs must not only prevent extinction, but allow for the recovery of federally listed endangered and threatened species.

Under the Endangered Species Act, a critical habitat designation establishes a geographic area that is important for the conservation of a threatened or endangered species and may require special management considerations. However, a designation does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other special conservation area. It does not allow government or public access to private lands and will not result in closure of the area to all access or use. A critical habitat designation does not constitute a land management plan. Rather, it triggers the requirement that Federal agencies must consult with the Service on activities they take or fund that might affect critical habitat.

(7) *Comment:* Critical habitat designation should consider the following: (1) The importance of designating the best remaining elements of ecosystems for multi-species recovery, (2) the practicality of managing and protecting scattered units without apparent physical boundaries, and (3) the importance of public/private partnerships for species recovery.

Our Response: We agree that all these factors are important for the conservation of listed species. We have sought to designate only areas that are essential for the conservation of the species, and which contain primary constituent elements within the best remaining habitats. We also agree that public/private partnerships are often essential for species recovery. As an example, the Service is excluding proposed unit Lanai D, an area proposed as critical habitat for 28 species, because the landowner has entered into a voluntary memorandum of agreement with the Service to manage the lands for the conservation benefit of 28 listed species. We believe there is a higher likelihood of beneficial conservation activities occurring on Lanai without designated critical habitat than there would be with designated critical habitat in this location. See *Exclusions Under Section 4(b)(2)* for a more detailed discussion of the excluded areas.

(8) *Comment:* One peer reviewer commented that the requirement that 1,000 m separate populations is adequate for small-scale disturbance events, but is inadequate for large-scale disturbances. However, the use of multiple populations with a 1,000-m separation is a good balance between protecting against catastrophes and avoiding isolation of populations. Another peer reviewer commented that although a 1,000-m separation seems a bit arbitrary, it is workable. A third peer reviewer disagreed with the identification of populations as discrete units due to the lack of barriers to breeding on Lanai.

Our Response: We acknowledge the difficulty in identifying a discrete, quantitative distance between populations, but in the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we believe that a distance of 1,000 m (3,281 ft) is scientifically reasonable based on our review of current literature (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; Schierup and Christiansen 1996).

(9a) *Comment:* Two peer reviewers commented that the multi-population approach is essential to the successful recovery of Hawaiian species, but that 8 to10 populations may be too low a goal in some cases. Eight to 10 populations should be considered the low end of what is needed for recovery; species that characteristically have numerous populations containing small numbers of individuals require special consideration. (9b) *Comment:* Another peer reviewer suggested that 8 to 10 populations *on each island* would be most appropriate for multi-island species.

Our Response: The Service acknowledges that, in general, identification of more than 8 to 10 areas for recovery would improve the likelihood of recovery. However, absent any quantitative scientific modeling for the species, the service concludes that 8 to 10 populations is a goal that has a reasonable likelihood of meeting recovery goals.

(10) *Comment:* It is difficult to comment in an informed manner on critical habitat for species occurring on more than one island because the proposed rule did not provide information on critical habitat proposed on other islands for multi-island species.

Our Response: For this reason, the Service gave notice on August 20, 2002, reopening simultaneous comment periods for the proposed designations and non-designations of critical habitat for plant species on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, and the northwestern Hawaiian Islands until September 30, 2002, and for plant species on the islands of Hawaii, and Oahu until November 30, 2002. The new comment periods allowed all the interested parties to review all the proposals together and submit written comments. The comment period for the proposed designations and non-designations of critical habitat for plant species on Lanai opened on August 15, 2002, and closed on August 30, 2002, overlapping with the reopened comment periods for Kauai, Niihau, Molokai, Maui, Kahoolawe, the northwestern Hawaiian Islands, Hawaii and Oahu.

(11a) *Comment:* Two peer reviewers stated that degraded habitat should only be excluded from critical habitat if it lacks the potential to become appropriate habitat in the future or if enough less degraded areas exist to make retention of degraded areas unnecessary. (11b) *Comment:* A third peer reviewer feels that degraded sites should still be included as critical habitat, at the very least as buffer zones and ideally as areas for expansion. (11c) *Comment:* Two peer reviewers commented that excluding degraded areas from critical habitat tends to encourage landowners to let areas decline to the point where they will not be selected as critical habitat.

Our Response: The Service agrees that ''degraded'' areas may be necessary for recovery of the species. We have included areas that are ''degraded'' only if such areas contain the primary constituent elements for the species; we considered if they are able to eventually regain those missing primary constituent elements if properly managed for restoration and no other suitable habitat for the species is available. We revised proposed critical habitat for many species in the proposed rule because we were able to reach our recovery goal of 8 to 10 populations for a species in intact areas within its

historical range that contain the primary constituent elements.

(12) *Comment:* One commenter was concerned about the designation of units containing ''a badly degraded habitat.'' The reviewer criticizes designation of such areas because it is not economically efficient to control threats such as feral ungulates, weeds, and fire. Such designation will create a regulatory burden and restrict future management options for landowners and the State. Another suggested that some species may be endangered because they exist in marginal habitat and that designating more marginal habitat will not improve a species' chance of survival.

Our Response: We agree that it is in a species' best interest to designate critical habitat in the least degraded areas containing primary constituent elements within historical range. However, in order to reach our recovery goal of 8 to 10 populations for a species within historical range it was sometimes necessary to include ''degraded'' areas when other less degraded areas were not available for the species.

(13a) *Comment:* One peer reviewer stated that it is unlikely that enough land has been identified for the long-term conservation of multiple populations; however, given the need to compromise, the proposed units are reasonable. Peer reviewers stated that the areas seem suitable in size and are ecologically appropriate, provided: (1) They are protected from their primary threats, (2) excluded lands are properly managed and of large enough size to be ecologically sustainable, (3) proposed units E1–3 are consolidated into a single unit and proposed unit D is retained as an entire unit, or the Service can explain why fragmentation and edge-effects are not threats to the species and why there is adequate mid-elevation habitat available in other areas for target species. (13b) *Comment:* Critical habitat for *Hibiscus brackenridgei, Tetramolopium remyi,* and *Sesbania tomentosa* should be larger due to their formerly extensive range. (13c) *Comment:* One peer reviewer stated that removal of significant portions of any of the critical habitat units in the proposed rule is likely to prevent the recovery of, or lead to the extinction of, listed species.

Our Response: We did not include additional lands in proposed critical habitat because, at the time of the proposal and revised proposal, we concluded that those lands were not essential for the conservation of the 37 Lanai plant species, based on available information concerning status of the species in specific areas and level of habitat degradation. In this final rule, several units and parts of units proposed as critical habitat have been excluded because they are not essential for the conservation of the species or because there are alternatives to a critical habitat designation. We determined them to be non-essential due to their lacking primary constituent elements, or having primary constituent elements but there are other places for these species that have more primary constituent elements, are less degraded, are already undergoing restoration, or are within a partnership, Natural Area Reserve, TNCH preserve, or on a refuge. A sufficient number (as defined in our recovery plans) of other, more appropriate areas are being designated or proposed as critical habitat within historical range on other islands. In other cases, the Service decided that the benefits of excluding critical habitat outweighed the benefits of including critical habitat. See the descriptions of exclusion of critical habitat under Exclusions Under Section 4(b)(2), below.

(14) *Comment:* One peer reviewer noted that one of the keys to a plant's survival is having the appropriate microclimate, which is created by other plant species in a large enough aggregation to alter the environment. Because of the strong, harsh winds on Lanai, it is essential that critical habitat units, such as proposed units A, B, and C, are large enough to provide habitat for a complete plant community that can provide shelter from the winds.

Our Response: We agree and have sought to designate critical habitat units that are large enough to accommodate the needs of the species within those units. However, based on information received during the public comment period, we have revised the proposed critical habitat units and have excluded proposed units A, B, and C because they are not essential for the conservation of *Hibiscus brackenridgei, Cyperus trachysanthos, Tetramolopium remyi,* and *Sesbania tomentosa.* Although they possess some of the primary constituent elements for these species, their habitat is largely degraded. We were able to identify an adequate number of sites within the historical range containing more appropriate and less degraded habitat, and/or that are already slated for conservation management and restoration.

(15a) *Comment:* Several commenters, including one peer reviewer, felt that the proposed rule was improved by incorporating clear methodology to designate appropriate unoccupied habitat for plant recovery. (15b) *Comment:* The Service should not designate unoccupied habitat. One commenter stated that the Service is acting outside its authority in designating unoccupied habitat because almost any area in Hawaii is capable of supporting one or more protected species, and the entire State would have to be designated if unoccupied habitat is included. (15c) *Comment:* Unoccupied habitat outside of the Conservation District should not be designated because it is degraded.

Our Response: Our recovery plans for these species identify the need to expand existing populations and reestablish wild populations within the historical range. Because of the very limited current range of these species, designating only occupied areas would not meet the conservation requirements of the species. Occupied areas, as well as the similar habitat around them within the designated units of critical habitat that may be occupied in the future, provide the essential life-cycle needs of the species and provide some or all of the habitat components essential for the conservation (primary constituent elements) of these species. We have revised the December 27, 2000, proposal to designate critical habitat for 18 species from Lanai to incorporate new information and/or address comments and new information received during the comment periods, including information on areas of potentially suitable unoccupied habitat for some of these species. Expansion of some of these species to areas that were likely to have been historically occupied is essential to the conservation of the species.

When designating unoccupied habitat for these species, we first evaluated lands that are suitable for each species. Of this suitable habitat, we determined what areas are essential for the conservation of each species using the guidelines outlined in the recovery plans (*i.e.*, areas that contain one or more of the primary constituent elements, are either in good condition for recovery efforts or could be made good through appropriate management actions), and would provide space needed by the species to reach our recovery goals of 8 to 10 populations with a minimum of 100 mature reproducing individuals per population for long-lived perennials, 300 mature reproducing individuals per populations for short-lived perennials, and 500 mature reproducing individuals per population for annuals.

We disagree that all areas outside the Conservation District are degraded and inappropriate for these species. Areas that contain one or more of the primary constituent elements, are either in good

condition for recovery efforts or could be made good through appropriate management actions, and would provide space needed by the species to reach our recovery goals of 8 to 10 populations with a minimum number of mature reproducing individuals as specified above, were determined to be essential for the conservation of each species, regardless of land-use zoning.

(16a) *Comment:* One peer reviewer praised the Service for its logical and reasonable methodology and for using the best available science, including information such as elevation range, vegetation type, associated species, physical location and community type for determining critical habitat on Lanai. Another reviewer expressed appreciation for the extensive work and review of Lanai data by the Service.

(16b) *Comment:* Other reviewers felt that the Service did not adequately consider recovery science and management in its proposed critical habitat designations and did not have adequate information relating to each species' primary constituent elements.

Our Response: When developing the proposed rule to designate critical habitat for 32 plants from Lanai, 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 and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database; the final listing rules for these species; information received during the public comment periods and the informational meetings and public hearings held on Lanai on July 22, 2002, and August 1, 2002; recent biological surveys and reports; our recovery plans for these species; GIS information (*e.g.*, vegetation, soils, annual rainfall, elevation contours, landownership); information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the island of Lanai; discussions with botanical experts; and recommendations from the Hawaii Pacific Plant Recovery Coordinating Committee (CPC, *in litt.* 1999, HINHP database 2000; HPPRCC 1998; Service 1994, 1995, 1996, 1997, 1998a, 1998c, 1999).

In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of appropriate and independent specialists regarding the proposed rule. The purpose of this peer review was to ensure that our designation methodology of critical habitat of Lanai plants was based on scientifically sound data, assumptions, and analysis. The comments of all of the peer reviewers were taken into consideration in the development of this final designation. We are required under a court-approved settlement agreement to finalize this designation by December 30, 2002. If provided with new information, we may revise the critical habitat designation in the future.

(17) *Comment:* One commenter asked why other federally listed plants on Lanai and historically listed plants were not included in the critical habitat proposal. A peer reviewer asked why critical habitat was not proposed for *Gardenia mannii* when it appears that the proposed critical habitat may provide adequate habitat for the recovery of that species.

Our Response: The proposed rule to designate critical habitat for 32 species found on Lanai was prepared in response to a lawsuit (see ''Previous Federal Action'' section above). Species listed prior to 1991, such as *Gardenia mannii,* were not covered by this lawsuit and thus not addressed in the proposed rule. Additionally, certain species were not included in the proposed rule because historical records were incomplete and biological experts were unable to provide information about their habitat requirements. These species are: *Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum,* and *Zanthoxylum hawaiiense.*

(18) *Comment:* One commenter stated that critical habitat for *Tetramolopium lepidotum* ssp. *lepidotum* should be included in the final rule, if such habitat is present on Lanai.

Our Response: Historical records are incomplete and biological experts were unable to provide information about the habitat requirements of *Tetramolopium lepidotum* ssp. *lepidotum* on Lanai. *Tetramolopium lepidotum* ssp. *lepidotum* is currently found on Oahu and we have proposed critical habitat for this species on that island.

Issue 2: Effects of Designation

(19) *Comment:* One landowner commented that critical habitat should be consistent with current and ongoing conservation efforts in priority areas so that resources are not directed elsewhere in an uncoordinated manner. This reviewer stated that the Service and landowner should work together to develop an approach that is more likely to lead to species recovery, rather than a passive designation lacking management.

Our Response: We agree and recognize that the ultimate purpose of critical habitat is to contribute to the conservation of listed species, a purpose that can be best reached by cooperation between the Service and the community. As an example, the Service excluded proposed unit D, proposed for 28 species, from critical habitat designation because we believe the benefits of exclusion outweigh the benefits of inclusion. The landowner entered into a voluntary memorandum of agreement with the Service to manage the lands in proposed unit Lanai D, as well as adjacent lands, for the conservation benefit of the 28 listed species for which it was proposed as critical habitat. We believe the benefits of these management actions, which would not occur if critical habitat is designated, are greater than the benefits of including the area as critical habitat. *See Exclusions Under Section 4(b)(2)* for a more detailed discussion of the exclusions.

(20) *Comment:* One reviewer commented that the designation of critical habitat alone will not prevent the loss of remaining natural habitats and that funds would be better spent on natural resource management activities. Another reviewer stated that if management is not realistic, it makes little sense to designate critical habitat.

Our Response: Critical habitat designation is one of a number of conservation tools established in the Act that can play an important role in the recovery of a species. For a Federal action to adversely modify critical habitat, the action would have to adversely affect the critical habitat's constituent elements or their management in a manner likely to appreciably diminish or preclude the conservation of the species. Designation of critical habitat is a way to guide Federal agencies in evaluating their actions, in consultation with the Service, such that their actions do not hamper conservation of listed species. There also are educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowners, land managers, and the general public about the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

(21) *Comment:* One peer reviewer noted that it appears that there is an assumption that ''natural'' areas in the recent past were not impacted by humans. It is unlikely that there was any place in the major Hawaiian Islands that was not at least nominally altered by Hawaiians. There should therefore be a slated role for the Hawaiian

community in the proposed conservation zones.

Our Response: We agree that Hawaiians may have impacted natural areas prior to European settlement. Further, we believe that native Hawaiians can play an important role in species recovery. We do not anticipate that the critical habitat designation will affect their role in species recovery efforts, and we believe it is likely to be compatible with many of the land management goals of native Hawaiians.

(22) *Comment:* Critical habitat must accommodate the traditional cultural gathering rights of native Hawaiians as reflected in Article XII of the State constitution and upheld by the Hawaii Supreme Court in the Public Access Shoreline Hawaii and Ka Paakai o Ka Aina decisions.

Our Response: Critical habitat designation does not affect activities, including human access, on State or private lands unless some kind of Federal permit, license, or funding is involved and the activities may affect the species. It imposes no regulatory prohibitions on state or other non-Federal lands, nor does it impose any restrictions on State or non-Federal activities that are not funded or authorized by any Federal agencies. Access to Federal lands that are designated as critical habitat is not restricted unless access is determined to result in the destruction or adverse modification of the critical habitat. If we determine that access will result in adverse modification of the critical habitat, we will suggest reasonable or prudent alternatives that allow the proposed activities to proceed. Activities of the State or private landowner or individual, such as farming, grazing, logging, and gathering generally are not affected by a critical habitat designation, even if the property is within the geographical boundaries of the critical habitat, unless there is Federal nexus to the activity. A critical habitat designation has no regulatory effect on access to State or private lands. Recreational, commercial, and subsistence activities, including hunting, on non-Federal lands are not regulated by this critical habitat designation, and may be impacted only where there is Federal involvement in the action and the action is likely to destroy or adversely modify critical habitat.

(23) *Comment:* One native Hawaiian commenter stated that the critical habitat proposal is crucial in guardianship and preservation of not only native plants, but the native species that thrive in such protected habitat.

Our Response: We agree that conservation of native plants is consistent with the land management goals of many native Hawaiians. Though not intended to replace on the ground management, we agree that critical habitat designation plays a role in the protection of native species. Designation of critical habitat is a way to guide Federal agencies in evaluating their actions, in consultation with the Service, such that their actions do not hamper conservation of listed species. There also are educational or informational benefits to the designation of critical habitat. Education benefits include the notification of landowners, 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.

Issue 3: Site-Specific Biological Comments

(24) *Comment:* The exclusion of Kanepuu Preserve needs to be reassessed because the string of small preserves may not be adequate to provide for the long-term maintenance of habitat. Critical habitat may need to be established around these preserves in order to sustain native plant communities. One peer reviewer was concerned that, given the exclusion of Kanepuu Preserve, *Bonamia menziesii* may not have enough suitable lowland dry forest designated as critical habitat.

Our Response: We reassessed the exclusion of Kanepuu Preserve and determined that it should be excluded because, in addition to having ongoing management, it is not essential for the conservation of *Bonamia menziesii* or *Hibiscus brackenridgei.* We were able to locate sites on other islands for those two species that: (1) Contain at least one of the primary constituent elements that are essential to the conservation of the species, (2) are within historical range, and (3) accommodate our recovery goals of 8–10 populations.

(25a) *Comment:* One peer reviewer noted that as long as the units are protected from major threats, adequate, although not ideal, habitat is designated within proposed unit A for species recovery. (25b) *Comment:* Other commenters recommended removing unit A from the proposed designation, citing the following reasons: (1) *Hibiscus brackenridgei* is represented by only one individual in the unit, the unit has a small amount of suitable soil, it has habitat proposed in unit D, habitats exist on other islands, and the species has been extensively cultivated *ex situ;* (2) the physical attributes of Kaena Iki have changed substantially over time, the ground water spring dried up and seasonally wet soil habitat is no longer present, making it unsuitable habitat for *Cyperus trachysanthos;* (3) the historical location for *C. trachysanthos* is somewhat ambiguous because ''Kaena'' is also the name of a locality 2.5 miles to the east-northeast outside proposed unit A; and (4) the former population of *C. trachysanthos* within proposed unit A was likely very small and may be considered an unusual occurrence. (25c) *Comment:* Another reviewer suggested reducing the size of proposed unit A to less than 275 acres in the upper portion of the site near the existing populations of *H. brackenridgei.* The unit should be designed to accommodate just one of the 8 to 10 populations needed statewide.

Our Response: Unit A was proposed as critical habitat for two species, *Cyperus trachysanthos* and *Hibiscus brackenridgei.* We excluded the proposed critical habitat for *C. trachysanthos* from the final rule because this area no longer contains the suitable habitat of seasonally wet soils. The water source has permanently dried up due to alterations in the watershed properties of the island. Also, this area is not essential for the conservation of *C. trachysanthos,* a multi-island species, because were able to locate sites on other islands that: (1) Contain at least one of the primary constituent elements that are essential to the conservation of the species, (2) are within historical range, and (3) accommodate our recovery goals of 8 to 10 populations.

Based on information received during the public comment period, we have also excluded unit A as critical habitat for *H. brackenridgei,* a multi-island species. We determined that this area is not essential for the conservation of the species because there are at least eight other places for this species that have more primary constituent elements, are less degraded, are already undergoing restoration, or are within a partnership, Natural Area Reserve, TNCH preserves, or on a refuge. More appropriate areas on other islands, within historical range, and that provide habitat for 10 populations, are proposed as critical habitat for *H. brackenridgei.*

(26a) *Comment:* One peer reviewer noted that, as long as the units are protected from major threats, adequate, though not ideal, habitat is designated within proposed unit B for species recovery. (26b) *Comment:* Proposed unit B should not be removed from critical habitat designation because recent surveys found no individuals of *Tetramolopium remyi* present in fenced areas, despite favorable environmental conditions. (26c) *Comment:* Proposed unit B should be reduced to less than

235 acres in the upper portion of the site near the existing population. Proposed unit D provides better habitat for many populations of *T. remyi* and recovery is much more likely in this unit.

Our Response: Unit B was proposed as critical habitat for *Tetramolopium remyi.* Modifications were made to this unit to exclude areas not essential to the conservation of this species. The area is highly degraded and is in a game management area where one of the threats (axis deer) is being managed for hunting purposes by the State. The remaining area designated as critical habitat for the multi-island species *T. remyi* provides habitat within its historical range for one population of the 8 to 10 outlined in the recovery plan for this species. The designated area is situated around the recently extirpated known individuals, contains at least one of the primary constituent elements, and most likely contains a viable seed bank due to the recent existence of mature, seed-bearing individuals of this species in the area. This unit was renamed Lanai 1—*Tetramolopium remyi.*

(27) *Comment:* Two commenters suggested that proposed unit C be removed from critical habitat designation for *Sesbania tomentosa,* citing the following reasons: (1) The species does not currently occur on Lanai; (2) natural recruitment from inter-island dispersal is unlikely; (3) it is not economically efficient to manage the threats in these areas; (4) the historical Lanai population may have been genetically distinct and propagules are not available from the historical population; and (5) suitable unoccupied habitat exists in proposed unit D.

Our Response: Unit C was proposed as critical habitat for the multi-island species *Sesbania tomentosa.* We have excluded this unit from critical habitat because it is not essential for the conservation of the species because there are at least eight other places for this species that have more primary constituent elements or are less degraded, are already undergoing restoration, or are within a partnership, Natural Area Reserve, TNCH preserve, or on a refuge. More appropriate areas on other islands, within the historical range, and that provide habitat for 10 populations, are proposed as critical habitat for *S. tomentosa.*

(28a) *Comment:* Commenters, including peer reviewers, supported the designation of critical habitat in proposed unit D because: (1) This area contains the best remaining habitat on Lanai, (2) supports high rare species diversity, and (3) has existing programs for native species management at Lanaihale. (28b) *Comment:* One reviewer commented that the extension of critical habitat for *Centaurium sebaeoides* into the Lanai Cooperative Game Management Area is reasonable because the habitat in this area is similar to the species' current habitat on Lanai. (28c) *Comment:* Two peer reviewers questioned the removal of the middle portion of proposed unit D, especially when edge effects should be minimized. (28d) *Comment:* Proposed unit D should be divided into three subunits (D–1, D–2, and D–3) in order to make the unit manageable in a practical sense. (27e) *Comment:* D–1 (Lanaihale area) should be removed from critical habitat designation because it is already being managed in a cooperative agreement between the Service and Castle and Cooke Resorts, LLC.

Our Response: Lanai D was proposed as critical habitat for 28 species: *Abutilon eremitopetalum, Adenophorus periens, Bonamia menziesii, Brighamia rockii, Centaurium sebaeoides, Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Diellia erecta, Diplazium molokaiensis, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Solanum incompletum, Spermolepis hawaiiense, Tetramolopium remyi, Vigna o-wahuensis* and *Viola lanaiensis.*

Based on additional information and discussions with the landowner, the Service has decided not to designate critical habitat for these species on Lanai. The unit was excluded from critical habitat under section 4(b)(2) of the Act because the landowner entered into a voluntary memorandum of agreement with the Service to manage the lands in proposed unit Lanai D, as well as adjacent lands, for the conservation benefit of the 28 listed species for which it was proposed as critical habitat. We believe the benefits of these management actions, which would not occur if critical habitat is designated, are greater than the benefits of including the area as critical habitat. See *Exclusions Under Section 4(b)(2)* for a more detailed discussion of the exclusions.

(29a) *Comment:* All commenters agreed that at least portions of proposed units E1–3 are appropriate for critical habitat designation due to the likely presence of many species within the unit. (29b) *Comment:* One peer reviewer argued for consolidation of proposed units E1–E3 in order to reduce edge effect and fragmentation, and remove barriers to gene flow. (29c) *Comment:* Only the upper portions of proposed units E should be included as critical habitat for *Bidens micrantha* because the remainder of proposed unit E is not essential to the conservation of the species.

Our Response: We acknowledge the potential negative impacts of edge effects on the habitat for *Bidens micrantha.* However, this species' primary constituent elements are found only within ridge habitat and the three proposed E units are actually three ridges. Consolidating the units would add the gulch areas between the ridges that lack the primary constituent elements for *B. micrantha.*

No changes were made to these proposed units and they are designated as critical habitat for *Bidens micrantha* ssp. *kalealaha.* They have been renamed units Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North, Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle, and Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South.

(30) *Comment:* Two reviewers suggested removing proposed unit F as critical habitat for *Hibiscus brackenridgei* due to its degraded habitat, marginal soil and rainfall, and physical characteristics that are different from those at currently extant populations. One reviewer believed that designation of such sites is not economically efficient and would create a regulatory burden and restrict future management options for landowners and the State.

Our Response: This unit was proposed as critical habitat for the multi-island species *Hibiscus brackenridgei.* Based on information received during the public comment period, we have revised the proposed critical habitat for this species. We have excluded proposed unit F because it does not contain the primary constituent elements essential for the conservation of this species. An adequate amount of critical habitat for *Hibiscus brackenridgei* is proposed within historical range on other islands.

(31) *Comment:* One peer reviewer expressed concern that proposed unit G is downslope from a golf course and the high nutrient runoff from the golf course may encourage nonnative plants and threaten the survival of native species within the proposed unit. Three commenters suggested removing proposed unit G as critical habitat for *Portulaca sclerocarpa* because: (1) The species does not occur at this site currently, (2) historical records of its

occurrence at this site are lacking, (3) since the species is confined to vertical cliffs, habitat above the cliff is inappropriate, (4) few available niches exist for this species along the cliffs, (5) the species was likely always rare in this area, and (6) the cliffs are already protected under applicable shoreline setback laws.

Our Response: Lanai G was proposed as critical habitat for the multi-island species *Portulaca sclerocarpa.* Modifications were made to this unit to exclude inland areas that do not contain the primary constituent elements. Although there are no historical records for this species on the main island of Lanai, we believe the species did historically occur there as plants continue to survive just off shore on Poopoo Islet. Poopoo Islet is a small rocky outcrop approximately 200 m (600 ft) from the south shoreline. It is likely that the species disappeared from the main island Lanai as a result of the threats there prior to adequate surveys being conducted. Further, the areas designated as critical habitat on Lanai proper contain one or more of the primary constituent elements and provide additional area for one of the 8 to 10 populations needed for the recovery of this species as outlined in the recovery plan. Critical habitat designated for *P. sclerocarpa* includes only cliff faces along the shore. While it is true the cliffs are already protected under applicable State shoreline setback laws, the specific habitat features for this species are not directly protected by those laws. Actions taken adjacent to the cliffs, which may not be affected by State laws, could appreciable alter the ability of the habitat to support a population of this species. This unit was renamed Lanai 5—*Portulaca sclerocarpa*—Coast.

(32) *Comment:* Commenters supported the designation of critical habitat for *Portulaca sclerocarpa* at proposed unit H. One commenter noted that although surveys found no evidence of the species in proposed unit H, the islets' cliff faces remain appropriate for a species that was likely naturally rare due to the area's few suitable niches.

Our Response: We agree this species is rare, but this unit continues to support the one extant colony of this species on Lanai. No changes were made to this unit and it is designated as critical habitat for *Portulaca sclerocarpa*. It has been renamed Lanai 6—*Portulaca sclerocarpa*—Isle.

Issue 4: Mapping

(33) *Comment:* The Service should define affected property lines in a manner that allows for the descriptions to be used in real property conveyance documents in the State of Hawaii.

Our Response: The maps in the **Federal Register** are meant to provide the general location and shape of critical habitat. The legal descriptions are readily plotted and transferable to a variety of mapping formats and were made available electronically upon request for use with GIS programs. At the public hearing, the maps were expanded to wall-size to assist the public in better understanding the proposal. These larger scale maps were also provided to individuals upon request. Furthermore, we provided direct assistance in response to written or telephone questions with regard to mapping and landownership within the proposed designation.

(34) *Comment:* The final proposal should map or identify how many populations are being accommodated in each unit and the acreage allotted for each population.

Our Response: The final rule identifies the number of populations accommodated in each unit. We do not have the scientific information to precisely identify how many acres each population requires. We did, however, ensure that each population is separated by 1,000 meters or by some distinct geologic feature.

Issue 5: Economic Issues

(35) *Comment:* The Draft Economic Analysis (DEA) fails to consider economic impacts of listing and critical habitat that result through interaction with State law, specifically Hawaii's Endangered Species Act. The commenter suggested that *New Mexico Cattlegrowers Association* v. *U.S. Fish and Wildlife Service* requires consideration of the impact of listing as well as the impact of designating an area as critical habitat. Instead, the analysis is expressly limited to the impact of Federal agency consultation under the jeopardy standard. However, since Federal listing triggers listing under State law, the Service must consider the impact of take prohibitions under State law (and consequently Federal law, which prohibits destruction of plants in knowing violation of State law).

Our Response: Possible costs resulting from interplay of the Federal Endangered Species Act and Hawaii State law are discussed in the economic analysis under indirect costs (*e.g.*, possible conservation management mandate for the private landowner and reduction in game mammal populations). The economic analysis considers the economic impacts of section 7 consultations related to critical habitat even if they are attributable co-extensively to the listed status of the species. In addition, the economic analysis examines any indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. However, where it is the listing of a species that prompts action at the State or local level (*e.g.*, further regulating the take of federally listed species), the impacts are not attributable to critical habitat designation and are not appropriately considered in the economic analysis of critical habitat designation. Take prohibitions under Hawaii law are tied to the Federal listing of the species and do not co-extensively occur because of critical habitat designations. However, our analysis did consider the other ways in which the Federal Endangered Species Act and Hawaii State law may interplay.

(36) *Comment:* Two commenters stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with Hawaii's Land Use Law. Critical habitat could result in changes to zoning under State law. HRS § 205–2(e) states that Conservation Districts shall include areas necessary for conserving endangered species. HRS 195D–5.1 states that DLNR shall initiate amendments in order to include the habitat of rare species. Even if DLNR does not act, the Land Use Commission may initiate such changes, or they may be forced by citizen lawsuits. Areas for endangered species are placed in the protected subzone with the most severe restrictions. While existing uses can be grandfathered in, downzoning will prevent landowners from being able to shift uses in the future, will reduce market value, and make the land unmortgageable.

Our Response: As indicated in the final addendum to the DEA (Addendum), about 362.4 ac of agricultural lands and 8 ac of rural lands are included in the final designation. No agricultural or ranching activities take place on these agricultural lands. Assuming a worst-case scenario, one which is not envisioned, reduction in land values due to redistricting land from the Agricultural or Rural District to Conservation District could range from $50,736 to $163,080 ($140 to $450 per acre) for agricultural lands and $1.3 million to $2.7 million ($160,000 to $334,000 per acre) for rural lands. Under this scenario, even if a landowner has no plans to sell the land, the loss in land value could reduce potential mortgage financing. However, the likelihood of redistricting is not certain and could be small. The State's history

supports the unlikelihood of rezoning or redistricting land based on evaluations of biological value.

(37) *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Environmental Impact Statement Law. HRS 343–5 applies to any use of conservation land, and a full Environmental Impact Statement is required if any of the significance criteria listed in HAR 11–200–12 apply. One of these criteria is that an action is significant if it ''substantially affects a rare, threatened or endangered species or its habitat.'' This will result in costly procedural requirements and delays. However, the DEA does not acknowledge that any impact on endangered species habitat will be deemed to be ''significant.'' Multiple commenters stated that the DEA fails to evaluate the practical effect critical habitat designation will have on development. Special Management Area permits administered by Maui County as required by Hawaii's Coastal Zone Management Act, will be harder to get, will result in delays, will cause a decline in property values and may make land impossible to develop.

Our Response: Adverse impacts on development, including delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, and increased risk of litigation over approvals, are not expected since no known development plans exist for the areas proposed for designation, as modified. Furthermore, the following factors make future development projects within critical habitat highly unlikely: (1) As modified, approximately 53 percent of the critical habitat is in the Conservation District where development is severely limited; (2) approximately 46 percent of the critical habitat is in the Agricultural District, but because the land includes gulches, it does not host any ranching or agricultural activities; (3) less than one percent of the proposed designation encompasses land in the Rural District with no known development plans; and (4) as modified, the cliffs along the southern shore are the only critical habitat area that is in the Special Management Area. (The percentages given here are different from those in the addendum because of the Service's decision to exclude Lanai Unit D (see *Exclusions Under Section 4(b)(2))*

(38) *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically the State Water Code. HRS 174C–2 states that ''adequate provision shall be made for protection of fish and wildlife''. HRS 174C–71 instructs the Commission of Water Resource Management to establish an instream use protection program to protect fish and wildlife. Since landowners may depend on water pumped from other watersheds, these effects can be far-reaching. It is impossible to tell from the descriptions in the proposal whether any water diversions will have to be reduced as a result of listing and critical habitat designation. The Service has an obligation to thoroughly investigate this issue and refrain from designating critical habitat until it has determined whether its actions will affect water use and balance this against any benefit to the species.

Our Response: No costs are expected to occur from such impacts, because none of the listed plants are stream-dependent for their survival and therefore critical habitat designation would not cause a reduction in existing water diversions.

(39) *Comment:* One commenter stated that the cost of potential citizen lawsuits preventing certain activities or requiring some sort of management in critical habitat was not discussed in the DEA. Another commenter stated that critical habitat designation will bring unnecessary and costly litigation. One commenter stated that proposed critical habitat could entail considerable cost to both the State and private landowners. One commenter stated that critical habitat designation could indirectly result in limitations or special management requirements (such as fencing or control of invasive species) being established on private lands. The DEA estimates that the Palila court decision may be interpreted to mandate private conservation and could cost Lanai landowners up to $800,000 per year, or $8 million over ten years. However, Table VI–3 of the Addendum dismisses these costs as minor and does not add them to the total cost estimate. These costs should be considered.

Our Response: The Act does not obligate landowners to manage their land to protect critical habitat, nor would landowners and managers be obligated under the Act to participate in projects to recover a species for which critical habitat has been designated. However, the DEA does discuss the potential mandate for conservation management pursuant to litigation and the resulting costs for the proposed designation on Lanai. Specifically, adverse impacts on development, including delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, and increased risk of litigation over approvals, are not expected since there are no known development plans within the areas proposed for designation, as modified. Furthermore, the following factors make future development projects within critical habitat highly unlikely: (1) As modified, approximately 53 percent of the proposed critical habitat is in the Conservation District where development is already limited; (2) approximately 46 percent of the critical habitat is in the Agricultural District, but because the land includes gulches, it does not host any ranching or agricultural activities; (3) less than one percent of the designation encompasses land in the Rural District with no known development plans; and (4) as modified, the cliffs along the southern shore are the only critical habitat area that is in the Special Management Area.

Thus, while it is conceivable that there may initially be an increase in subsequent lawsuits related to the critical habitat designation, it is not possible to predict their number, degree of complexity, or any other associated effect on project delays due to scant historical evidence regarding the Lanai plants.

(40) *Comment:* One commenter stated that the DEA lacks a thorough benefits analysis. It does not include the benefits of watershed protection and improvement, protection of other stream and riparian biota, and the value of the plants as an indicator of ecological health. Other commenters stated that the DEA ignored the benefit of keeping other native species off the endangered species list, of maintaining water quality and quantity, of promoting ground water recharge, and of preventing siltation of the marine environment, thus protecting coral reefs. Another commenter noted that additional benefits of critical habitat include combating global warming, providing recreational opportunities, attracting ecotourism, and preserving Hawaii's natural heritage. The Service must use the tools available, such as a study by the University of Hawaii (UH) Secretariat for Conservation Biology that estimated the value of ecosystem service, to determine the benefits of critical habitat. Another commenter stated that the DEA overestimates economic benefits and many of the alleged benefits are entirely speculative, unquantifiable or lack any commercial value.

Our Response: The DEA discussed these potential benefits. However, the DEA also indicated that these benefits

are not quantified due to lack of information available on: (1) Quantified data on the value of the Lanai species; and (2) quantified data on the change in the quality of the ecosystem and the species as a result of the designation. Although the UH study does value ecosystem services, it has limited applicability for valuing the benefits of the critical habitat designation for the plants for a number of reasons. First, the UH study had a different purpose, which was to estimate the total value of environmental benefits provided by the entire Koolau Mountains on the island of Oahu. Consistent with its purpose, the UH study provides no estimates of the changes in environmental conditions resulting from changes in land and stream management due to critical habitat designation. Furthermore, many of the assumptions and much of the analysis in the UH study are not transferable to the economic analysis for the critical habitat of the Lanai plants. For example, the value of water recharge in the UH study reflects projected water supply and demand conditions on Oahu, an island three times the size of Lanai, but with a population of more than 360 times that of Lanai. Also, the UH benefit analysis of reducing soil runoff is unique to three valleys that drain through partially channelized streams in urban areas into the manmade Ala Wai Canal. Since this canal was designed with inadequate flushing from stream or ocean currents, it functions as an unintended settling basin, so must be dredged periodically. In addition, the recreational and ecotourism values provided in the UH study apply to areas that are accessible to most hikers, which is not the case with most of the Lanai critical habitat. Most of the critical habitat units designated on Lanai are either in mountainous areas with steep slopes and difficult access or on coastal cliffs.

(41) *Comment:* Existence values should be quantified. Studies referenced in the DEA analysis contain information about how much people would be willing to pay to save various species. Even assuming plants are noncharismatic and therefore would justify lower values, there would still be a value of $6 per household per year. If the study is able to take values for a day of hunting from the State of Idaho and apply them to Hawaii, it should be equally able to take values from studies which have looked at other species to get some sense of what people would pay to make sure these species recover and do not go extinct.

Our Response: As discussed in the Addendum, when primary research is not feasible, economists frequently rely on the method of benefits transfer. Benefits transfer involves the application of results of existing valuation studies to a new policy question. Two core principals of defensible benefits transfer are: (1) The use of studies that apply acceptable techniques to generate welfare values, and (2) similarity between the good being valued in the literature and the good being valued in the policy context to which the transfer is being made (*i.e.*, the protection afforded the Lanai plants by critical habitat). As noted above, no known studies exist with quantified data on the value of plants or the change in the quality of the ecosystem and the species as a result of the designation. Therefore, applying results of existing valuation studies on non-plants to Lanai plant critical habitat is not feasible.

(42) *Comment:* The conclusion under E.O. 12866 that the rule will not have an annual economic effect of $100 million or more, or adversely affect in a material way any sector of the economy or State or local governments or communities, is flawed because it does not consider the major adverse impacts from secondary effects.

Our Response: For the reasons explained in the DEA, this rule is not expected to have an annual economic effect of $100 million or more. Both the DEA and the Addendum provide analysis of the indirect costs associated with designation of critical habitat for the Lanai plants in terms of land management, loss in property values and investigative costs. These indirect costs are considered and those costs that can be quantitatively estimated are addressed in the DEA and Addendum. Some potential costs are not estimated because the likelihood of actually incurring the cost is considered to be extremely remote.

(43) *Comment:* The designation of critical habitat will have direct and substantial impacts on private property because large areas will be unavailable for productive use and land values will be substantially diminished. The Service must take these into account and weigh them against the speculative protections that would accrue from designation. The DEA correctly recognizes that perceptions and uncertainty of the economic impact of critical habitat designation can cause temporary reductions in land value as long as those perceptions persist and until information is distributed. These impacts, however, need to be analyzed. The DEA should examine true appraised values, rather than relying on ''GIS analysis of land value,'' which is not explained, with and without critical habitat designation and as it may be perceived by buyers and lenders. In addition to the reduction in land value itself, the DEA should investigate whether these losses in property value may be long-term, because the consequences of critical habitat are yet to be determined and will likely be the subject of extensive and costly litigation that will take years to resolve. The DEA should also recognize that land use values may be used as collateral for loans supporting commercial operations and assess the potential impact critical habitat designations may have on these transactions.

Our Response: The DEA did indeed estimate land values associated with the different land use districts using GIS analysis. This technique assesses large parcels as a group, rather than as specific parcels, due to lack of obtaining information on land values for specific locations. However, during the comment period, Castle and Cooke Resorts, LLC, provided location-specific land value information for the areas in the proposed units. Therefore, the Addendum relied on those figures to recalculate the decrease in property value in the worst-case scenario. According to Castle and Cooke Resorts, LLC, the agricultural lands included in the designation should be valued at $390 to over $1,000 per acre; rural lands at $160,000 to over $335,000 per acre; and conservation lands at $250 to over $550 per acre (based on an appraisal of similar lands). Based on these figures, the decrease in property value of agricultural lands could range from $50,811 to $163,323 million [(($390 − $250)×362.94), (($1,000 − $550)×362.94)]. The decrease in value for rural lands may range from $1.2 million to $2.7 million [(($160,000 − 250)×8), (($335,000 − 550)×8)]. As noted above, this scenario is not expected to occur, and ensuring that clear and correct information is available to all potential buyers will further reduce the potential for such a scenario.

(44) *Comment:* It is not adequate to state, without any analysis, that any reduction in property value to agricultural lands proposed in units E and F is expected to be small because many of the lands are categorized as open space by the county to limit development. Agricultural lands such as those on Lanai have been appraised from $390 to $1,000 an acre. The DEA should examine the effects by using appraised values before and after critical habitat designation. The DEA also states that rural land on Lanai is valued at approximately $44,000 per acre, even though nearby house lots in the Manele

Project district range up to $15 million. If the entire Manele Project district is not excluded in the final rule, the DEA will have failed to analyze one of the most substantial impacts of critical habitat on Lanai. Even if excluded, proposed unit G includes approximately 110 ac of rural lands, and the DEA has undervalued these lands greatly. The undeveloped rural land in proposed unit G is adjacent to already developed infrastructure in the Manele Project district.

Our Response: The Service has removed proposed unit F and modified proposed unit G to exclude all but the cliffs in this final designation. As modified, about 8 ac of rural lands remain in the designation. However, no known plans exist for development on this rural land and the cliff areas are likely unable to be developed. As noted above, using figures provided by Castle and Cooke Resorts, LLC, the Addendum estimated that the decrease in value for those rural lands may range from $1.2 million to $2.7 million.

(45) *Comment:* The DEA underestimates the economic costs because they are limited to what is likely to occur within ten years even though critical habitat designation is permanent and not automatically revised if there is new evidence of the benefits of non-designation, or if the species is delisted.

Our Response: As indicated by the DEA, the landowner does not have specific development plans for the proposed designated areas for the next ten years. As such, no maps, permit applications, or other documents are available to serve as the basis for an estimate of possible impact of the designation.

A listed species is delisted when it is recovered or has gone extinct. Recovery is defined as no longer needing the protections provided by the Act, including critical habitat. Thus, when a species is delisted, critical habitat for that species would no longer be in effect.

(46) *Comment:* The DEA grossly generalizes that all land in the Conservation District is ''not suitable for development due to poor access and terrain.'' This statement is not true for all or even most of such lands. The DEA should have a unit-by unit review of the actual lands designated to determine whether this is the case.

Our Response: In the final designation, only about 373 ac of proposed unit B (now Lanai 1—*Tetramolopium remyi*) and the cliffs of proposed unit G (now Lanai 5—*Portulaca sclerocarpa*-Coast) are lands in the Conservation District. Lanai 1—*Tetramolopium remyi* is in the State hunting unit on the mountain flanks. Lanai 5—*Portulaca sclerocarpa*-Coast is limited to the steep cliffs of southern coast, only accessible by a guided tour on a rocky trail. Therefore, we believe the lands in the Conservation District that are included in this final designation are in fact unsuitable for development. Other lands in the Conservation District that were included in the proposed designation have not been included in this final critical habitat designation.

(47) *Comment:* The economic analysis is wrong in identifying the impacts on State and county development approvals as major. The analysis completely fails to take into account the benefits of having this information and enabling State and county agencies to make better land use decisions. This benefit should be quantified and discussed in the analysis.

Our Response: The DEA concluded that the possible quarry site for proposed unit F may undergo more stringent State and county development approval because of the designation and, therefore, may result in major impacts. However, such impacts are no longer expected since we have removed proposed unit F from this final designation for scientific reasons. In addition, State and county agencies may gain better knowledge of land resources because of the critical habitat designation. However, the extent to which this may help their land-use decisions is unknown. For example, State and county agencies may need to spend less time surveying lands for natural resources, but it is not feasible to estimate to what extent the designation would reduce the number of hours or the amount of effort involved in determining the sensitivity of an area. Furthermore, it is also impossible to determine how much of the benefit is attributable to the designation alone.

(48) *Comment:* Proposed critical habitat units A, B, C, F and a small portion of D are in the Lanai Cooperative Game Management Area lease. One commenter stated that critical habitat management and game management activities are not compatible. As a result, the commenter indicated that the worst-case scenario would be for the public hunting program to be eliminated entirely, which would have an economic impact on Lanai, and that this was not reflected in the DEA. Alternatively, another commenter stated that the Service should not base its economic analysis on unlikely worst-case scenarios, but, rather, on likely scenarios. For example, this commenter indicated that the requirement to fence all of the critical habitat areas within hunting management areas is the worst case. Further it was noted, that the more likely situation would be that the State would forego Federal funding for game mammal programs on Lanai and use State funds, in which case fencing would not be required. Therefore, the commenter indicated that at most, the cost would be those portions of the program that the State would not receive because of critical habitat. The commenter further questioned how much of this to attribute to critical habitat, because history shows us that the State has already foregone some funds due to listing, not critical habitat. Lastly, the commenter noted that there also may be some ecosystem benefits to the State from fencing that are not reflected in the analysis.

Our Response: Although DLNR does discuss the possibility of shutting down the State hunting program on Lanai in its comment to the proposed rule, the agency also states that avoiding a Federal nexus is the likely alternative. The DEA recognizes that DLNR is likely to avoid a Federal nexus by finding alternative non-Federal funds to manage State hunting units on Lanai. Therefore, in a conservative estimate of possible impacts to game management activities on Lanai, the DEA considered the worst-case scenario to be the building an exclosure fence around the proposed critical habitat that overlaps with State hunting units. It is important to note, however, that the Service has removed and modified some of these units in this final rule. As such, the Addendum has revisited the impacts on game management discussed in the DEA and revised the estimated costs according to the modification.

(49) *Comment:* Given the size of the designated areas, the vagueness of the regulatory exclusion, and the real costs of obtaining development approvals, the estimate of 15 to 24 hours is too low.

Our Response: To address these concerns, the Addendum revisited the hours estimates presented in the DEA. The DEA indicated that the landowner may want to learn how the designation may affect: (1) The use of his land (either through restrictions or new obligations) and (2) the value of his land. Since commenters did not provide an estimate of time or cost incurred in order to investigate the implications of critical habitat, the Addendum conservatively doubled the hours spent by the landowner and/or his attorneys or professional staff on investigating the issues. As described in the Addendum, using these new assumptions, the analysis estimated that total section 7

costs range from $4,900 to $11,500, all of which are attributable to critical habitat.

(50) *Comment:* Designation will have a huge impact on a new quarry site, the probable source for rock for improvements to the breakwater at Kaumalapau Harbor by the Corps, which will in turn have a material adverse impact on planned development of essential improvements to the harbor. The Service cannot assume that the section 7 costs would be minor because stone could be obtained from another location within the quarry. Private actions in critical habitat within the Conservation District, such as construction of a new quarry in proposed unit F, could require a full EIS at an additional cost.

Our Response: Such impacts are not expected since the Service has removed proposed unit F completely from this final rule.

(51) *Comment:* Designation will create uncertainties which will deter investment and potential agricultural and irrigation water resource development.

Our Response: As noted above, no agricultural or ranching activities take place within the designated critical habitat. Furthermore, potential agricultural or ranching activities on these agricultural lands in the future are also unlikely due to their remote location (mostly on gulch lands) and rugged terrain. Therefore, such impacts are not expected to occur as a result of the designation.

(52) *Comment:* The DEA must take into account the unique local circumstances of land ownership and limited economic base of Lanai, which are especially susceptible to detrimental impacts of regulations.

Our Response: The DEA examined potential impacts on small entities (small businesses, small organizations, and small governmental jurisdictions) under the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996. The DEA concluded that a significant economic impact on a substantial number of small entities would not result from the proposed critical habitat designation. However, the DEA also concluded that small businesses on Lanai that cater to hunters could be indirectly affected by the designation in the unlikely event that DLNR builds exclosure fences around the designated critical habitat. As stated above, this final rule designates fewer areas within State hunting areas than did the proposed rule.

Issue 6: Policy and Regulations

(53) *Comment:* One commentor stated the proposal fails to properly consider the importance of cooperation and goodwill between the Service and private landowners, and the impact critical habitat designations will have in discouraging voluntary partnerships on private lands.

Our Response: The Service recognizes the importance of landowner cooperation for recovery of listed species. This is especially true for the island of Lanai which is under private ownership. We also recognize that critical habitat designations may have a negative impact on voluntary partnerships with private landowners. Conservation of the Lanai plant species requires control of threats from alien species and fire, and translocation of species that have been extirpated from the wild. Castle and Cooke Resorts, LLC, owner of the lands proposed as critical habitat, has cooperated with the Service, the State of Hawaii, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits to the species. In addition, Castle and Cooke Resorts, LLC has agreed to expand the existing conservation measures to address the threats to all of the species in proposed unit Lanai D. They also indicated that including the area in a critical habitat designation would have a negative impact on their existing and future voluntary conservation efforts on Lanai. After weighing the benefits of including unit Lanai D as critical habitat with the benefits of excluding it, we concluded that the designation of critical habitat would have a net negative conservation effect on the recovery and conservation of the species included in the unit, and thus excluded unit Lanai D from the final designation of critical habitat.

(54) *Comment:* The Service did not adequately address the takings of private property as a result of designating critical habitat for endangered plants on Lanai. If the critical habitat proposal would require reducing water diversions from any stream, the Service should investigate whether that would take anyone's vested water rights. In addition, if the proposed designation of critical habitat precipitates conversion of agricultural lands to conservation land that has no economically beneficial use, then the Federal and State governments will have taken private property.

Our Response: We have assessed the takings implications of this rule in accordance with Executive Order 12630 and have concluded that this rule does not pose significant takings implications. Because no critical habitat unit boundaries are located in existing diversions, no requirements to reduce out-of-stream water use will arise as a result of this rule. Furthermore, none of the plants are stream-dependent for their survival and therefore would not cause a reduction in water diversion. According to the State, land classification would not be changed based on the designation of critical habitat alone, and private lands are rarely changed to conservation. In addition, although the 366 acres within unit Lanai E is zoned for agriculture, the land within this unit is on and/or near mountain flanks lined with gulches, and neither farming nor ranching takes place in the unit.

(55) *Comment:* Prudency cannot be determined without an analysis of the economic impacts of critical habitat. The prudency of critical habitat designation is a final conclusion based on weighing all relevant factors, including economic factors. While the Service promised to complete its economic impact analysis before it promulgates its final determination of critical habitat, it risks putting the decision before the analysis. The prior determination that critical habitat is prudent and is therefore required, is treated as a given, even though it ignored economic factors.

Our Response: First, the Service did not make a final conclusion regarding prudency in the proposed rule; in fact, the proposed rule specifically requested public comment on the reasons why habitat is prudent or not prudent. Second, the commenter is conflating the two steps of the process. As defined by regulation, prudency looks at whether critical habitat would harm or benefit the species. *See* 50 CFR 424.12(a)(1). If critical habitat is prudent, we look at all of the impacts of designating specific areas as critical habitat to see if the benefits of designation outweigh the benefits of excluding an area from critical habitat. Third, this does not mean we ignored the requirement to consider economic and other impacts of critical habitat designation. To the contrary, a draft economic analysis was prepared, comments were solicited, and an addendum was completed. Furthermore, we have excluded a significant portion of the proposed designation based on negative impacts to important private conservation efforts.

(56) *Comment:* While the Service has stated that critical habitat affects only activities that require Federal permits or funding, and does not require landowners to carry out special

management or restrict use of their land, this fails to address the breadth of federal activities that affect private property in Hawaii and the extent to which private landowners are required to obtain Federal approval before they can use their property. These requirements extend to all State agencies using Federal funds in connection with a proposed action and community actions for which Federal approval or review is necessary. The requirements also extend to loan and grant programs such as National Resources Conservation Service loans and grants. In addition, the Service has taken the position in other States that it has a right to intervene in local land use proceedings if they affect endangered species on private property, as evidenced by the Service petition to the local zoning board in Arizona to postpone approval of a rezoning petition pending a survey to determine the extent to which an endangered plant was present on the property even though no Federal approval was being sought.

Our Response: Private landowners are not required to obtain Federal approval before using their property. When State or private landowners seek a Federal permit or Federal funding, the Federal agency must consult with the Service on actions that may affect listed species or designated critical habitat. The draft Economic Analysis identifies the potential Federal actions that may result in consultations on listed plants and critical habitat on Lanai over the next ten years. Finally, the Service has never intervened in local land use proceedings in the State of Hawaii and does not anticipate doing so in the future.

(57) *Comment:* One commenter said that the Service failed to give the public adequate opportunity to comment on the memorandum of agreement (MOA) draft being used to possibly form the basis of a decision to exclude proposed unit Lanai D from the final critical habitat.

Our Response: The Service posted a notice of availability of the draft MOA in the **Federal Register** on November 15, 2002. Letters were sent to interested parties that same day, notifying the recipients of the availability of the draft MOA at the Honolulu office of the Service. Electronic versions of the draft agreement were also available upon request. The comment period was opened for 10 days to allow the public to make comments.

(58) *Comment:* One commenter said that the draft MOA made available for comment is non-binding and only in draft form with vague terms. He said the draft does not make clear what the species in question would receive *in lieu* of critical habitat protection. He also said that the draft MOA does not require any real financial commitments on the part of Castle and Cooke Resorts, LLC, relying, instead on in-kind contributions, nor would any new funds be committed to conservation efforts during the first nine years of the agreement.

Our Response: Much planning is necessary to execute successful plant restoration efforts of the type and scale covered by the draft MOA. The area covered by the draft MOA is a large, rugged terrain covering thousands of acres where no one has worked before. The development of precise propagation and planting plans will require site-specific and species-specific evaluations and require consultation and additional input of expert biologists. Some efforts will also likely involve experimentation, for example investigating plant survival in certain areas, the feasibility of providing water to a particular site, or a test of deer hunting methods in different terrains. It is difficult to set specific numeric targets of plants propagated and reintroduced without first conducting the necessary evaluation of specific landscape conditions and logistical constraints and opportunities. More precise goal-setting is appropriate after these more basic planning activities are completed. The draft MOA references the Service's recovery plans and the actions called for therein; these plans will provide the basic guidance for these draft MOA future actions, with adaptive management. The draft MOA makes it clear that the company will be implementing conservation actions that benefit all these listed species, *e.g.* putting up exclosure fences around more than just the proposed plant critical habitat area, they will be removing ungulates, and they will be planting native plants (including listed species). It is impossible to provide precise figures on these actions at this point. But given the past positive record of action by the company in fulfilling voluntary agreements, we believe it is reasonable to expect these overall commitments will be met.

In reference to the funding portion of the draft MOA, it is a longstanding policy of the Service to accept and encourage in-kind contributions for our cost-share partnership programs. These type of contributions provide local, on-the-ground expertise; they encourage greater local ''ownership'' in a successful outcome; and many partners often provide greater in-kind services than for which they receive credit. The commenter is correct that there are no explicit guarantees regarding exactly how much the company would spend over the life of this agreement, but this is a voluntary agreement based on good faith, past performance, and a reasonable expectation of future performance.

Preserving Castle and Cooke Resorts, LLC's current commitment to voluntary conservation is one of our fundamental goals in the critical habitat exclusion. Regardless of any additional commitments from the company, this accomplishment alone establishes an important benefit of approval of the draft MOA and excluding proposed Lanai Unit D, when compared with a critical habitat designation. In our opinion, loss of these existing voluntary commitments, which is made more likely by a critical habitat designation, would have a much greater negative impact on these plants than would the proposed critical habitat exclusion. These plants are benefitting more from these ongoing, interventionist actions than they would from the critical habitat designation. We have outlined our reasoning for excluding land from critical habitat below (see *Exclusions Under Section 4(b)(2)).*

(59) *Comment:* One commenter stated that the draft MOA stipulation that Castle and Cooke Resorts, LLC would not seek Federal assistance and/or authorization from any Federal agency for activities that may adversely affect habitat found in some areas of proposed unit Lanai D falls short of protection that critical habitat provides. He also stated that even if Castle and Cooke Resorts, LLC does not apply for Federal assistance and/or authorization, that does not mean that the Federal government would not initiate any projects on Lanai that may affect the proposed critical habitat that may be excluded from final designation and designation would provide more protection under the Act.

Our Response: To improve the current condition of the endangered and threatened species on Lanai, it is insufficient simply to prohibit harmful activities. Rather, it is necessary to carry out active management measures to confer a positive benefit on the species of concern, such as habitat manipulation, exotic species control, or simply allowing access for the purposes of reintroduction (Bean 2002). We feel the likelihood of federally-initiated projects on Lanai that may affect listed species is very low, and therefore critical habitat would have little regulatory benefit to the species other than those listed below in section *Exclusions Under Section 4(b)(2).*

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from 12 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region that the species occurs in, and familiarity with the principles of conservation biology. We received comments from three. All three generally supported our methodology and conclusion, but none supported or opposed the proposed critical habitat designations. Comments received from the peer reviewers were summarized in the previous section and considered in developing the final rule.

Summary of Changes From the Revised Proposed Rule

Based on a review of public comments received on the proposed determinations of critical habitat, we have reevaluated our proposed designations and included several changes to the final designations of critical habitat. These changes include the following:

(1) The scientific names were changed for the following associated species found in the *''Supplementary Information: Discussion of the Plant Taxa''* section: *Styphelia tameiameiae* changed to *Leptecophylla tameiameiae* in the discussion of *Gahnia lanaiensis, Hedyotis schlechtendahliana* var. *remyi,* and *Viola lanaiensis; Odontosoria chinensis* changed to *Sphenomeris chinensis* in the discussion of *G. lanaiensis* and *H. schlechtendahliana* var. *remyi; Diospyros ferrea* changed to *D. sandwicensis* in the discussion of *Abutilon eremitopetalum.*

(2) We removed *Sapindus oahuensis* from the list of associated species in the *''Supplementary Information: Discussion of the Plant Taxa''* section for *Bonamia menziesii;* added gulch bottoms to habitat in the species description section for *Abutilon eremitopetalum;* and throughout the species description section removed goats and pigs and replaced them with mouflon sheep and axis deer as current threats. Goats and pigs are no longer present on Lanai and were mistakenly included as current threats.

(3) We received new information on the presence of *Bidens micrantha* ssp. *kalealaha* in Waiapaa Gulch. For *Tetramolopium remyi,* we updated the two occurrences to one occurrence, updated the number of plants to 150 and updated ''Table 2.—Summary of existing occurrences on Lanai, and landownership for 37 species reported from Lanai.'' This new information did not affect our decisions in designating critical habitat for these species. Waipaa Gulch was proposed as critical habitat for *B. micrantha* ssp. *kalealaha* and the loss of a population of *T. remyi* is a recent extirpation and the habitat once occupied is still considered essential to the recovery of that species. We believe that its recent presence indicates a high likelihood of a seed bank in the area.

(4) We changed ''flowering cycles, pollination vectors, seed dispersal agents'' to ''reproduction cycles, dispersal agents'' in the life history portion of the *''Supplementary Information: Discussion of the Plant Taxa''* section for the fern species *Ctenitis squamigera, Diellia erecta,* and *Diplazium molokaiense.*

(5) We revised the list of manmade features that are excluded from the designation in order to exclude additional features based on information received during the public comment periods. The revised list is described in the *''Criteria Used to Identify Critical Habitat''* and in regulatory language for section 17.96 *''Critical habitat—plants''* described at the end of this document.

(6) We revised our decision on the essentiality of Kanepuu Preserve for the conservation of *Bonamia menziesii* (see *''Managed Lands''*).

(7) We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, that indicated that the primary constituent elements were not present in certain portions of the proposed unit, that certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements, or that the areas were not essential to the conservation of the species in question. In addition, an area was excluded based on weighing the benefits of inclusion versus exclusion pursuant to section 4(b)(2) of the Act (see ''*Economic Analysis*'').

A brief summary of the modifications made to each unit is given below (see also Figure 1).

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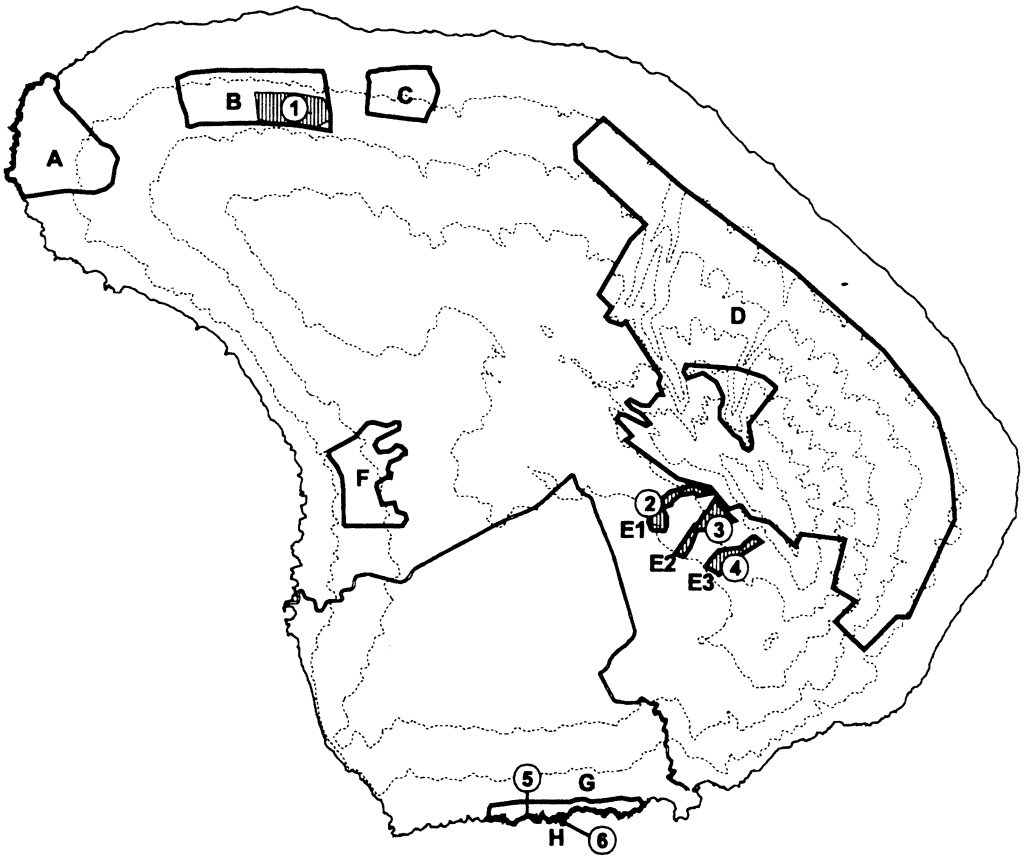

Figure 1
Summary of Changes from Proposed Rule to Final Rule

Final Lanai Critical Habitat Unit
Proposed Lanai Critical Habitat Unit
Major Roads
Coastline
Elevation (500-ft. contours)

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(8) In accordance with the revisions described in (7) above, we revised section 17.12 *''Endangered and threatened plants''* to include only *Bidens micrantha* ssp. *kalealaha, Portulaca sclerocarpa,* and *Tetramolopium remyi* (see *''Economic Analysis''*).

(9) In accordance with the revisions described in (7) above, we revised section 17.96 ''*Critical Habitat—plants*'' to include only *Bidens micrantha* ssp. *kalealaha, Portulaca sclerocarpa,* and *Tetramolopium remyi* and updated their elevation ranges, based on information received during the public comment periods.

Lanai A

This unit was proposed as critical habitat for two species, *Cyperus trachysanthos* and *Hibiscus brackenridgei.* We excluded the proposed critical habitat for *C. trachysanthos* from the final rule because this area no longer contains the suitable habitat of seasonally wet soils. The water source has permanently dried up due to alterations in the watershed properties of the island. Also, this area is not essential for the conservation of *C. trachysanthos,* a multi-island species, because we have proposed adequate habitat on other islands within its historical range.

We excluded the proposed critical habitat for *Hibiscus brackenridgei,* a multi-island species. This area is not essential for the conservation of the species because the area lacks sufficient suitable soil and there are at least eight other places for this species that have the primary constituent elements, are less degraded, are already undergoing restoration, or are within a partnership, TNCH preserve or other reserve. Other areas on other islands within its historical range are proposed as critical habitat that provide habitat for 10 populations.

Exclusion of this unit from critical habitat for *Cyperus trachysanthos* and *Hibiscus brackenridgei* resulted in the overall reduction of 574 ha (1,418 ac) of critical habitat on the island of Lanai.

Lanai B

This unit was proposed as critical habitat for *Tetramolopium remyi,* a multi-island species. Modifications were made to this unit to exclude areas not essential to the conservation of this species (*i.e.* areas that are highly degraded). The area designated as critical habitat for *T. remyi* provides habitat within its historical range for one population. The designated area is situated around the recently extirpated known individuals and contains the primary constituent elements. In addition, this area most likely contains a viable seed bank because of the recent existence of mature, seed-bearing individuals in this area and because plants from drought-prone sites tend to survive through the existence of seed banks. This modification resulted in the reduction from 551 ha (1,363 ac) to 151 ha (373 ac). This unit was renamed Lanai 1—*Tetramolopium remyi.*

Lanai C

This unit was proposed as critical habitat for the multi-island species *Sesbania tomentosa.* This unit was excluded from critical habitat because it is not essential for the conservation of the species and there are at least eight other places for this species that have more primary constituent elements, are less degraded, are already undergoing restoration, or are within a partnership, TNCH preserve, or other reserve. Other areas on other islands within the historical range of *S. tomentosa* are being designated or proposed as critical habitat and provide habitat for 10 populations.

Exclusion of this unit from critical habitat for *Sesbania tomentosa* resulted in the overall reduction of 222 ha (549 ac) of critical habitat on the island of Lanai.

Lanai D

Lanai D was proposed as critical habitat for 28 species: *Abutilon eremitopetalum, Adenophorus periens, Bonamia menziesii, Brighamia rockii, Centaurium sebaeoides, Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Diellia erecta, Diplazium molokaiensis, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Solanum incompletum, Spermolepis hawaiiense, Tetramolopium remyi, Vigna o-wahuensis* and *Viola lanaiensis.*

This unit was excluded from critical habitat under section 4(b)(2) of the Act for the reasons described in the ''*Economic Analysis*'' section below. Exclusion of this unit from critical habitat for the 28 species listed above resulted in the overall reduction of 5,861 ha (14,482 ac) of critical habitat on the island of Lanai.

Lanai E1, E2 and E3

No changes were made to these units and they are designated as critical habitat for *Bidens micrantha* ssp. *kalealaha.* They have been renamed units Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North (53 ha (132 ac)), Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle (60 ha (148 ac)), and Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South (49 ha (120 ac)).

Lanai F

This unit was proposed as critical habitat for the multi-island species *Hibiscus brackenridgei.* This unit was excluded from critical habitat because it is not essential for the conservation of the species because it is highly degraded. Other areas on other islands, within the species' historical range, are being proposed as critical habitat that provide habitat for 10 populations.

Exclusion of this unit from critical habitat for *Hibiscus brackenridgei* resulted in the overall reduction of 331 ha (818 ac) of critical habitat on the island of Lanai.

Lanai G

Lanai G was proposed as critical habitat for the multi-island species *Portulaca sclerocarpa.* Modifications were made to this unit to exclude inland areas that do not contain the primary constituent elements. Critical habitat for *P. sclerocarpa* includes only cliff faces along the shore. This modification resulted in the reduction from 151 ha (373 ac) to 7 ha (17 ac). This unit was renamed Lanai 5—*Portulaca sclerocarpa*—Coast.

Lanai H

No changes were made to this unit and it is designated as critical habitat for *Portulaca sclerocarpa.* It has been renamed Lanai 6—*Portulaca sclerocarpa*—Isle, consists of Poopoo Islet, and contains 1 ha (2 ac).

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation,'' as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' The relationship between a species survival and its recovery has been a source of confusion to some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when its recovery can be achieved; thus, the concepts of long-term survival and recovery are intricately linked. However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434) regarding a not prudent finding, the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known, using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (*i.e.,* areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species or alternatively, we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic areas occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have some of the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation.

Our regulations state that ''The Secretary shall designate critical habitat outside the geographic areas presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species.

A. Prudency

We originally proposed that designation of critical habitat was prudent for six plants (*Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Gahnia lanaiensis, Portulaca sclerocarpa, Tetramolopium remyi,* and *Viola lanaiensis*) from the island of Lanai on December 27, 2000 (65 FR 82086). In that same proposal, we incorporated by reference the proposed prudency analysis for 13 other plants (*Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Spermolepis hawaiiensis,* and *Vigna o-wahuensis*) that are reported from Lanai as well as from Kauai, Niihau, Maui, or Kahoolawe (64 FR 48307, 65 FR 66808, 65 FR 79192, and 65 FR 82086). No change was made to the proposed prudency findings for the 19 plants in the revised proposal published on March 4, 2002, and they were incorporated by reference (67 FR 9806). In addition, in the December 27, 2000, proposal, we proposed that designation of critical habitat was not prudent for *Phyllostegia glabra* var. *lanaiensis,* and no change was made to this proposed prudency finding in the March 4, 2002, revised proposal (65 FR 82086 and 67 FR 9806). In the March 4, 2002, revised proposal no change was made to the proposed prudency analysis published in other proposed rules for 16 plants (*Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense,*

Hesperomannia arborescens, Isodendrion pyrifolium, Mariscus fauriei, Neraudia sericea, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, and Zanthoxylum hawaiiense) that no longer occur on Lanai but are reported from one or more other islands, and they were incorporated by reference (65 FR 66808, 65 FR 79192, 65 FR 83158, 67 FR 3940, and 67 FR 9806). In the March 4, 2002, revised proposal, we proposed that designation of critical habitat was prudent for *Tetramolopium lepidotum* ssp. *lepidotum,* a species for which a prudency finding had not been made previously, and that no longer occurs on Lanai but is reported only from Oahu (67 FR 9806).

We believe that designation of critical habitat is prudent for 36 species (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Mariscus fauriei, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepidotum, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis, and Zanthoxylum hawaiiense*) from the island of Lanai.

We analyzed the potential threats and benefits for each species in accordance with the court's order and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of these species or of similarly situated species. Consequently, while we remain concerned that these activities could potentially threaten these 36 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which threats would be exacerbated by the designation of critical habitat. The potential benefits to designation of critical habitat for these 36 species include: (1) Triggering section 7 consultation in new areas it would not otherwise occur; (2) focusing conservation activities on the most essential area; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore we believe that the designation of critical habitat for these 36 species is prudent because the potential benefits of critical habitat designation outweigh the potential threats.

Designation of critical habitat is not prudent for *Phyllostegia glabra* var. *lanaiensis* because such designation would be of no benefit to this species. *Phyllostegia glabra* var. *lanaiensis* has not been seen on Lanai since 1914. In addition, this plant is not known to be in storage or under propagation. If this species is relocated, we may revise this final rule to incorporate or address new information becomes available (see 16 U.S.C. 1532(5)(B); 50 CFR 424.13(f)).

B. Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Mariscus fauriei, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepidotum, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis, and Zanthoxylum hawaiiense.* This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC's) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide Geographic Information System (GIS) coverages (*e.g.,* vegetation, soils, annual rainfall, elevation contours, landownership); the final listing rules for these 36 species; the December 27, 2000, proposal; the March 4, 2002, revised proposal; information received during the public comment periods and public hearings; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information that we sent to all landowners, land managers, and interested parties on the island of Lanai; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (CPC *in litt.* 1999; GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; 65 FR 82086).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data have been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed to some degree. New location data for many species have been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the specific listed species at issue. As a result, the critical habitat designations in this rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana ssp. grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis* is described above in the ''*Background*'' section of this final rule. We are unable to identify these features for *Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum* and *Zanthoxylum hawaiiense,* which no longer occur on the island of Lanai, because information on the physical and biological features (*i.e.,* the primary constituent elements) that are considered essential to the conservation of these four species on Lanai is not known (see 67 FR 9806).

All areas designated as critical habitat are within the historical range of the three species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of the species.

As described in the discussions for each of the three species for which we are designating critical habitat, we are defining the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community (*e.g.,* mesic *Metrosideros polymorpha* forest), associated native plant species, locale information (*e.g.,* steep rocky cliffs, talus slopes, gulches, streambanks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicate specific microclimate (localized climatic) conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the **SUPPLEMENTARY INFORMATION:** *Discussion of the Plant Taxa* section above, constitute the primary constituent elements for these species on the island of Lanai.

D. Criteria Used To Identify Critical Habitat

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.,* population viability analysis (National Research Council 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). At this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, we used available information, including expert scientific opinion, to identify potentially suitable habitat within the known historic range of each species.

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these three species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes: (1) Stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species biology and ecology (Service 1995, 1996a, 1997). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within their historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennials; 300 mature, reproducing individuals per population for short-lived perennials; and 500 mature, reproducing individuals per population for annuals. There are some specific exceptions to this general recovery goal of 8 to 10 populations for species that are believed to be very narrowly distributed on a single island, but that does not apply to the three species. To be considered recovered, the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1995, 1996a, 1997). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated and influenced by the same small-scale events (such as landslides), and which contains a minimum of 100, 300, or 500 mature, reproducing individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual.

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes or tsunamis, that could destroy a large percentage of a species at any one time, may be reduced (Menges 1990; Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology

literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Menges 1990; Murphy *et al.* 1990; Podolsky 2001; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life-history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

The long-term objectives, as reviewed by Pavlik (1996), require from 50 to 2,500 individuals per population, based largely on research and theoretical modeling on endangered animals, since much less research has been done on endangered plants. Many aspects of species life history are typically considered to determine guidelines for species' interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed longevity, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of these characteristics that can be uniformly applied to all Hawaiian plant species is longevity (*i.e.*, long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature, reproducing individuals per population for long-lived perennial species, 300 mature, reproducing individuals per population for short-lived perennial species, and 500 mature, reproducing individuals per population for annual species.

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. Although absent the detailed information inherent to the types of Population Viability Analysis models described above (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species: (1) Creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2001; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Meffe and Carroll 1996; Raup 1991). This basic conservation principle of redundancy applies to Hawaiian plant species. By maintaining 8 to 10 viable populations in several critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and recovery. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of non-native plants and animals. Establishing and conserving 8 to 10 viable populations on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as the hurricanes which occurred in 1982 and 1992 on Kauai, fires, and nonnative plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential to give the species a reasonable likelihood of long-term survival and recovery, based on currently available information.

In summary, the long-term survival and recovery of Hawaiian plant species requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species. Some of this habitat is currently not known to be occupied by these species. To recover the species, it is essential to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.*, hurricanes, fire, and non-native species introductions) (Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992).

In this rule, we have defined the primary constituent elements based on the general habitat features of the areas from which the plants are reported, such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes, streambanks), and elevation. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of the three plant species.

Our approach to delineating critical habitat units was applied in the following manner:

1. We focused on designating units representative of the known current and historical geographic and elevational range of each species; and

2. Critical habitat units were designed to allow for expansion of existing wild populations and reestablishment of wild populations within the historic range, as recommended by the recovery plans for each species.

The proposed critical habitat units were delineated by creating rough units for each species by screen digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program. 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 elevational range and potential, suitable habitat) were then evaluated. Elevation ranges were further refined and land areas identified as not suitable

for a particular species (*i.e.*, not containing the primary constituent elements) were avoided. The resulting shape files for each species were then 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 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 suitable habitat units identified as containing the appropriate primary constituent elements for each species. If more than the area needed for the number of recovery populations was identified as potentially suitable, only those areas within the least disturbed suitable habitat were designated as proposed critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,280 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; Schierup and Christiansen 1996). The resulting critical habitat units were further refined by using satellite imagery and parcel data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of one or more of the 32 plant species for which critical habitat was proposed on March 4, 2002. Geographic features (*e.g.*, ridge lines, valleys, streams, coastlines, *etc.*) or manmade features (*e.g.*, roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries.

Following publication of the proposed critical habitat rules for 255 Hawaiian plants (67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 34522, 67 FR 36968, 67 FR 37108), we reevaluated proposed critical habitat, State-wide, for each of the multi-island species using the recovery guidelines (8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennial species; 300 mature, reproducing individuals per population for short-lived perennial species; and 500 mature, reproducing individuals per population for annual species) to determine if we had inadvertently proposed for designation too much or not enough habitat to meet the essential recovery goals of 8 to 10 populations per species distributed among the islands of the species' known historic range (HINHP Database 2000, 2001; Wagner *et al.* 1990, 1999). For each multi-island species, we then further evaluated areas of the proposed critical habitat for the existing quality of the primary constituent elements (*i.e.*, intact native plant communities, predominance of associated native plants versus nonnative plants) and potential as a recovery area. We selected adequate area for our recovery goals of 8 to 10 populations distributed among the islands of each species' historical range. Of the proposed critical habitat for a species, areas that did not meet these criteria and that may provide habitat for populations above the recovery goal of 8 to 10, were determined not essential for the conservation of the species and were excluded from the final designation.

For the species endemic to Lanai, we modified the boundaries of proposed critical habitat using additional information from botanical experts and comments on the proposed rule. We excluded areas that do not contain one or more of the primary constituent elements or were not essential for the conservation of the species because: (1) The area is highly degraded and may not be restorable; (2) the area has some of the primary constituent elements but there are at least eight other places for the species that have more primary constituent elements or are less degraded or are already undergoing restoration or are within a partnership, Natural Area Reserve, TNCH preserve, or refuge; or (3) the threats to the species are uncontrollable in this area. In addition, some areas were excluded under section 4(b)(2) of the Act for economic or other reasons (See ''Exclusions Under Section 4(b)(2)''). The specific modifications are described above in the ''Summary of Changes from the Revised Proposed Rule.'' The boundaries of the final critical habitat units are described by their UTMs.

Within the critical habitat boundaries, section 7 consultation is generally necessary and adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In selecting areas of designated critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of the three species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas from the maps. In addition, existing manmade features and structures within the boundaries of the mapped unit, such as buildings; roads; aqueducts and other water system features—including, but not limited to, pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, and wells; telecommunications towers and associated structures and equipment; electrical power transmission lines and associated rights-of-way; radars; telemetry antennas; 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 are therefore excluded under the terms of this regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

In summary, for these species we utilized the approved recovery plan guidance to identify appropriately sized land units containing essential occupied and unoccupied habitat. Based on the best available information, we believe these areas constitute the habitat necessary on Lanai to provide for the recovery of *Bidens micrantha* ssp. *kalealaha, Portulaca sclerocarpa,* and *Tetramolopium remyi.*

Managed Lands

Currently occupied and historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 32 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, we contacted the major private landowner on Lanai by mail and we met with the landowner's representatives in April 2000 and August 2002 to discuss their current management for the plants on their lands. We also met with Maui County DOFAW office staff to discuss management activities they are conducting on Lanai. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearings.

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 have adequate funding for the management plan); and, (3) provides assurances that the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). 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 whether a management plan or agreement provides a conservation benefit to the species, 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 (Cuddihy and Stone 1990; Howarth 1985; Loope 1998; Scott *et al.* 1986; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Smith 1985; Stone 1985; Vitousek 1992; Wagner *et al.* 1985).

Current threats to these species include non-native grass- and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including axis deer and mouflon sheep); 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 negatively affected by fruit- and flower-eating pests such as non-native arthropods, mollusks, and rats, and photosynthesis and water transport are 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 carrying weeds and disturbing vegetation and soils, thereby facilitating dispersal and establishment of non-native plants, and numerous non-native insect species feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Bruegmann *et al.* 2001; Cuddihy and Stone 1990; D'Antonio and Vitousek 1992; Howarth 1985; Mack 1992; Scott *et al.* 1986; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Smith 1985; Tunison *et al.* 1992);

(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; and

(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 32 species (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001), in the 1998 HPPRCC report to us, and in various other documents and publications relating to plant conservation in Hawaii (Cuddihy and Stone 1990; Mueller-Dombois 1985; Smith 1985; Stone 1985; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) nonnative plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plant species; (7) propagation, reintroduction, and 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: Feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and 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 (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). 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.

As shown in Table 2, the 32 species of plants are found on private lands on the island of Lanai. Information received in response to our public notices; meetings with representatives of the landowner and Maui County DOFAW staff; the December 27, 2000, and March 4, 2002, proposals; public comment periods; and the March 22, 2001, and August 1, 2002, public hearings, as well as information in our files, indicated that there is limited on-going conservation management action for these plants, except as noted below. Without management plans and assurances that the plans will be implemented, we are unable to find that the land in question does not require special management or protection.

Private Lands

Two species (*Bonamia menziesii* and *Hibiscus brackenridgei*) are reported from The Nature Conservancy of

Hawaii's (TNCH) Kanepuu Preserve, which is located in the northeast-central portion of Lanai (GDSI 2000; HINHP Database 2000; TNCH 1997). This preserve was established by a grant of a perpetual conservation easement from the private landowner to TNCH and is 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).

Under the NAP program, the State of Hawaii provides matching funds on a two-to-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the six-year partnership agreement between the State and the managing entity is automatically renewed each year so that there are always six years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every six 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 six-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 State Department of Land and Natural Resources (DLNR), and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat. Secs. 195–1–195–11, and Hawaii Administrative Rules Sec. 13–210.

The management program within Kanepuu Preserve is documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plant and its habitat within the preserve (TNCH 1997, 1998, 1999). These management measures address the factors which led to the listing of *Bonamia menzeisii* and *Hibiscus brackenridgei* including control of non-native species of ungulates, rodents, weeds, and fire control. In addition, habitat restoration and monitoring are also included in these plans.

The primary goals within Kanepuu Preserve are to: (1) Control non-native species; (2) suppress wildfires; and (3) restore the integrity of the dryland forest ecosystem through monitoring and research. Specific management actions to address feral ungulates include the replacement of fences around some of the management units with Benzinal-coated wire fences as well as staff hunting and implementation of a volunteer hunting program with the DLNR. Additionally, a small mammal control program has been established to prevent small nonnative mammals (*e.g.,* rats) from damaging rare native species and limit their impact on the preserve's overall native biota.

To prevent further displacement of native vegetation by non-native plants, a non-native plant control plan has been developed, which includes monitoring of previously treated areas, and the control of non-native plants in management units with restoration projects.

The fire control program focuses on suppression and pre-suppression. Suppression activities consist of coordination with State and county fire-fighting agencies to develop a Wildfire Management Plan for the preserve (TNCH 1998). Pre-suppression activities include mowing inside and outside of the fence line to minimize fuels for fires.

A restoration, research, and monitoring program has been developed at Kanepuu Preserve to create a naturally regenerating *Nestegis sandwicensis-Diospyros sandwicensis* dryland forest, and expand the current range of native-dominated vegetation. Several years of casual observation indicate that natural regeneration is occurring within native forest patches in the deer-free units (TNCH 1999). A draft of the Kanepuu Restoration Plan was completed in June 1999. This plan identifies sites for rare plant outplanting and other restoration activities. Monitoring is an important component to measure the success or failure rate of the animal and weed control programs. Management of these non-native species control programs is regularly amended to preserve the ecological integrity of the preserve.

Comments received on the proposed rule and a site visit by Service staff revealed that Kanepuu Preserve does not contain as many of the primary constituent elements for *Bonamia menzeisii* and *Hibiscus brackenridgei* as previously thought or that exist in other areas of the State of Hawaii proposed as critical habitat for these species. The other areas proposed for these species are occupied, contain intact native habitat, are being managed for these species, and provide adequate area for the 8 to 10 populations needed to reach our recovery goals for these species. It is our belief that this area is not essential for the conservation of these species for the above stated reasons. We were able to find enough better quality habitat for 8 to 10 populations needed to reach our recovery goals on this and other Hawaiian islands. Though it is occupied by *Bonamia menziesii* and *Hibiscus brackenridgei* and should continue to be managed for these and other species, this area was not considered essential to the conservation of any of the 37 species covered by this rule.

The critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of *Bidens micrantha* ssp. *kalealaha, Portulaca sclerocarpa,* and *Tetramolopium remyi,* and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We publish this final rule acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may consider reevaluating the boundaries of areas that warrant critical habitat designation.

The approximate areas of the designated critical habitat by landownership or jurisdiction are shown in Table 4.

Critical habitat includes habitat for these three species in the northwestern, central, and southern portions of Lanai. Lands designated as critical habitat have been divided into six units. A brief description of each unit is presented below.

TABLE 4.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII

Unit name	State/local	Private	Federal	Total
Lanai 1—*Tetramolopium remyi*		151 ha (373 ac)		151 ha (373 ac)
Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North.		53 ha (131 ac)		53 ha (131 ac)
Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle.		60 ha (148 ac)		60 ha (148 ac)
Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South.		48 ha (118 ac)		48 ha (118 ac)
Lanai 5—*Portulaca sclerocarpa*—Coast		7 ha (17 ac)		7 ha (17 ac)
Lanai 6—*Portulaca sclerocarpa*—Isle		1 ha (2 ac)		1 ha (2 ac)
Grand Total		320 ha (789 ac)		320 ha (789 ac)

Descriptions of Critical Habitat Units

Lanai 1—*Tetramolopium remyi*

This unit is critical habitat for *Tetramolopium remyi* and is 151 ha (373 ac) on privately owned land. It lies approximately between 182 m (600 ft) and 274 m (900 ft) elevation, is slightly east of Puumaiekahi Gulch, contains a portion of Lapaiki Gulch and is completely in a conservation district (limited use). Awalua Road runs through the western portion of this unit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial and is currently unoccupied. The habitat features contained in this unit that are important for this species include, but are not limited to, predominantly red sandy loam in a *Dodonaea viscosa-Heteropogon contortus* community. In addition, this area is the most likely to contain a viable seed bank on the north side of the island because of the existence within the past year of mature, seed-bearing individuals in this area and because plants from drought-prone sites tend to survive through the existence of seed banks. The State of Hawaii is managing a small portion of this unit by fencing the area to control feral ungulates around the recently extirpated known individuals. This unit provides for one population within this multi-island species' historical range on Lanai.

Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North

This unit is critical habitat for *Bidens micrantha* ssp. *kalealaha* and is 53 ha (131 ac) on privately owned land. This unit lies west of Lanai 3 and includes most of Kapohaku Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of this short-lived perennial and is currently unoccupied. The habitat features contained in this unit that are important for this species include, but are not limited to, gulch slopes in dry *Dodonaea viscosa* shrubland. This critical habitat unit provides area for one population within the historical range of this multi-island species and is in the gulch adjacent to the occupied unit Lanai 3—*Bidens micrantha* ssp *kalealaha*—Middle. It is geographically separated (by a ridge) from other designated critical habitat units on this and other islands in order to avoid all populations from being destroyed by one naturally occurring catastrophic event.

Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle

This unit is critical habitat for *Bidens micrantha* ssp. *kalealaha* and is 60 ha (148 ac) on privately owned land. This unit lies between Lanai 2 and Lanai 4 and includes most of Waiapaa Gulch and Waiakaiole Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of this short-lived perennial and is currently occupied by less than 20 individuals. This unit is important to the conservation of the species because it supports the one extant colony of this species on Lanai. This unit also includes habitat that is important for the expansion of the present population. The habitat features contained in this unit that are important for this species include, but are not limited to, gulch slopes in dry *Dodonaea viscosa* shrubland. This critical habitat unit provides area for one population within the historical range of this multi-island species. It is geographically separated by a ridge from other designated critical habitat units on this and other islands in order to avoid all populations from being destroyed by one naturally occurring catastrophic event.

Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South

This unit is critical habitat for *Bidens micrantha* ssp. *kalealaha* and is 48 ha (118 ac) on privately owned land. This unit lies east of Lanai 3 and includes most of Paliakoae Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of this short-lived perennial and is currently unoccupied. The habitat features contained in this unit that are important for this species include, but are not limited to, gulch slopes in dry *Dodonaea viscosa* shrubland. This critical habitat unit provides area for one recovery population within the historical range of this multi-island species and is in a gulch adjacent to the occupied unit Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle. It is geographically separated by a ridge from other designated critical habitat units on this and other islands in order to avoid all populations from being destroyed by one naturally occurring catastrophic event.

Lanai 5—*Portulaca sclerocarpa*—Coast

This unit is critical habitat for *Portulaca sclerocarpa* and is 7 ha (17 ac) on privately owned land. This unit lies along the shore between Anapuka in the west and Huawai Bay in the east. This unit provides habitat for one population (combined with Lanai 6—*Portulaca sclerocarpa*—Isle) of 300 mature, reproducing individuals of this short-lived perennial and is currently unoccupied. The habitat features contained in this unit that are important for this species include, but are not limited to, exposed ledges in thin soil in coastal communities. This coastal habitat is unique to Lanai for this species; on the island of Hawaii, this species grows on weathered soils, cinder cones, or geologically young lava; in montane dry shrubland; often on bare cinder; near steam vents; or in open *Metrosideros polymorpha*-dominated woodlands, away from coastal areas. This critical habitat unit provides area for one recovery population within the historical range of this multi-island

species and is adjacent to the currently occupied habitat in Unit 6—Portulaca sclerocarpa—Isle. It is geographically separated from other designated critical habitat on the island of Hawaii in order to avoid all populations from being destroyed by one naturally occurring catastrophic event.

Lanai 6—*Portulaca sclerocarpa*—Isle

This unit is critical habitat for *Portulaca sclerocarpa* and is 1 ha (2 ac) on privately owned land. This unit comprises all of Poopoo Islet. This unit provides habitat for one population (combined with Lanai 5—*Portulaca sclerocarpa*—Coast) of 300 mature, reproducing individuals of this short-lived perennial and is currently occupied by about 10 plants. This unit is important to the conservation of the species because it supports the one extant colony of this species on Lanai. This unit also includes habitat that is important for the expansion (combined with Lanai 5—*Portulaca sclerocarpa*—Coast) of the present population. The habitat features contained in this unit that are important for this species include, but are not limited to, exposed ledges in thin soil in coastal communities. This coastal habitat is unique to Lanai for this species; on the island of Hawaii, this species grows on weathered soils, cinder cones, or geologically young lava; in montane dry shrubland; often on bare cinder; near steam vents; or in open *Metrosideros polymorpha*-dominated woodlands, away from coastal areas. This critical habitat unit provides area for one population within the historical range of this multi-island species. It is geographically separated from other designated critical habitat units on the island of Hawaii to prevent all populations from being destroyed by one naturally occurring catastrophic event.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat when their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(1) of the Act requires Federal agencies, including the Service, to use their authorities to carry out programs for the conservation of any species that is proposed or listed as endangered or threatened. Section 7(a)(4) of the Act requires Federal agencies (action agency) to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

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 action agency must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Activities on Federal lands that may affect critical habitat of *Bidens micrantha* ssp. *kalealaha, Portulaca sclerocarpa,* or *Tetramolopium remyi* will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), the Department of Housing and Urban Development, or an incidental take permit under section 10(a)(1)(B) of the Act from us; or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), or Department of Energy); regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communications Commission 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 (whether public or private) 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 manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock that degrades watershed values;

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems in wetlands where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;

(6) Introducing or encouraging the spread of non-native plant species into critical habitat units; and

(7) Importation of non-native species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the listed species and the primary constituent elements of their habitats.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species concerned.

Economic Impacts

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic impact of the designation, in accordance with the recent decision in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.,* 248 F.3d 1277 (10th Cir. 2001). The draft analysis was made available for review on August 16, 2002 (67 FR 46626). We accepted comments on the draft analysis until the comment period closed on August 30, 2002, and again from November 15, 2002 to November 25, 2002 (67 FR 69176).

We have not excluded or modified critical habitat units from the proposed rule based on economic impacts. Our draft economic analysis evaluated the potential future section 7 effects, including indirect effects, associated with designating critical habitat for 32 species (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis*) on Lanai. However, given the difficulty of determining precisely what section 7 impacts should be attributed alone to critical habitat, we have analyzed the total section 7 impacts as well.

The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) potential delays associated with reinitiating completed consultations after critical habitat is finalized; (4) uncertainty and public perceptions resulting in loss of land value from the designation of critical habitat; (5) potential effects on property values including potential indirect costs resulting from the loss of hunting opportunities and increased regulation related costs due to the interaction of State and local laws; and (6) potential offsetting benefits associated with critical habitat, including educational benefits. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency.

Following the close of the comment period on the draft economic analysis, a final addendum was completed that incorporated public comments on the draft analysis and made other changes in the draft, for example, to account for changes in unit boundaries due to the receipt of information during the comment period indicating that certain areas do not contain the necessary primary constituent elements or were not essential to the conservation of the species. Together, the draft analysis as modified by the addendum constitute our final economic analysis. The final economic analysis estimates that, over the next 10 years, the designation may result in potential economic effects ranging from approximately $450,000 to $530,000 in quantifiable costs, and concludes that economic impacts from the designation of critical habitat would not be significant. This is a reduction of approximately $1.7 million from the costs estimated in the draft economic analysis, and is due to the exclusion of proposed units Lanai A, Lanai C, and Lanai F from final designation and the significant reduction in size to proposed units Lanai B and Lanai G (designation of 6,181 ha (15,271 ac) versus the 7,853 ha (19,405 ac) proposed as critical habitat, a reduction of approximately 1,672 ha (4,134 ac)). As described in the analysis, direct costs result from conservation projects and secondary costs result from investigations of the implications of critical habitat designation. Indirect costs attributed to critical habitat that were considered major in the draft economic analysis are avoided by the modifications made to units based on new biological information (*i.e.*, excluding unit F and removing much of the land zoned as rural). The Addendum to the economic analysis states that the indirect cost of reduction in property values is not expected to occur, and ensuring that clear and correct information on the effects of a critical habitat designation is available to all potential buyers will further reduce the potential for such a scenario. A more detailed discussion of our economic analysis is contained in the draft economic analysis and the addendum. Both documents are included in our administrative record and are available for inspection at the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Other Impacts

As described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating

critical habitat. A proposed critical habitat unit, Lanai D, located on the central-eastern side of the island, was excluded from designation because we believed that doing so would further the goal of encouraging private landowners to undertake voluntary conservation activities, which will be necessary to achieve species recovery. The proposed 5,861 ha (14,482 ac) unit is on private lands owned by Castle and Cooke Resorts, LLC. Castle and Cooke Resorts, LLC—which owns 99 percent of the island—is currently undertaking voluntary conservation activities within and adjacent to this unit, and has recently entered into an agreement with the Service for future activities (MOA, 2002), as well.

The proposed unit Lanai D is occupied habitat for 17 species: *Abutilon eremitopetalum, Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Spermolepis hawaiiense, Tetramolopium remyi,* and *Viola lanaiensis.* It is unoccupied habitat for 11 species: *Adenophorus periens, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Diellia erecta, Diplazium molokaiensis, Hesperomannia arborescens, Isodendrion pyrifolium, Neraudia sericea, Solanum incompletum,* and *Vigna o-wahuensis.*

According to our published recovery plans, recovery of these species will require reproducing, self-sustaining populations located in a geographic array across the landscape, with population numbers and population locations of sufficient robustness to withstand periodic threats due to natural disaster or biological threats (Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). The highest priority recovery tasks include active management such as plant propagation and reintroduction, fire control, alien species removal, and ungulate fencing. Failure to implement these active management measures, all of which require voluntary landowner support and participation, virtually assures the extinction of these species. Many of these types of conservation actions in this area of Lanai are carried out as part of the Lanai Forest and Watershed Partnership and by actions taken on the landowner's initiative in areas outside the watershed partnership area. These activities, which are described in more detail below, require substantial voluntary cooperation by Castle and Cooke Resorts, LLC.

The following analysis describes the likely conservation benefits of a critical habitat designation compared to the negative impacts of a critical habitat designation. The Service paid particular attention to the following issues: Whether critical habitat designation would confer regulatory conservation benefits on these species; whether the designation would educate members of the public such that conservation efforts would be enhanced; and whether a critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on this privately-owned island.

If excluding an area from a critical habitat designation will provide substantial conservation benefits, and at the same time including the area fails to confer a counter-balancing positive regulatory or educational benefit to the species, then the benefits of excluding the area from critical habitat outweigh the benefits of including it. The results of this type of evaluation will vary significantly depending on the landowners, geographic areas, and species involved.

(1) Benefits of Inclusion

Critical habitat in Lanai D was proposed for the following species: *Abutilon eremitopetalum, Adenophorus periens, Bonamia menziesii, Brighamia rockii, Centaurium sebaeoides, Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Diellia erecta, Diplazium molokaiensis, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Solanum incompletum, Spermolepis hawaiiense, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis.* The primary direct benefit of inclusion of the proposed unit Lanai D as final critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat.

Historically, we have conducted only seven informal consultations under section 7 on Lanai, and only one consultation involved any of the 28 species associated with proposed unit D. We do not expect further consultations in unit Lanai D for several reasons. Unit Lanai D is privately owned and does not contain any wetlands (the major reason for Federal permits). The landowner does not plan on applying for Federal funds (other than for habitat restoration) and does not foresee any reason to obtain federal permits that may create a federal nexus. Any funds received by the landowner for habitat restoration will require internal consultations, but will not likely adversely affect listed plant species or involve other Federal agencies. The majority of the land in proposed unit Lanai D is zoned as Conservation [1] (71 percent). Any lands zoned as Agriculture [2] (27 percent) in this area are not currently used for agricultural purposes and are currently fallow. Likely future use by the landowner of this area is as watershed protection (MOA, 2002). As stated in the economic analysis, future development in this area is not expected over the long term. Past uses of this area include marginal agriculture (primarily grazing). For these specific reasons, we do not expect future consultations in proposed unit Lanai D.

Although we believe the likelihood of a consultation is small, in the unlikely event that the landowner began using Federal funds or permits for projects, consultation requirements under section 7 of the Act would be triggered as a result of the funding or permitting processes administered by the Federal agency involved. The benefit of critical habitat designation would ensure that any actions funded by or permits given by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where species are not currently present; in contrast, Federal project areas with listed species present would still be covered under section 7. Given the overall low likelihood of Federal

[1] Conservation-zoned land is designated to conserve, protect and preserve the State's important natural resources through appropriate management in order to promote the long-term sustainability of these natural resources, and to promote public health, safety and welfare. Only limited development and commercial activity are allowed in the Conservation District.

[2] Agricultural-zoned land is a catch-all category that includes all lands not otherwise categorized, regardless of the agricultural quality of the land. Crops, livestock, and grazing are permitted in the zone, as are accessory structures and farmhouses. Although land in this zoning is not meant to be urbanized, it is, in practice, sometimes used for large-lot subdivisions. Listed species are found in some parts of this zoning, particularly in gulches, on hillsides, and on some of the land that is used for low-intensity grazing. In many cases, the fact that the land is Agricultural District indirectly protects listed species by limiting urban sprawl.

projects being proposed in the area of proposed unit D, the Service believes there is low potential for negative impacts to unoccupied habitat as a consequence of Federal activities, and thus a low regulatory benefit of a critical habitat designation in this area. We believe there is a low likelihood of negative impacts because of reasons stated above (*i.e.*, land use and zoning, land use history).

Another reason that the benefits of including Lanai D in the critical habitat designation is small is that, even if the area is not included in the designation, the conservation agreement (MOA, 2002) will provide conservation benefits to the target species. The management actions as outlined will remove threats (*e.g.* axis deer, mouflon sheep, rats, invasive nonnative plants) from the Lanaihale and East Lanai Regions, engage in fire control measures, engage in nursery propagation of native flora (including the target species) and planting of such flora. These actions will significantly improve the habitat for all currently occurring species (*Abutilon eremitopetalum, Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Spermolepis hawaiiense, Tetramolopium remyi,* and *Viola lanaiensis*) and will provide suitable habitat for reintroduction of extirpated species (*Adenophorus periens, Brighamia rockii, Cenchrus agrimonioides, Cyanea lobata, Diellia erecta, Diplazium molokaiensis, Hesperomannia arborescens, Isodendrion pyrifolium, Neraudia sericea, Solanum incompletum,* and *Vigna o-wahuensis*).

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. This outcome would be important for these 28 species. Any information about the species and their habitats that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable. However, only one landowner would be affected directly by including Lanai D in the designation, and that landowner is already working with the Service to address the habitat needs of the species. Further, this area was included in the proposed designation, which itself has reached a wide audience, and has thus provided information to the broader public about the conservation value of the area. For these reasons, we would expect that including Lanai D in the designation would provide at most moderate educational benefits to the species.

To be inclusive, we have considered some of these unlikely assumptions in this benefits of inclusion section. The economic analysis also identifies indirect impacts to landowners and other affected parties, and some of these impacts could result in benefits to the species. For example, the critical habitat designation could encourage the State to take measures to manage the populations of feral ungulates by fencing off portions of the State hunting areas (Economic Analysis section 4.b.). Such measures could result in preserving significant populations of the plants within the enclosed areas, and further the recovery of the species. The economic analysis concluded, however, that this result would be unlikely, because closing off portions of the State hunting areas would be vigorously protested by hunters. The economic analysis also stated that there is a possibility, of undetermined likelihood, that private landowners could be required by courts to take specific management actions if failing to take the action is a ''taking'' of the species (Economic Analysis section 4.c.). Management actions could include such activities as control of feral ungulates, non-native plants, rodents, and invertebrate pests; fire management; maintenance of plant genetic material; propagation; or management of the habitat or the plant populations. Each of these actions would provide commensurate benefits to the species, and designation of a particular area as critical habitat could further define and expand the scope of the management actions and resulting benefits. Many of these actions will be species-specific and benefit species as well as the island's watershed. Also, these types of management actions would ensure these areas continue to provide habitat for the seven island endemics as well as for reintroduction of several species including *Solanum incompletum* and *Isodendrion pyrifolium* which are no longer found on the island. We believe, however, that many of these same benefits would result from the agreement the Service has recently entered into with the landowner (MOA, 2002). Finally, the Economic Analysis discusses the possibility that designation could make development more difficult and/or costly (Economic Analysis sections 4.d. and 4.f.). The State or Counties could require developers to prepare a State EIS instead of a less burdensome EA in order to obtain development approvals, and may ultimately require additional project modifications; in addition, landowners could perceive that development in rural and agricultural areas is limited. Preparation of an EIS would presumably result in decisionmaking that is more informed and that is better able to provide for the protection of the species. Similarly, to the extent that designation of critical habitat would result in additional or more finely tuned project modifications, it would further the conservation of the species. The final designation together with the excluded Unit D contain less than 6 ha (15 ac) of land designated as Rural lands. Of these, over half 3.4 ha (8.3 ac) are mountainous and the rest are coastal 2.4 ha (6 ac). In the unlikely event that land values are decreased or economic activities are slowed, these plant species would benefit from the resulting decreased level of invasive activities. For example, the Rural lands in Unit D provide habitat for two multi-island species, *Centaurium sebaeoides* and *Brighamia rockii.* For both species, the Lanai populations are the only non-coastal populations of the species that are known to exist. This makes protecting the Lanai populations and their habitat from harmful activities particularly important. The only anticipated development project identified in the Economic Analysis is the planned construction of a new quarry, and this does not fall within Unit D and has been dropped from the analysis.

In sum, the Service believes that a critical habitat designation for listed plants on Lanai would provide a relatively low level of additional regulatory conservation benefits to each of the plant species. Any regulatory conservation benefits would accrue through the benefit associated with section 7 consultation. Based on a review of past consultations and consideration of the likely future activities in the area, there is little Federal activity expected to occur on this privately-owned island that would trigger section 7 consultation. The Service believes that critical habitat proposal and final designation provides some conservation benefits by educating the public on the site-specific areas on Lanai essential to the recovery of the extant and extirpated species.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of these species on Lanai and other Hawaiian islands (Shogren *et al.* 1999, Wilcove and Chen 1998, Wilcove *et al.* 1998). Consideration of this concern is especially important in areas where species have been extirpated and their recovery requires access and permission for reintroduction efforts. For example, eleven of the 28 species associated with proposed unit D are extirpated from Lanai, and natural repopulation is likely not possible without human assistance and landowner cooperation.

Castle and Cooke Resorts, LLC, is involved in several important voluntary conservation agreements and is currently carrying out some of these activities for conservation and watershed protection purposes. For example, the Partners for Fish and Wildlife Awehi Gulch agreement was entered into in fiscal year 1998 with the stated purpose of restoring and protecting a mesic to dry forest community including a population of the endangered *Gardenia brighamii.* The strategy to be employed for this project was to construct a three-acre deer-proof fenced exclosure, ensure that all deer were removed from the fenced area, plant and water *G. brighamii* within the fenced area, and control invasive alien plants in areas around the out-planted individuals. The agreement is between Castle and Cooke Resorts, LLC, the State Division of Forestry and Wildlife (DOFAW), and the USFWS. The USFWS provided funding for fence materials ($24,000), DOFAW provided the labor to construct the fence, and Castle and Cooke provided the labor and materials needed to plant, water, and weed the area. The fence was completed and no deer were left within the exclosure. Shortly thereafter, Castle and Cooke planted 150 *G. brighamii,* planted other native species (50 individuals) appropriate to the area within the Awehi exclosure, conduced alien plant removal above the level agreed upon, and set up a watering system (tank and delivery lines) that will be used for establishing more that just the original gardenia plants in the exclosure.

Another important voluntary project undertaken in partnership with the landowner is the Lanaihale Summit Forest Restoration Project. This is a very large and ambitious project (approximately 5,800 acres) within the area of proposed unit D, for which the USFWS has obligated a total of $177,500 to date. The landowner is matching that amount with at least $143,266 of in-kind cost-share in the form of fence-line clearing and native-plant restoration (growing, planting, and weed control). It is understood that these amounts will not be sufficient to complete the summit fence but will allow the project to get started with the assumption that the partnership will be able to secure additional funding from various sources to help complete the project. Castle and Cooke has entered into other agreements with agencies besides the Service, such as the Hawaii Division of Forestry and Wildlife and Hawaii Department of Health for additional funds to assist with completion of this project. The agreement documenting this project lists 10 of the proposed critical habitat plant species (among others) that will benefit from its completion. The project is currently ongoing. Castle and Cooke's Conservation Department has almost completed clearing the fence line for the first (Unit 1) of three exclosure units that will make up the summit fence project. They have also obtained bids from private contractors for construction of this first phase of fencing.

A third voluntary partnership project undertaken in cooperation with this landowner is the Lanai Cloud Forest Exclosure project. For this much smaller exclosure project, the Service provided $27,500 to be matched by in-kind services valued at $9,213 to be provided by the company. The purpose of this project is to provide an area protected by a fence that excluded not only deer and sheep, but predators (rats and feral cats) as well. The exact size and location for this project have not yet been finalized, but will be selected to provide the greatest protection and restoration potential for listed plants and two species of imperilled tree snails. This project is yet to get underway due to the higher priority of the summit fence. The Service and the landowner are planning to complete this project by the end of fiscal year 2003.

Another noteworthy voluntary agreement is the Lanai Forest and Watershed Partnership. While this multi-party agreement does not commit the company (or any party) to complete any conservation actions, it does demonstrate the willingness of the company to work cooperatively with all involved parties toward landscape-scale conservation efforts.

In addition to the projects described above, to address the conservation needs of all of the listed species associated with proposed unit D and to cover a larger landscape area, Castle and Cooke Resorts, LLC, has recently entered into an agreement with the Service to voluntarily manage proposed unit D and some adjacent lands for the conservation benefit of all of the listed species from Lanai. This agreement includes the following important voluntary commitments by Castle and Cooke Resorts, LLC:

1. Construction of exclosure fencing around large portions of Lanaihale and East Lanai (proposed unit D and adjacent lands); this fencing would expand upon the Lanaihale summit fence described above and protect a much larger area.
2. Active management of feral ungulates that are negatively affecting listed plants within the fenced areas; through a combination of public hunting and staff hunting, feral ungulates will be eliminated or controlled to allow for the restoration of listed plant species within fenced areas.
3. Active management of nonnative grasses and other fire hazards, and development of fire control measures;
4. Nursery propagation and planting of native flora, including these listed species, within the fenced areas;
5. In the unlikely event that future Federal projects occur on Lanai in the most important portions of proposed unit D (*e.g.*, Lanaihale and some adjacent areas), the landowner has agreed to have these projects reviewed by the Service to a standard similar to that required by section 7 consultation for designated critical habitat. These areas were identified by the company's contract botanist as having the highest conservation value for these listed species. They include the Lanaihale area (2,339 ha (5,781 ac)), an adjacent area to the north (702 ha (1,734 ac)), and an area east of the Lanaihale area (1,082 ha (2,674 ac)).

The Service believes that each of the listed species originally included within proposed unit D will benefit substantially from this agreement due to a reduction in ungulate browsing and habitat conversion, a reduction in competition with nonnative weeds, a reduction in risk of fire, and the reintroduction of species currently extirpated from various areas and for which the technical ability to propagate these species currently exists or will be developed in the near future.

On Lanai, simply preventing ''harmful activities'' will not slow the extinction of listed plant species. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. While the impact of providing these incentives may be modest in economic terms, they can be significant in terms

of conservation benefits that can stem from the cooperation of the landowner. The continued participation of Castle and Cooke Resorts, LLC, in the existing Lanai Forest and Watershed Partnership and other voluntary conservation agreements will greatly enhance the Service's ability to further the recovery of these endangered plants. Approximately 27 percent of the proposed critical habitat on Lanai, including portions of proposed unit D, are zoned Agriculture. Although the Service's economic analysis did not find it likely, the landowner and other commenters nevertheless believe that there is a risk that the critical habitat designation will result in the rezoning of lands, that State and county permits will contain additional requirements and expense for protection of lands designated as critical habitat, and that there is an increased risk of third-party litigation. We believe that the landowner's concerns over these potential negative impacts would affect its voluntary conservation efforts, which we believe are necessary to conserve these species.

As described earlier, Castle and Cooke Resorts, LLC, has a history of entering into conservation agreements with various Federal and State agencies and nongovernmental organizations on important portions of their lands. These arrangements have taken a variety of forms. They include partnership commitments such as the Awehi Gulch Partners for Fish and Wildlife project, Puhielelu Exclosure (funded through section 6 of the Act), Lanai Summit Fence project in concert with NRCS and the Service, Lanai Snail Fence, Lanai Forest Stewardship Project, Lanai Forest and Watershed Partnership, and the Kanepuu Preserve (perpetual easement to TNCH).

Thus, we believe it is essential for the recovery of these 28 species to build on the previous voluntary conservation efforts. Because the Federal government owns no land on Lanai, and because large tracts of land suitable for conservation of threatened and endangered species are owned by one private landowner, successful recovery of listed species on Lanai is especially dependent upon working partnerships and the voluntary cooperation of this landowner. Without additional voluntary conservation efforts for these 28 species, recovery will not occur.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding proposed unit Lanai D as critical habitat outweigh the benefits of including it as critical habitat for *Abutilon eremitopetalum, Adenophorus periens, Bonamia menziesii, Brighamia rockii, Centaurium sebaeoides, Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Diellia erecta, Diplazium molokaiensis, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Solanum incompletum, Spermolepis hawaiiense, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis.*

This conclusion is based on the following factors:

1. Large portions of proposed unit D (Lanaihale area) are currently being managed under the Lanai Forest and Watershed Partnership by the landowner on a voluntary basis in cooperation with us and the State of Hawaii to achieve important conservation goals. Building on this partnership approach, Castle and Cooke Resorts, LLC, has entered into a long-term agreement with the Service to manage the area within proposed unit D and adjacent areas for conservation. In the past, Castle and Cooke Resorts, LLC, has cooperated with us, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

2. Simple regulation of ''harmful activities'' is not sufficient to conserve these species. Landowner cooperation and support will be required to prevent the extinction and promote the recovery of all of the listed species on this island due to the need to implement proactive conservation actions such as ungulate management, weed control, fire suppression, and plant propagation. This need for landowner cooperation is especially acute because the proposed unit Lanai D is unoccupied by eleven of the 28 species. Future conservation efforts, such as translocation of these eleven plant species back into unoccupied habitat on the island, will require the cooperation of Castle and Cooke Resorts, LLC.

3. Excluding proposed unit Lanai D will foster participation in ongoing and future voluntary conservation efforts on the island. We believe the memorandum of agreement with Castle and Cooke Resorts, LLC, documents this commitment to voluntary conservation efforts on their lands on Lanai. This cooperation is essential to the conservation of the species.

4. Given the current watershed partnership and recent conservation agreements between the Service and the landowner, the Service believes the overall regulatory and educational benefits of including this unit as critical habitat are relatively small in comparison. The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal will be effectively accomplished through the identification of this area in the management agreements described above. Likewise, there will be little Federal regulatory benefit to the species because, as described in the economic analysis and in this rule, there is a low likelihood that this proposed critical habitat unit will be negatively affected to any significant degree by Federal activities requiring section 7 consultation. The Service is unable to identify any other potential benefits associated with critical habitat for this proposed unit.

In conclusion, we find that the net benefits of excluding proposed unit Lanai D from critical habitat for these species outweigh the benefits of including it. As described above, the overall benefits to these species of a critical habitat designation for this unit are relatively small. We conclude there is a higher likelihood of beneficial conservation activities occurring on this portion of Lanai without designated critical habitat than there would be with designated critical habitat in this location. We reached this conclusion because active management is integral to the recovery of these species, which are found almost entirely on private land. The landowner is more likely to continue and increase their ongoing voluntary conservation efforts on the island if this area is not designated as critical habitat.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

In considering whether or not exclusion of proposed unit D might result in the extinction of any of these 28 species, the Service first considered the impacts to the seven species endemic to Lanai (Abutilon eremitopetalum, Cyanea macrostegia ssp. gibsonii, Gahnia lanaiensis, Hedyotis schlechtendahliana var. remyi, Labordia tinifolia var. lanaiensis, Phyllostegia glabra var. lanaiensis, and Viola lanaiensis), and second to the 21

species known from Lanai and one or more other Hawaiian islands.

For both the seven endemic and the 21 ''multi-island'' species, it is the Service's conclusion that the conservation agreement developed by Castle and Cooke Resorts, LLC, and agreed to by the Service will provide more net conservation benefits than would be provided by designating proposed unit D as critical habitat. This agreement, which is described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for all Lanai's listed plants and increase their likelihood of recovery. We believe that extinction of any these species as a consequence of this exclusion is unlikely because there are no known threats in proposed unit D due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Implementation of the conservation agreement between the landowner and the Service, and the exclusion of proposed unit D, has the highest likelihood of preventing extinction of these species, especially the species endemic to the island of Lanai.

In addition, critical habitat is being designated on another area of Lanai for one species (Unit 1—*Tetramolopium remyi*), and critical habitat has been proposed and is likely to be designated on other islands for the remaining 20 multi-island species consistent with the guidance in recovery plans. These other designations identify conservation areas for the maintenance and expansion of the existing populations.

In sum, the above analysis indicates there is a much greater likelihood of the landowner undertaking conservation actions on Lanai to prevent extinction without the proposed unit Lanai D being designated as critical habitat. Therefore, the exclusion of the proposed unit Lanai D will not cause extinction and should in fact improve the chances of recovery for *Abutilon eremitopetalum, Adenophorus periens, Bonamia menziesii, Brighamia rockii, Centaurium sebaeoides, Cenchrus agrimonioides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Diellia erecta, Diplazium molokaiensis, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Solanum incompletum, Spermolepis hawaiiense, Tetramolopium remyi, Vigna o-wahuensis,* and *Viola lanaiensis.*

Taxonomic Changes

At the time we listed *Cyanea grimesiana* ssp. *grimesiana* and *Cyanea lobata,* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii.* Subsequent to the final listing, we became aware of new taxonomic treatments of these species. Also, the soon-to-be-published book *Hawaii's Ferns and Fern Allies* (Palmer, in press) has changed the family name for *Ctenitis squamigera* from Aspleniaceae to Dryopteridaceae. Due to the court-ordered deadlines, we are required to publish this final rule to designate critical habitat on Lanai before we can prepare and publish a notice of taxonomic changes for these three species. We plan to publish a taxonomic change notice for these three species after we have published the final critical habitat designations on Lanai.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this is a significant regulatory action because it may raise novel legal or policy issues. As required by the executive order, we have provided a copy of the rule, which describes the need, for this action and how designation meets that need and the economic analysis, which assesses the costs and benefits of this critical habitat designation, to OMB for review. OMB did not recommend or make any changes in this regulatory action.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the RFA to require Federal agencies to provide a certification statement with the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities.

As discussed in our Draft Economic Analysis, we are certifying that the critical habitat designation for the three Lanai species will not have a significant effect on a substantial number of small entities because the lands designated as critical habitat are owned solely by one landowner, Castle and Cooke Resorts, LCC, which is not a small entity as defined by RFA, as amended by the SBREFA. The following discussion explains our rationale.

The regulatory flexibility analysis determines whether this critical habitat designation potentially affects a ''substantial number'' of small entities in counties supporting critical habitat areas. It also quantifies the probable number of small businesses likely to experience a ''significant effect.'' While SBREFA does not explicitly define either ''substantial number'' or ''significant effect,'' the Environmental Protection Agency and other Federal agencies have interpreted these terms to represent an impact on 20 percent or more of the small entities in any industry and an effect equal or greater than three percent or more of a business' annual revenues. In both tests, this analysis conservatively examines the total estimated section 7 costs calculated in the Draft Economic Analysis, including those impacts that may be ''attributable co-extensively'' with the listing of the species.

The RFA/SBREFA defines ''small governmental jurisdiction'' as the government of a city, county, town, school district, or special district with a population of less than 50,000. By this definition, Maui County is not a small governmental jurisdiction because its population was 128,100 in 2000. Although certain State agencies, such as DLNR, may be affected by the proposed critical habitat designation, State governments are considered independent sovereigns, not small governments, for the purposes of the RFA.

No primary projects or activities that might be affected by the proposed critical habitat are expected to affect small businesses. Castle and Cooke Resorts, LLC, the sole owner of the lands on which critical habitat is designated, may be adversely affected by a decrease in property values. However, this is a company that received over $13.5 million in net income in 1999 (Lynch. February 7, 2000). It is therefore not considered to be a small business. Thus, the proposed critical habitat designation is not likely to affect small businesses on Lanai.

Our Draft Economic Analysis does mention that some small businesses may be adversely affected if, in the unlikely event that the Department of Land and Natural Resources builds fences around the critical habitat, some businesses that cater to the hunting community may be adversely affected. However, courts have indicated that an RFA/SBREFA analysis is properly limited to the impacts on entities directly regulated by the regulation. *American Trucking Ass'ns* v. *U.S. Envtl. Protection Agency,* 178 F.3d 1027, 1045 (D.C. Cir. 1999); *Mid-Tex Elec. Corp.* v. *Federal Energy Regulatory Comm'n,* 88 F.3d 1105,1170 (D.C. Cir. 1996). In this instance, that would mean that the RFA/SBREFA analysis should consider impacts on entities subject to section 7 consultation requirements, not entities regulated indirectly because of affiliation or relationship to a directly regulated entity. Thus entities that are not directly regulated by the critical habitat designation, such as businesses that supply hunters on Lanai, are not considered in this analysis.

Since these three plant species were listed (between 1991 and 1994), there have been no formal section 7 consultations and only seven informal section 7 consultations on Lanai, in addition to consultations on Federal grants to State wildlife programs. None of these consultations affected small entities. Two informal consultations were conducted on behalf of a private consulting firm, representing Maui Electric Company, who requested species lists for a proposed generating station at Miki Basin. None of the three species were reported from this area. Two informal consultations were conducted on behalf of the FAA for airport navigational or improvement projects. None of the three species were reported from the project areas. One informal consultation was conducted on behalf of the U.S. Department of the Navy regarding nighttime, low-altitude terrain flights and confined area landings over and on limited areas of northwestern Lanai by the Marine Corps. None of the three species were reported from the project area. One informal consultation was conducted on behalf of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) for the construction of a wildlife exclusion fence and removal of nonnative ungulates from the enclosure, control of invasive nonnative plants within the enclosure, and outplanting of native plants in the Lanaihale watershed area. Two species, *Bidens micrantha* ssp. *kalealaha* and *Tetramolopium remyi,* were reported from the project area. Funding for the project will be provided by NRCS, through their Wildlife Habitat Incentive Program, to Castle and Cooke Resorts, LLC. One informal consultation was conducted on behalf of the Service, for the effects of fencing and replanting of listed and endangered species within Awehi Gulch. None of the three species were reported from the Awehi Gulch project area. In addition, we are in the process of determining a project area in the Lanaihale watershed for fencing and restoration of native vegetation. Funding for the project will be provided by the Service to Castle and Cooke Resorts, LLC, in partnership with the State DLNR. Only one of the three species (*Tetramolopium remyi*) is reported from the project area.

We have determined that Maui Electric Company is not a small entity because it is not an independent non-profit organization, small governmental jurisdiction, or a small business. The FAA, U.S. Department of the Navy, and NRCS are not small entities. The informal consultations on the Lanaihale watershed area project and the Awehi Gulch project indirectly affected or concerned the major landowner on Lanai, Castle and Cooke Resorts, LLC. As stated above, we have determined that Castle and Cooke Resorts, LLC, is not a small entity because it is not a small retail and service business with less than $5 million in annual sales nor is it a small agricultural business with annual sales less than $750,000. We concurred with the NRCS's determination that the Lanaihale watershed area project, as proposed, was not likely to adversely affect listed species. At this time, the Lanaihale watershed area projects are ongoing. Therefore, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Lanai.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7, that would otherwise not be required. However, there will be little additional impact on State and local governments and their activities because two of the proposed critical habitat areas are occupied by at least one species. Other than the federally funded habitat restoration projects in the Lanaihale watershed area, we are aware of relatively few activities in the designated critical habitat areas for these three plants that have Federal involvement and thus would require consultation for ongoing projects. As mentioned above, we have conducted only seven informal consultations under section 7 on Lanai to date, and only one consultation involved any of the three species. As a result, we cannot easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

On Lanai, all of the designations are on private land under one landowner. Nearly all of the land within the critical habitat units is unsuitable for development, land uses, and activities. This is due to the units remote locations, lack of access, and rugged terrain. The majority of this land is within the State Conservation District, where State land-use controls severely limit development and most activities. Approximately 46 percent of this land is within the State Agricultural District, and less than one percent is within the State Rural District. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. However, activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these designations consist of improvements in 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 FAA 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 the major landowner on the island (who is not a small entity), within these critical habitat designations.

Lands that are within the State Rural District are primarily located within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations

from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, small farms that may receive funding or require authorizations from the Department of Agriculture, watershed management and restoration projects sponsored by NRCS, and activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would require Federal funds, permits, or authorizations in these coastal areas.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for these three species from Lanai, we can describe only 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 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 measure 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 by the Act's consultation requirements.

In summary, we have determined that, because all of the critical habitat designations are on lands under one landownership and because that landowner is not a small entity, this rule would not affect a substantial number of small entities and would not result in a significant economic effect on a substantial number of small entities. Most of this private land within the areas being designated as critical habitat is currently being used for recreational or conservation purposes, and therefore is not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area being designated. 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 and the Service. These consultations would likely occur on only a subset of the total number of parcels, all under one ownership, and, therefore, would not 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 the single landowner. 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 designation of critical habitat for *Bidens micrantha* ssp. *kalealaha, Portulaca sclerocarpa,* and *Tetramolopium remyi* will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined whether designation of critical habitat would cause: (a) Any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final addendum to the economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy production supply and distribution facilities. No energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe the designation of critical habitat for *Bidens micrantha* ssp. *kalealaha, Portulaca sclerocarpa,* and *Tetramolopium remyi* on Lanai will affect future energy production. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the three species from Lanai in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in the two areas currently occupied by one or more of the three plant species imposes no additional restrictions beyond those currently in place; and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in the remaining four unoccupied areas may require section 7 consultation on non-Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. In these cases, the most likely scenario would be section 7 consultation on Federal funding for State game management programs. However, of the four unoccupied areas, only the Lanai 1—*Tetramolopium remyi* unit falls within a State Game Management Area (GMA), and the area in which the recently extirpated *Tetramolopium remyi* population occurred within the unit has already been fenced by the State for protection against damage by ungulates. Therefore, there will be little additional impact on State and local governments and their activities as a result of the designation of critical habitat in currently unoccupied areas on Lanai.

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 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the three plant species from Lanai.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these three plant species. Therefore, designation of critical habitat for these three species does not involve any Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this final rule are the staff of the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by revising the entries for *Bidens micrantha* ssp. *kalealaha, Portulaca sclerocarpa,* and *Tetramolopium remyi* under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Bidens micrantha ssp. *kalealaha*.	Kookoolau	U.S.A. (HI)	Asteraceae	E	467	17.96(b)	NA
*	*	*	*	*	*		*
Portulaca sclerocarpa.	Poe	U.S.A. (HI)	Portulacaceae	E	532	17.96(b)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Tetramolopium remyi	None	U.S.A. (HI)	Asteraceae	E	435	17.96(b)	NA
*	*	*	*	*	*		*

3. Amend § 17.96 by adding a new paragraph (b) to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(b) Critical habitat; plants on the island of Lanai, Hawaii.

(1) *Maps and critical habitat unit descriptions.* The following paragraphs contain the legal descriptions of the critical habitat units designated for the island of Lanai, Hawaii. Existing manmade features and structures within proposed areas, such as buildings, roads, aqueducts, reservoirs, diversions, flumes, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, lawns, other rural residential landscaped areas, electrical transmission and distribution, and communication facilities and regularly maintained associated rights-of way and access ways do not contain one or more of the primary constituent elements described for each species in paragraph (b)(2) of this section and therefore, are not included in the critical habitat designations. Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the six critical habitat units designated on the island of Lanai.

(i) **Note:** Map 1—Index map follows:

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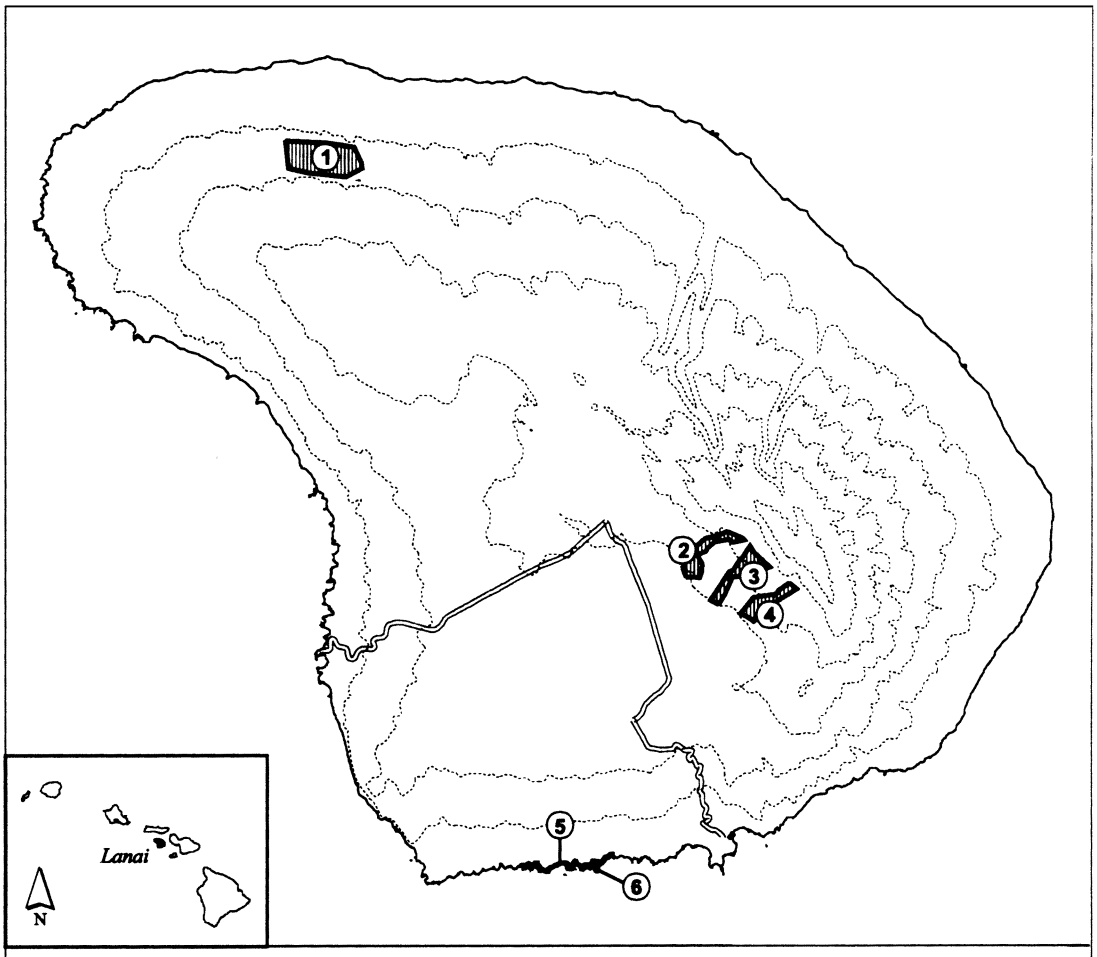

Map 1
Lanai Final Critical Habitat - Island Index Map

Final Lanai Critical Habitat Unit

Major Roads
Coastline
Elevation (500-ft. contours)

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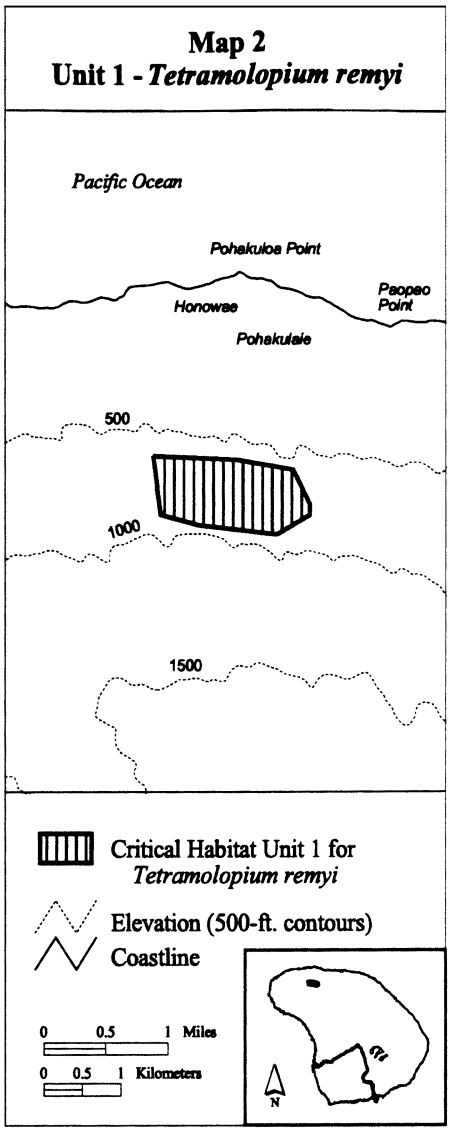
(ii) Lanai 1—*Tetramolopium remyi* (151 ha; 373 ac).

(A) Unit consists of the following nine boundary points: 708156, 2313405; 709229, 2313365; 709970, 2313244; 710178, 2312821; 710182, 2312686; 709754, 2312448; 708741, 2312566; 708241, 2312691; 708156, 2313405.

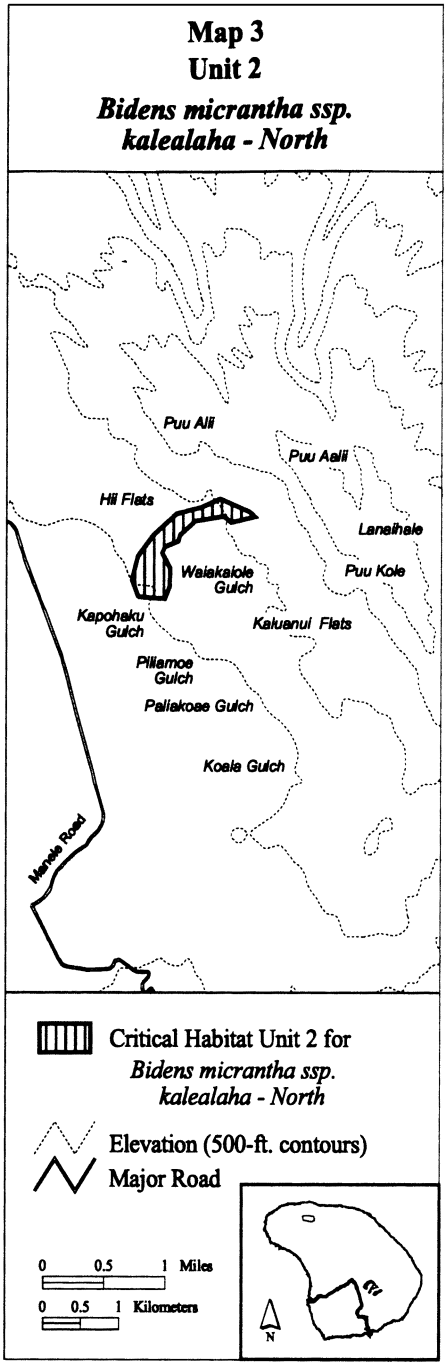
(B) **Note:** Map 2 follows:



(iii) Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North (53 ha; 131 ac)

(A) Unit consists of the following 20 boundary points: 718727, 2301883; 718642, 2302092; 718720, 2302377; 718928, 2302637; 719228, 2302896; 719550, 2302974; 719799, 2303078; 720193, 2302917; 720260, 2302858; 719948, 2302788; 719846, 2302865; 719474, 2302802; 719277, 2302635; 719253, 2302561; 719078, 2302494; 719042, 2302419; 719144, 2302231; 719136, 2302009; 719078, 2301859; 718727, 2301883.

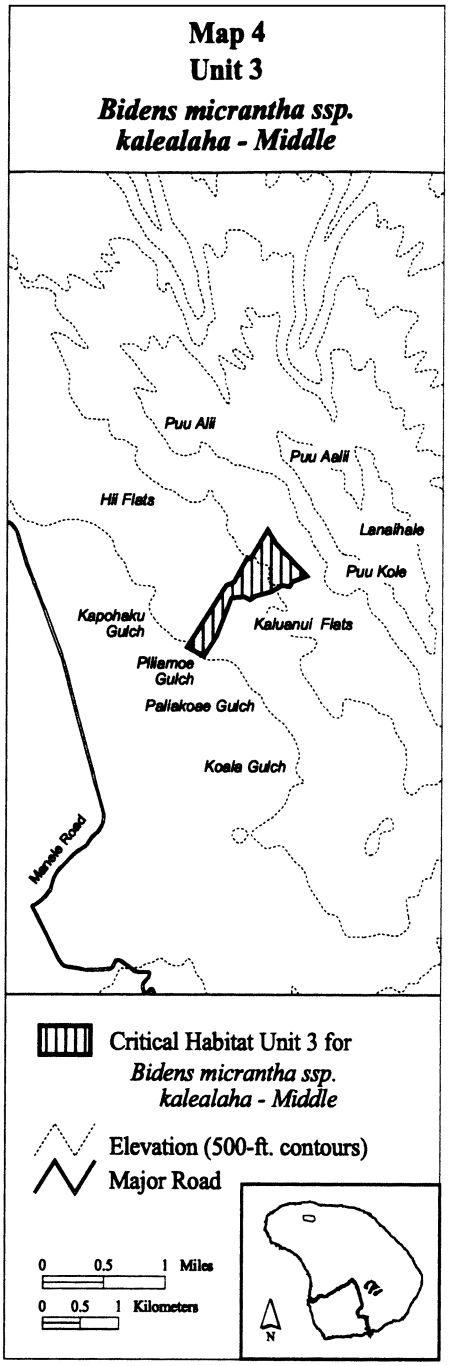
(B) **Note:** Map 3 follows:



(iv) Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle (60 ha; 148 ac)

(A) Unit consists of the following 19 boundary points: 719582, 2301162; 719361, 2301274; 719868, 2302031; 719968, 2302070; 720134, 2302344; 720198, 2302369; 720411, 2302710; 720524, 2302530; 720931, 2302147; 720741, 2302073; 720699, 2302012; 720600, 2302026; 720464, 2301954; 720259, 2301901; 720187, 2301857; 720106, 2301890; 719937, 2301876; 719749, 2301413; 719582, 2301162.

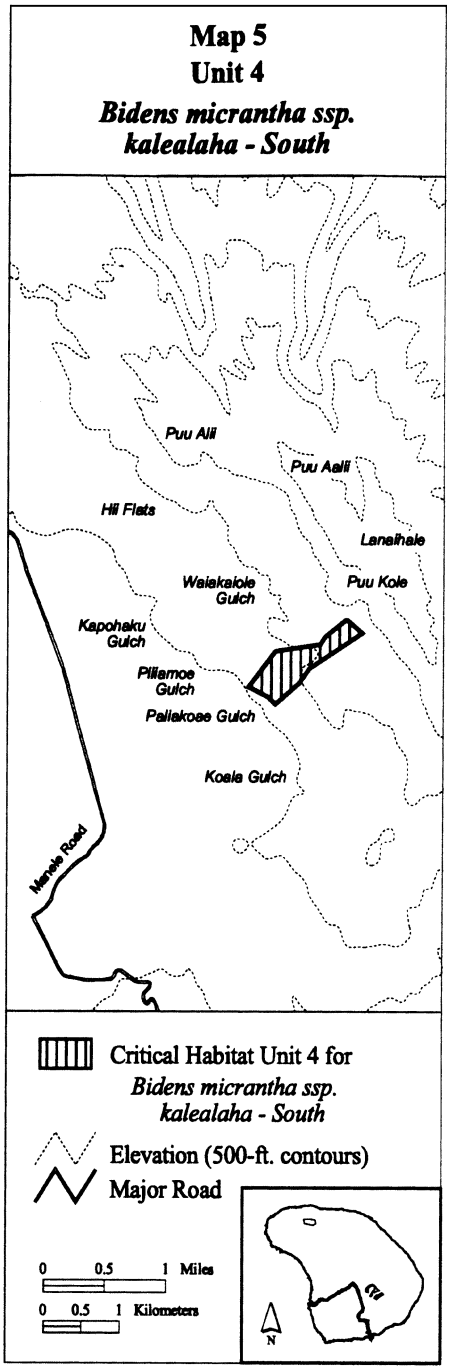
(B) **Note:** Map 4 follows:



(v) Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South (48 ha; 118 ac)

(A) Unit consists of the following 11 boundary points: 721438, 2301740; 721647, 2301574; 720952, 2301142; 720824, 2300969; 720507, 2300707; 720411, 2300796; 720164, 2300917; 720513, 2301353; 721094, 2301439; 721161, 2301532; 721438, 2301740.

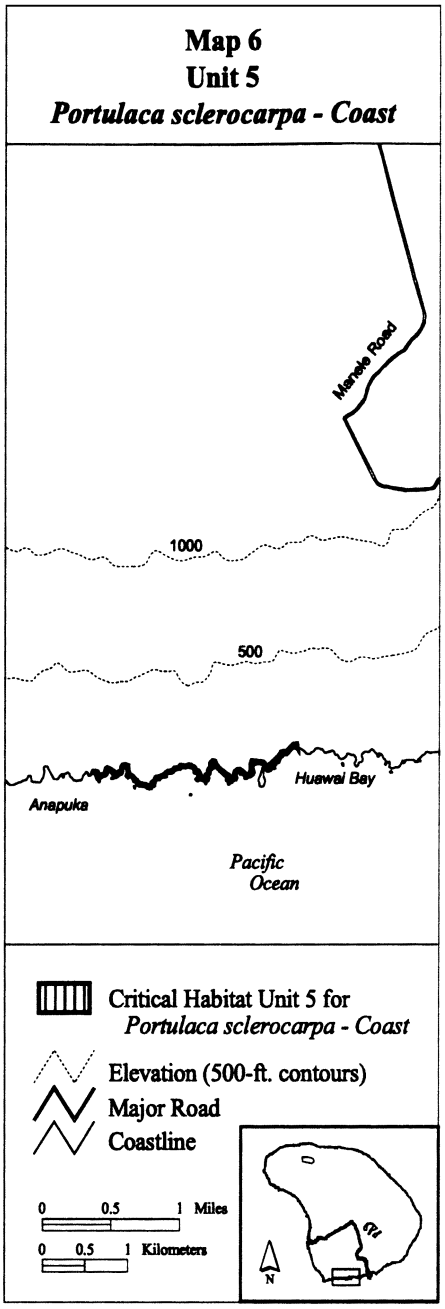
(B) **Note:** Map 5 follows:



(vi) Lanai 5—*Portulaca sclerocarpa*—Coast (7 ha; 17 ac).

(A) Area consists of the following 109 boundary points and the intermediate coastline: 716811, 2294534; 714416, 2294262; 714411, 2294277; 714422, 2294291; 714456, 2294290; 714473, 2294280; 714478, 2294247; 714484, 2294226; 714558, 2294267; 714568, 2294317; 714590, 2294331; 714662, 2294292; 714689, 2294248; 714719, 2294280; 714735, 2294279; 714745, 2294295; 714745, 2294323; 714766, 2294357; 714795, 2294361; 714829, 2294349; 714833, 2294329; 714834, 2294305; 714838, 2294281; 714832, 2294257; 714855, 2294254; 714880, 2294241; 714901, 2294221; 714907, 2294204; 714937, 2294195; 714949, 2294166; 714960, 2294158; 714995, 2294154; 715038, 2294145; 715070, 2294126; 715089, 2294125; 715107, 2294172; 715130, 2294182; 715151, 2294225; 715167, 2294229; 715188, 2294229; 715221, 2294240; 715245, 2294248; 715267, 2294269; 715290, 2294289; 715314, 2294291; 715335, 2294295; 715357, 2294305; 715377, 2294327; 715415, 2294331; 715439, 2294357; 715477, 2294353; 715496, 2294344; 715533, 2294357; 715564, 2294356; 715580, 2294347; 715605, 2294340; 715615, 2294316; 715619, 2294292; 715644, 2294298; 715659, 2294286; 715669, 2294259; 715670, 2294239; 715660, 2294219; 715671, 2294213; 715692, 2294216; 715715, 2294212; 715735, 2294242; 715758, 2294268; 715763, 2294284; 715770, 2294312; 715799, 2294336; 715787, 2294371; 715800, 2294392; 715821, 2294402; 715849, 2294396; 715860, 2294364; 715893, 2294324; 715983, 2294259; 716003, 2294252; 716014, 2294216; 716064, 2294227; 716070, 2294286; 716106, 2294307; 716142, 2294307; 716174, 2294283; 716210, 2294248; 716239, 2294258; 716264, 2294284; 716262, 2294373; 716275, 2294406; 716412, 2294390; 716458, 2294326; 716484, 2294363; 716529, 2294395; 716585, 2294452; 716619, 2294499; 716658, 2294508; 716683, 2294499; 716719, 2294550; 716756, 2294581; 716802, 2294587; 716811, 2294534.

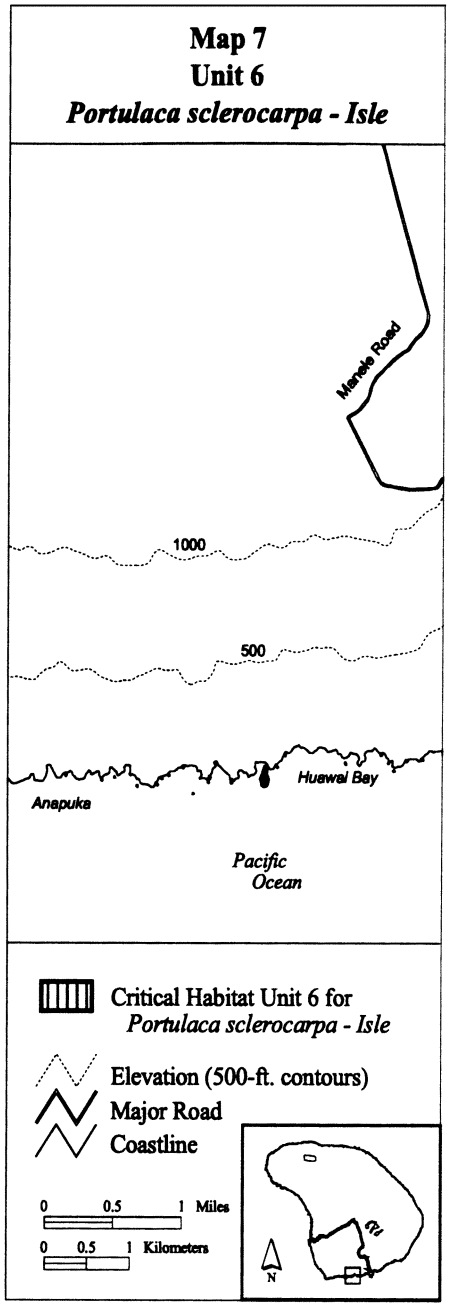
(B) **Note:** Map 6 follows:



(vii) Lanai 6—*Portulaca sclerocarpa*—Isle (1 ha; 2 ac)

(A) Area consists of the entire offshore island located at approximately: 716391, 2294222.

(B) **Note:** Map 7 follows:



(VIII) PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR LANAI

Unit name	Species occupied	Species unoccupied
Lanai 1—*Tetramolopium remyi*		*Tetramolopium remyi*.
Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North		*Bidens micrantha* ssp. *kalealaha*.
Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle	*Bidens micrantha* ssp. *kalealaha*.	
Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South		*Bidens micrantha* ssp. *kalealaha*.
Lanai 5—*Portulaca sclerocarpa*—Coast		*Portulaca sclerocarpa*.
Lanai 6—*Portulaca sclerocarpa*—Isle	*Portulaca sclerocarpa*.	

(2) *Hawaiian plants—Constituent elements; Flowering plants.*

Family Asteraceae: *Bidens micrantha* ssp. *kalealaha* (kookoolau)

Lanai 2—*Bidens micrantha* ssp. *kalealaha*—North, Lanai 3—*Bidens micrantha* ssp. *kalealaha*—Middle, and Lanai 4—*Bidens micrantha* ssp. *kalealaha*—South, identified in the legal descriptions in (b)(1)(iii), (b)(1)(iv), and (b)(1)(v) of this section, constitute critical habitat for *Bidens micrantha* ssp. *kalealaha* on Lanai. Within these units, the currently known primary

constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulch slopes in dry *Dodonaea viscosa* shrubland; and

(ii) Elevations between 409 and 691 m (1,342 and 2,267 ft).

Family Asteraceae: *Tetramolopium remyi* (NCN)

Lanai 1—*Tetramolopium remyi,* identified in the legal descriptions in (b)(1)(ii) of this section, constitutes critical habitat for *Tetramolopium remyi* on Lanai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Red, sandy, loam soil in dry *Dodonaea viscosa-Heteropogon contortus* communities with one or more of the following associated native species: *Bidens mauiensis, Waltheria indica, Wikstroemia oahuensis,* or *Melanthera lavarum;* and

(ii) Elevations between 90 and 481 m (295 and 1,578 ft).

Family Portulacaceae: *Portulaca sclerocarpa* (poe)

Lanai 5—*Portulaca sclerocarpa*—Coast and Lanai 6—*Portulaca sclerocarpa*—Isle, identified in the legal descriptions in (b)(1)(vi) and (b)(1)(vii) of this section, constitute critical habitat for *Portulaca sclerocarpa* on Lanai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Exposed ledges in thin soil in coastal communities; and

(ii) Elevations between 0 and 30 m (0 and 98 ft).

Dated: December 27, 2002.

David P. Smith,

Acting Assistant Secretary of Fish and Wildlife and Parks.

[FR Doc. 03–130 Filed 1–8–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
January 9, 2003

Part III

Environmental Protection Agency

40 CFR 63

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7419–3]

RIN 2060–AG52

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for the plywood and composite wood products (PCWP) source category. The EPA has determined that the PCWP source category contains major sources of hazardous air pollutants (HAP), including acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. These HAP are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, damage to nasal membranes, reproductive disorders, and problems with pregnancies) and acute health disorders (*e.g.*, irritation of eyes, throat, and mucous membranes, dizziness, headache, and nausea). Three of the HAP have been classified as probable or possible human carcinogens. These proposed standards would implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources subject to the rule to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). Implementation of the proposed standards would reduce HAP emissions from the PCWP source category by approximately 9,700 megagrams per year (Mg/yr) (11,000 tons per year (tons/yr)). In addition, the proposed standards would reduce emissions of volatile organic compounds (VOC) by 25,000 Mg/yr (27,000 tons/yr). This action also proposes to add a method to the relevant General Provisions to measure methanol, formaldehyde, and phenol and a method to measure total HAP at PCWP facilities.

DATES: *Comments.* Submit comments on or before March 10, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by January 29, 2003, a public hearing will be held on February 10, 2003.

ADDRESSES: *Comments.* Written comments sent by U.S. mail should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket Number A–98–44, Room B108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. Written comments delivered in person or by courier (*e.g.*, FedEx, Airborne, and UPS) should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket Number A–98–44, Room B102, U.S. EPA, 1301 Consitution Avenue, NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina.

Docket. Docket No. A–98–44 contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460 in room B108, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

General and technical information. Mary Tom Kissell, Waste and Chemical Processes Group, Emissions Standards Division (C439–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–4516, electronic mail (e-mail) address *kissell.mary@epa.gov*.

Methods, sampling, and monitoring information. Gary McAlister, Source Measurement Analysis Group, Emission Monitoring and Analysis Division (D243–02), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1062, e-mail address *mcalister.gary@epa.gov*.

Economic impacts and benefit analysis. Larry Sorrels, Innovative Strategies and Economics Group, Air Quality Strategies and Standards Division (C339–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5041, e-mail address *sorrels.larry@epa.gov*.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–98–44. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mary Tom Kissell, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park NC 27711. The EPA will disclose information identified as CBI only the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact JoLynn Collins, Waste and Chemical Processes Group, Emissions Standards Division (C439–03), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–5671 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call JoLynn Collins to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, with certain exceptions, will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 566–1742. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of regulated entities
Industry	2421	321999	Sawmills with lumber kilns.
	2435	321211	Hardwood plywood and veneer plants.
	2436	321212	Softwood plywood and veneer plants.
	2493	321219	Reconstituted wood products (Particleboard, medium density fiberboard, hardboard, fiberboard, and oriented strandboard plants).
	2439	321213	Structural Wood Members, Not Elsewhere Classified (Engineered wood products plants).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2231 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

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I. Introduction

A. What Is the Purpose of This Proposed Rule?

The purpose of the proposed rule is to protect the public health by reducing emissions of HAP from PCWP facilities.

B. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The PCWP source category was originally listed as the plywood and particleboard source category on July 16, 1992 (57 FR 31576). The name of the source category was changed to plywood and composite wood products on November 18, 1999 (64 FR 63025) to more accurately reflect the types of manufacturing facilities covered by the source category. Major sources of HAP are those that have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons per year of any combination of HAP.

Section 112(d) of the CAA directs us to adopt emission standards for categories and subcategories of HAP sources. In cases where emission standards are not feasible, section 112(h) of the CAA allows us to develop design, equipment, work practice and/or operational standards. The collection of compliance options, operating requirements, and work practice requirements in today's proposed rule make up the emission standards and

work practice standards for the PCWP NESHAP.

C. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we must also consider any control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

D. How Was This Proposed Rule Developed?

We used several resources to develop this proposed rule, including questionnaire responses from industry, emissions test data, site visits to PCWP facilities, telephone contacts, and operating permits. We consulted representatives of the PCWP industry, State and Federal representatives, and emission control device vendors in developing this proposed rule. Industry representatives provided emissions test data, arranged site visits, reviewed draft questionnaires, and identified issues and provided information to help resolve issues in the rulemaking process. State representatives provided emissions test data and copies of permits.

We identified the MACT floor level of control with information obtained from the questionnaire responses, emission test reports, site visits, telephone contacts, and operating permits.

E. What Are the Health Effects of the Pollutants Emitted From the PCWP Industry?

This proposed rule protects air quality and promotes the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. The HAP emitted by PCWP facilities include, but are not limited to, acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. Exposure to these compounds has been demonstrated to cause adverse health effects when present in concentrations higher than those typically found in ambient air.

We do not have the necessary data on each PCWP facility and the people living around each facility to determine the actual population exposures to the HAP emitted from these facilities and the potential health effects. Therefore, we do not know the extent to which the adverse health effects described in the following subsections occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, today's proposed rule would reduce emissions and subsequent exposures.

1. Acetaldehyde

Acetaldehyde is ubiquitous in the environment and may be formed in the body from the breakdown of ethanol (ethyl alcohol). Acute (short-term) exposure to acetaldehyde results in effects including irritation of the eyes, skin, and respiratory tract. In humans, symptoms of chronic (long-term) exposure to acetaldehyde resemble those of alcoholism. Long-term inhalation exposure studies in animals reported damage to the nasal epithelium and mucous membranes, growth retardation, and increased kidney weight. We have classified acetaldehyde as a probable human carcinogen (Group B2) based on animal studies that have shown nasal tumors in rats and laryngeal tumors in hamsters.

2. Acrolein

Acute (short-term) inhalation exposure to acrolein may result in upper respiratory tract irritation and congestion. The major effects from chronic (long-term) inhalation exposure to acrolein in humans consist of general respiratory congestion and eye, nose, and throat irritation. Acrolein is a strong dermal irritant, causing skin burns in humans. We consider acrolein a possible human carcinogen (Group C) based on limited animal cancer data suggesting an increased incidence of tumors in rats exposed to acrolein in the drinking water.

3. Formaldehyde

Both acute (short-term) and chronic (long-term) exposure to formaldehyde irritates the eyes, nose, and throat, and may cause coughing, chest pains, and bronchitis. Reproductive effects, such as menstrual disorders and pregnancy problems, have been reported in female workers exposed to formaldehyde. Limited human studies have reported an association between formaldehyde exposure and lung and nasopharyngeal cancer. Animal inhalation studies have reported an increased incidence of nasal squamous cell cancer. We consider formaldehyde a probable human carcinogen (Group B2).

4. Methanol

Acute (short-term) or chronic (long-term) exposure of humans to methanol by inhalation or ingestion may result in blurred vision, headache, dizziness, and nausea. No information is available on the reproductive, developmental, or carcinogenic effects of methanol in humans. Birth defects have been observed in the offspring of rats and mice exposed to methanol by inhalation. A methanol inhalation study using rhesus monkeys reported a decrease in the length of pregnancy and limited evidence of impaired learning ability in offspring. We have not classified methanol with respect to carcinogenicity.

5. Phenol

Acute (short-term) inhalation and dermal exposure to phenol is highly irritating to the skin, eyes, and mucous membranes in humans. Oral exposure to small amounts of phenol may cause irregular breathing, muscular weakness and tremors, coma, and respiratory arrest at lethal concentrations. Anorexia, progressive weight loss, diarrhea, vertigo, salivation, and a dark coloration of the urine have been reported in chronically (long-term) exposed humans. Gastrointestinal irritation and blood and liver effects have also been reported. No studies of developmental or reproductive effects of phenol in humans are available, but animal studies have reported reduced fetal body weights, growth retardation, and abnormal development in the offspring of animals exposed to phenol by the oral route. We have classified phenol in Group D, not classifiable as to human carcinogenicity.

6. Propionaldehyde

No information is available on the acute (short-term) effects of propionaldehyde in humans. Animal studies have reported that inhalation exposure to high levels of propionaldehyde results in anesthesia and liver damage. No information is available on the chronic (long-term), reproductive, developmental or carcinogenic effects of propionaldehyde in animals or humans. We have not classified propionaldehyde for carcinogenicity.

F. Incorporation by Reference of NCASI Test Methods

With today's action, we are proposing to amend 40 CFR 63.14 by revising paragraph (f) to incorporate by reference two test methods developed by the National Council of the Paper Industry for Air and Stream Improvement (NCASI): (1) Method CI/WP–98.01, Chilled Impinger Method for Use at Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol; and (2) pending review by EPA, Method IM/CAN/WP–99.01, Impinger/Canister Source Sampling Method for Selected HAPs at Wood Products Facilities. These methods are available from the NCASI, Methods Manual, P.O. Box 133318, Research Triangle Park, NC 27709–3318 or at *http://www.ncasi.org.* They are also available from the docket for this proposed rule (Docket Number A–98–44).

In today's proposed rule, NCASI Method CI/WP–98.01 would be allowed as an alternative to:

- EPA Method 320, Measurement of Vapor Phase Organic and Inorganic Emission by Extractive FTIR, for measuring methanol or formaldehyde;
- EPA Method 0011, Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources, for measuring formaldehyde;
- EPA Method 316, Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries, for measuring formaldehyde;
- EPA Method 308, Procedure for Determination of Methanol Emission from Stationary Sources, for measuring methanol; and
- NCASI Method IM/CAN/WP–99.01 for measuring formaldehyde or methanol.

The NCASI Method CI/WP–98.01 has been validated using EPA Method 301, Field Validation of Pollutant Measurement Methods from Various Waste Media, for measuring methanol, formaldehyde, and phenol emissions from PCWP facilities. (EPA Method 0011 is available in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846. EPA Methods 301, 308, 316, and 320 are in 40 CFR part 63, appendix A.)

In today's proposed rule, NCASI Method IM/CAN/WP–99.01, which is a self-validating method, would be allowed, pending our review, as an alternative to:

- EPA Method 320, for measuring methanol, formaldehyde, or total HAP;
- EPA Methods 0011 and 316, for measuring formaldehyde;
- EPA Method 308, for measuring methanol; and
- NCASI Method CI/WP–98.01, for measuring formaldehyde or methanol.

G. Alternative Procedure for Determining Press Enclosure Capture Efficiency

We are working with industry representatives to develop a procedure that uses measurement of tracer gas to determine capture efficiency. We are proposing this ''tracer gas procedure'' today in appendix A to the proposed subpart DDDD.

H. Changes to the Scope of a Source Category

Today's action serves to broaden the PCWP source category to include lumber kilns located at stand-alone kiln-dried lumber manufacturing facilities or at any other type of facility. Wood products industry representatives requested that all lumber kilns (regardless of location) be considered in today's proposed rule so there would be one MACT determination for all lumber kilns nationwide. If lumber kilns at stand-alone kiln-dried lumber manufacturing facilities and other types of facilities are not included in the PCWP NESHAP, kiln-dried lumber manufacturing could be listed as a major source category under section 112(c) of the CAA in the future, requiring a separate section 112(d) rulemaking, and may become separately subject to the provisions of section 112(g) of the CAA as well. Because the design and operation of lumber kilns are essentially the same regardless of whether the kilns are located at a sawmill or are co-located with PCWP or other types of manufacturing operations, we have included lumber kilns in the PCWP source category. Broadening the scope of the PCWP source category to include lumber kilns located at any type of facility is reasonable because based on our information, there are no currently applicable controls at any lumber kilns and it is both more efficient and expeditious to include them in the MACT process now than to separately address them in a rulemaking that would not likely result in meaningful emissions reductions from lumber kilns. Moreover, including all lumber kilns in the PCWP MACT results in placing them on a faster schedule for purposes of future residual risk analysis under CAA section 112(f).

II. Summary of Proposed Rule

A. What Process Units Are Subject to This Proposed Rule?

The proposed rule would regulate HAP emissions from PCWP facilities that are major sources. Plywood and composite wood products are manufactured by bonding wood material (fibers, particles, strands, *etc.*) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. Plywood and composite wood products manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any facility. Plywood and composite wood products include (but are not limited to) plywood, veneer, particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams. Table 1 of this preamble lists the process units at PCWP facilities and indicates which process units are subject to the control requirements in today's proposed rule. ''Process unit'' means equipment classified according to its function such as a blender, dryer, press, former, or board cooler.

TABLE 1.—PROCESS UNITS THAT ARE SUBJECT TO THE PROPOSED CONTROL REQUIREMENTS

For the following process units . . .	Does today's proposed rule include control requirements for . . .	
	Existing affected sources?	New affected sources?
Softwood veneer dryers; tube dryers; strand dryers; green rotary dryers; hardboard ovens; reconstituted wood product presses; and pressurized refiners.	Yes	Yes.
Press predryers; fiberboard mat dryers; and board coolers	No	Yes.
Dry rotary dryers; veneer redryers; plywood presses; engineered wood products presses; hardwood veneer dryers; humidifiers; atmospheric refiners; formers; blenders; rotary agricultural fiber dryers; agricultural fiber board presses; sanders; saws; fiber washers; chippers; log vats; lumber kilns; storage tanks; wastewater operations; miscellaneous coating operations; and stand-alone digesters.	No	No.

The affected source for this proposed rule is the combination of all PCWP manufacturing operations, including PCWP process units, onsite storage of raw materials, onsite wastewater treatment operations associated with PCWP manufacturing, and miscellaneous coating operations located in a single facility covering a contiguous area under common control that is also a major source. One of the implications of the proposed definition of affected source is that the control requirements or ''floor,'' as defined in section 112(d)(3), are determined for the entire PCWP facility. Therefore, except for lumber kilns not otherwise located at PCWP facilities, this proposed rule contains the control requirements that represent the MACT level of control for the entire facility. For lumber kilns not otherwise located at PCWP facilities, this proposed rule contains the control requirements that represent the MACT level of control only for lumber kilns.

B. What Pollutants Are Regulated by This Proposed Rule?

The proposed rule would regulate HAP emissions from PCWP facilities. For the purpose of compliance with 40 CFR part 63, subpart DDDD, we defined ''total HAP'' to be the sum of the emissions of six primary HAP emitted from PCWP manufacturing. For the purpose of determining whether your facility is a major source, you would have to include all HAP as prescribed by rules and guidance pertaining to determination of major source.

The six HAP that define ''total HAP'' are: Acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. Other HAP are sometimes emitted and controlled along with these six HAP, but in low quantities that may be difficult to measure. Depending upon which of the compliance alternatives you choose, you could be required to measure emissions of total hydrocarbon (THC), methanol, or formaldehyde as surrogates for measuring total HAP.

C. What Are the Compliance Options?

Today's proposed rule includes a range of compliance options which are summarized in the following subsections. You would have to use one of the compliance options to show compliance with the proposed rule. In most cases, the proposed compliance options would be the same for new and existing sources. Dilution to achieve compliance is prohibited as specified in 40 CFR 63.4.

1. Production-Based Compliance Options

Today's proposed rule includes production-based compliance options which are based on total HAP and vary according to type of process unit. Total HAP emissions are defined in today's proposed rule as the total mass emissions of the following six HAP: Acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. The production-based compliance options are in units of mass of pollutant per unit of production. Add-on control systems may not be used to meet the production-based compliance options. For pressurized refiners and most dryers, the production-based compliance options are expressed as pounds per oven-dried-ton of wood (lb/ODT). For presses, hardboard ovens, and some dryers, the production-based compliance options are expressed as pounds per thousand square feet of board (lb/MSF), with a reference board thickness.

2. Add-On Control System Compliance Options

If you operate a process unit equipped with an add-on control system, you may use any one of the following six compliance options. ''Add-on control system'' or ''control system'' means the combination of capture and control devices used to reduce HAP emissions to the atmosphere.

a. Reduce THC emissions (as carbon, and minus methane if you wish to subtract methane) by 90 percent.

b. Reduce methanol emissions by 90 percent.

c. Reduce formaldehyde emissions by 90 percent.

d. Limit the concentration of THC (as carbon, and minus methane if you wish to subtract methane) in the outlet of the add-on control system to 20 parts per million by volume, dry basis (ppmvd).

e. Limit the concentration of methanol in the exhaust from the add-on control system to 1 ppmvd (can be used only if the concentration of methanol entering the control device is greater than or equal to 10 ppmvd).

f. Limit the concentration of formaldehyde in the exhaust from the add-on control system to 1 ppmvd (can be used only if the concentration of formaldehyde entering the control device is greater than or equal to 10 ppmvd).

In the first three options (a through c), the 90 percent control efficiency represents a total control efficiency. Total control efficiency is defined as the product of the capture efficiency and the control device efficiency. For process units such as rotary strand dryers, capture efficiency is not an issue because the rotary strand dryer has a single exhaust point which is easily captured by the control device. However, for presses and board coolers, the HAP emissions cannot be completely captured without installing an enclosure. If the enclosure meets the criteria for a permanent total enclosure (PTE) as described in EPA Test Method 204 (40 CFR part 51, appendix M), then you could assign the enclosure a capture efficiency of 100 percent. You would have to test other enclosures to determine capture efficiency using EPA Test Methods 204 and 204A through 204F (as appropriate) or the alternative

tracer gas procedure in today's proposed rule. For the three concentration options (d through f), you would need to have an enclosure that either meets the criteria for a PTE or achieves a capture efficiency greater than or equal to 95 percent.

The six compliance options are equivalent ways to express the HAP control levels that represent the MACT floor. Because the compliance options are equivalent for controlling HAP emissions, you would be required to meet only one compliance option for add-on control systems. For example, if you elect to test your control system for THC and formaldehyde and the test results demonstrate compliance with only the THC or only the formaldehyde compliance option, you would still be in compliance with today's proposed rule.

3. Emissions Averaging Compliance Option

The CAA does not limit how we set control requirements beyond requiring that they be applicable to all sources in a category and be at least as stringent as the MACT floor. Therefore, the relevant statutory language does not prohibit us from allowing a source to meet MACT through use of emissions averaging as long as averaging does not cross source category boundaries, and the standard is set at a level at least as stringent as the MACT floor. As explained in this preamble, we believe we have met these criteria. In addition, it should be noted that Congress explicitly provided that cost should be considered in setting the standards. Emissions averaging is a means of achieving the required emissions reductions in a cost effective way. Therefore, if you operate an existing affected source, you could choose to comply with the emissions averaging provisions instead of the production-based compliance options or add-on control system compliance options.

Emissions averaging is a system of debits and credits in which the credits must equal or exceed the debits. ''Debit-generating process units'' are the PCWP process units required to meet the proposed control requirements that you choose to either not control or under-control. ''Credit-generating process units'' are the PCWP process units that you choose to control. You may take credit for emissions from debit-generating process units that are under-controlled. Control devices used for credit-generating process units may not be assigned more than 90 percent control efficiency.

Under the emissions averaging provisions, you would determine the required mass removal (RMR) of total HAP from debit-generating process units for a 6-month compliance period. Total HAP is defined in today's proposed rule to include acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. The RMR would be based on initial total HAP measurements for each debit-generating process unit, your process unit operating hours for a 6-month period, and the required 90 percent control system efficiency. One hundred percent of the RMR for debit-generating process units would have to be achieved or exceeded by the actual mass removal (AMR) of total HAP achieved by credit-generating process units. The AMR is determined based on initial performance tests, the total HAP removal efficiency of the control systems used to control the credit-generating process units, and your process unit operating hours over the 6-month period.

There are some restrictions on use of the emissions averaging provisions in today's proposed rule. You would have to limit emissions averaging to the process units located within your affected source. Emissions averaging could not be used at new affected sources. You could not include in an emissions average those process units that are not operating or that are shut down. You could not include in your emissions average those process units controlled to comply with a State or Federal rule other than today's proposed rule (unless the process unit was included in an emissions average and the control system was installed before the process unit was subject to the other State or Federal rule). Only PCWP process units using add-on control systems may be used to generate credits.

D. What Operating Requirements Are in the Proposed Rule?

The operating requirements in today's proposed rule would apply to add-on control systems used to comply with the proposed rule and to process units that can meet the proposed production-based compliance options. For incineration-based control devices and biofilters, the proposed rule specifies that you would either monitor operating parameters or use a THC continuous emission monitoring system (CEMS) to demonstrate continuous compliance. The proposed operating requirements are summarized below:

- If you operate a thermal oxidizer, such as a regenerative thermal oxidizer (RTO) or a combustion unit that accepts process exhaust into the flame zone, you would be required to maintain the firebox temperature at a level that is greater than or equal to the minimum temperature established during the performance test. You would also be required to maintain the average static pressure at the inlet of the thermal oxidizer within the operating range established during the performance test. You may choose to monitor gas flow rate at the thermal oxidizer stack as an alternative to monitoring static pressure. If you monitor gas flow, you must maintain the gas flow rate below the maximum flow rate established during the performance test. If you operate a combustion unit that accepts process exhaust into the flame zone and that combustion unit has a heat input capacity of greater than or equal to 44 megawatts (MW), you would be exempt from the testing and monitoring requirements described above for thermal oxidizers.
- If you operate a catalytic oxidizer, such as a regenerative catalytic oxidizer (RCO) or thermal catalytic oxidizer (TCO), you would be required to maintain the temperature upstream of the catalyst bed at or above the minimum temperature established during the performance test. You would also be required to maintain the average static pressure at the inlet of the catalytic oxidizer within the operating range established during the performance test. You may choose to monitor gas flow rate at the catalytic oxidizer stack as an alternative to monitoring static pressure. If you monitor gas flow, you must maintain the gas flow rate below the maximum flow rate established during the performance test.
- If you operate a biofilter, you would be required to maintain the temperature of the air stream entering the biofilter, pH of the biofilter effluent, and pressure drop across the biofilter bed within the ranges you specify during the initial performance test or during qualifying previous performance tests using the required test methods. If you use values from previous performance tests to establish the operating parameter ranges, you would have to certify that the biofilter and associated process unit(s) have not been modified subsequent to the date the previous data were collected.
- If you operate an add-on control system not listed in today's proposed rule, you would establish operating parameters to be monitored and parameter values that represent your operating requirements during the performance test, subject to prior written approval by the Administrator.
- If you operate a process unit that can meet the production-based compliance options without an add-on

control device, you would be required to maintain the average process unit inlet or operating temperature (depending on the specific process unit) below the maximum temperature established during the performance test.

• As an alternative to monitoring the operating parameters specified above for thermal oxidizers, catalytic oxidizers, biofilters, other control devices, and process units that meet the compliance options for process units without add-on control systems, you would be allowed to monitor THC concentration in the outlet stack with a THC CEMS. You would be required to maintain the outlet THC concentration below the maximum concentration established during the performance test. You may choose to subtract methane from the THC concentration measured by the CEMS if you wish to do so.

E. What Are the Work Practice Requirements?

The work practice requirements in today's proposed rule apply to veneer dryers, dry rotary dryers, veneer redryers, and hardwood veneer dryers. For veneer dryers, the proposed work practice requirements require you to minimize fugitive emissions from the veneer dryer doors (by applying appropriate operation and maintenance procedures) and from the green end of the dryers (through proper balancing of hot zone exhausts). The proposed work practice requirements also specify parameters that you would monitor to demonstrate that each dry rotary dryer, redryer, and hardwood veneer dryer continuously operates in a manner consistent with the definitions of these process units provided in today's proposed rule, as follows:

• If you operate a dry rotary dryer, you would be required to maintain the inlet dryer temperature at or below 600 °F and maintain the moisture content of the wood particles entering the dryer at or below 30 weight percent, on a dry basis.

• If you operate a veneer redryer, you would be required to maintain the moisture content of the wood veneer entering the dryer at or below 25 percent, by weight.

• If you operate a hardwood veneer dryer, you would be required to process less than 30 percent, by volume, softwood species each year.

F. When Must I Comply With This Proposed Rule?

Existing PCWP facilities must comply within 3 years of the date the promulgated rule is published in the **Federal Register**. New sources that commence construction after today's date must comply immediately upon initial startup or on the effective date of the rule, whichever is later.

G. How Do I Demonstrate Initial Compliance With This Proposed Rule?

The initial compliance requirements in today's proposed rule vary with the different compliance options.

1. Production-Based Compliance Options

If you are complying with the production-based compliance options in today's proposed rule, you would be required to conduct an initial performance test using specified test methods to demonstrate initial compliance. You would be required to test the efficiency of your emissions capture device during the initial compliance test if the process unit is a press or board cooler. The actual emission rate of the press or board cooler would be equivalent to the measured emissions divided by the capture efficiency. You would be required to install process (temperature) monitoring equipment to be used to demonstrate compliance with the operating requirements for process units without add-on control systems or install a THC CEMS and monitor the outlet THC concentration. During the initial compliance test, you would use the process monitoring equipment to establish the parameter value that represents your operating requirement for the process unit.

2. Add-On Control System Compliance Options

If you use the compliance options for add-on control systems, you would be required to conduct an initial performance test using specified test methods to demonstrate initial compliance. With the exception of the 20 ppmvd THC concentration option, you would be required to test at both the inlet and the outlet of the control device. If you use any of the six compliance options for add-on control systems, and the process unit is a press or a board cooler without a PTE, you would also be required to test the capture efficiency of your partial enclosure. Prior to the initial performance test, you would be required to install control device parameter monitoring equipment or THC CEMS to be used to demonstrate compliance with the operating requirements for add-on control systems in today's proposed rule. During the initial compliance test, you would use the control device parameter monitoring equipment or THC CEMS to establish the parameter values that represent your operating requirements for the control systems. If your add-on control system is preceded by a particulate control device, you would only be required to establish operating parameter values for the HAP control system and not for the particulate control device. If your control device is a biofilter, then you may use historical operating records for the biofilter to establish your operating requirements as long as you were in compliance with the emission limits in today's proposed rule when the data were collected, the test data were obtained using the test methods in today's proposed rule, and no modifications were made to the process unit or biofilter subsequent to the date the historical data were collected.

3. Emissions Averaging Compliance Option

If you elect to comply with the emissions averaging compliance option in today's proposed rule, you would be required to submit an Emissions Averaging Plan (EAP) to the Administrator for approval. The EAP would describe the process units you are including in the emissions average. The plan also would specify which process units will be credit-generating units and which process units will be debit-generating units. The EAP would also have to include descriptions of the control systems used to generate emission credits, documentation of the total HAP measurements made to determine the RMR, calculations and supporting documentation to demonstrate that the AMR will be greater than or equal to the RMR, and a summary of the operating parameters that will be monitored for the credit-generating units.

Following approval of your EAP, you would be required to conduct performance tests to determine the total HAP emissions from all process units included in the EAP. The credit-generating process units would be equipped with add-on control systems; therefore, for those process units, you would follow the procedures for demonstrating initial compliance as outlined above for add-on control systems. The emissions averaging provisions would require you to conduct all total HAP measurements and performance test(s) when the process units are operating under representative operating conditions. Today's proposed rule defines ''representative operating conditions'' as those conditions under which the process unit will be typically operating following the compliance date. Representative conditions would include such things as using a

representative range of materials (*e.g.*, wood material of a typical species mix and moisture content, typical resin formulations) and operating the process unit at typical operating temperature ranges.

4. Work Practice Requirements

The work practice requirements in today's proposed rule do not require you to conduct any initial performance tests. To demonstrate initial compliance with the work practice requirements for dry rotary dryers, you would have to install parameter monitoring devices to continuously monitor the dryer inlet operating temperature and the moisture content (dry basis) of the wood furnish (*i.e.*, wood fibers, particles, or strands used for making board) entering the dryer. You would then use the parameter monitoring devices to continuously monitor and record the dryer temperature and wood furnish moisture content for a minimum of 30 days. If the monitoring data indicate that during the minimum 30-day demonstration period, your dry rotary dryer continuously processed wood furnish with an inlet moisture content less than or equal to 30 percent, and the dryer was continuously operated at an inlet dryer temperature less than or equal to 600 °F, then your dryer would meet the definition of a dry rotary dryer in today's proposed rule. You would submit the monitoring data as part of your notification of compliance status report.

To demonstrate initial compliance with the work practice requirements for hardwood veneer dryers, you would have to calculate the annualized percentage of softwood veneer processed in the dryer by volume, using veneer dryer production records for the 12-month period prior to the compliance date. If the total annual percentage by volume of softwood veneer is less than 30 percent, your veneer dryer would meet the definition of hardwood veneer dryer. You would then submit a summary of the production data for the 12-month period and a statement verifying that the veneer dryer will continue to process less than 30 percent softwoods as part of your notification of compliance status report.

To demonstrate initial compliance with the work practice requirements for softwood veneer dryers, you would have to develop a plan for minimizing fugitive emissions from the veneer dryer green end and heated zones. You would submit the plan with your notification of compliance status report.

To demonstrate initial compliance with the work practice requirements for veneer redryers, you would have to install a device that can be used to continuously monitor the moisture content (dry basis) of veneer entering the dryer. You would then use the moisture monitoring device to continuously monitor and record the inlet moisture content of the veneer for a minimum of 30 days. If the monitoring data indicate that your veneer dryer continuously processed veneer with a moisture content less than or equal to 25 percent during the minimum 30-day demonstration period, then your veneer dryer would meet the definition of a veneer redryer in today's proposed rule. You would submit the monitoring data as part of your notification of compliance status report.

H. How Do I Demonstrate Continuous Compliance With This Proposed Rule?

The continuous compliance requirements in today's proposed rule vary with the different types of compliance options.

1. Production-Based Compliance Options

If you comply with the production-based compliance options, then you would have to install a continuous parameter monitoring system (CPMS) to monitor the process operating parameter(s) used to demonstrate compliance with the operating requirements in today's proposed rule. Your CPMS would have to collect data at least every 15 minutes, and you would need to have at least three data points per hour to have a valid hour of data. You would have to operate the CPMS at all times the process unit is operating. You also would have to conduct proper maintenance of the CPMS and maintain an inventory of necessary parts for routine repairs of the CPMS. Using the data collected with the CPMS, you would calculate and record the 3-hour block average values of each process operating parameter.

The process operating parameter you would monitor for green rotary dryers, tube dryers, and strand dryers is dryer inlet temperature. The process operating parameter you would monitor for hardboard ovens, press predryers, reconstituted wood product presses, fiberboard mat dryer hot zones, and softwood veneer dryer hot zones is operating temperature. You would not be required to monitor process parameters for reconstituted wood product board coolers or pressurized refiners. For each temperature parameter, you would have to continuously maintain the 3-hour block average temperature below the maximum temperature established during the performance test.

Instead of operating a CPMS, you could choose to operate a CEMS for monitoring THC concentration to demonstrate compliance with the operating requirements in today's proposed rule. If you choose to operate a THC CEMS in lieu of a CPMS, you would have to demonstrate continuous compliance as described in the following subsection.

2. Add-On Control System Compliance Options

For add-on control systems, you would have to install a CPMS to monitor the specified control device operating parameter(s) or install a CEMS to monitor THC concentration to demonstrate compliance with the operating requirements in today's proposed rule. If you operate a CPMS, it would have to collect data at least every 15 minutes, and you would need to have at least three data points per hour to have a valid hour of data. You would have to operate the CPMS at all times the process unit is operating. You also would have to conduct proper maintenance of the CPMS and maintain an inventory of necessary parts for routine repairs of the CPMS. Using the data collected with the CPMS, you would calculate and record the average values of each operating parameter according to the specified averaging times.

For thermal oxidizers, you would have to continuously maintain the 3-hour block average firebox temperature at or above the minimum temperature established during the performance test. For catalytic oxidizers, you would have to continuously maintain the 3-hour block average temperature upstream of the catalyst bed at or above the minimum value established during the performance test. For both thermal and catalytic oxidizers, you would also have to continuously maintain the 3-hour block average static pressure at the inlet of the thermal oxidizer within the operating range established during the performance test. As an alternative to monitoring static pressure, you may monitor gas flow rate at the oxidizer stack. If you monitor gas flow, you must maintain the 3-hour block average gas flow rate below the maximum flow rate established during the performance test.

For biofilters, you would have to maintain the gas temperature entering the biofilter, effluent pH, and pressure drop across the biofilter bed within the operating ranges you establish. You would establish your biofilter operating parameter limits, their monitoring frequencies, and their averaging times

based on data collected during the initial performance test or during qualifying previous performance tests using the required test methods. If you use values from previous performance tests to establish the operating parameter ranges, you would have to certify that the biofilter and associated process unit(s) have not been modified subsequent to the date the previous data were collected. If previous performance test data are not available (as would be the case for a new biofilter installation) you would be allowed up to 180 days after the compliance date to gather the necessary information and establish your biofilter operating parameter ranges.

If you choose to operate a CEMS for monitoring THC concentration instead of operating a CPMS, you must install, operate, and maintain the CEMS according to Performance Specification 8 in 40 CFR part 60, appendix B. You would also be required to comply with the CEMS data quality assurance requirements in Procedure 1 of appendix F of 40 CFR part 60. You would be required to conduct a performance evaluation of the CEMS according to 40 CFR 63.8 and Performance Specification 8. The CEMS would have to complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Using the data collected with the CEMS, you would calculate and record the 3-hour block average THC concentration. You would have to continuously monitor and maintain the 3-hour block average THC concentration at or below the maximum established during the performance test. You may use a CEMS capable of subtracting methane from the measured THC concentration if you wish to do so.

If you comply with today's proposed rule using an add-on control system, you could request a routine control device maintenance exemption from the Administrator. Your request for a routine control device maintenance exemption would have to document the need for routine maintenance on the control device and the time required to accomplish the maintenance, describe the maintenance activities and the frequency of these activities, explain why the maintenance could not be accomplished during process shutdowns, describe how you plan to minimize emissions to the greatest extent possible during these maintenance activities, and provide any other documentation required by the Administrator. If your request for the routine control device maintenance exemption is approved by the Administrator, it would have to be incorporated into your title V permit. The compliance options and operating requirements would not apply during times when control device maintenance covered under your approved routine control device maintenance exemption is performed. The routine control device maintenance exemption may not exceed 3 percent of annual operating uptime for each green rotary dryer, tube dryer, strand dryer, or pressurized refiner controlled. The routine control device maintenance exemption is limited to 0.5 percent of the annual operating uptime for each softwood veneer dryer, reconstituted wood product press, reconstituted wood product board cooler, hardboard oven, press predryer, or fiberboard mat dryer controlled. If your control device is used to control a combination of equipment with different downtime allowances (*e.g.*, a tube dryer and a press), then the highest (*i.e.*, 3 percent) downtime allowance applies.

3. Emissions Averaging Compliance Option

To demonstrate continuous compliance with the emissions averaging provisions, you would have to continuously comply with the applicable operating requirements for add-on control systems (described in the previous subsection). You also would have to maintain records of your operating hours for each process unit included in the EAP. For each semiannual compliance period, you would have to demonstrate that the AMR equals or exceeds the RMR using your initial (or most recent) total HAP measurements for debit-generating units, initial (or most recent) performance test results for credit-generating units, and the operating hours recorded for the semiannual compliance period.

4. Work Practice Requirements

To demonstrate continuous compliance with the work practice requirements for dry rotary dryers and veneer redryers, you would be required to operate all dry rotary dryers and veneer redryers so that they continuously meet the definitions of these process units in today's proposed rule. For dry rotary dryers, you would have to continuously monitor and maintain the inlet furnish moisture content at or below 30 percent and the inlet dryer operating temperature at or below 600 °F. You would also have to manually measure the moisture content of a representative sample of the inlet wood furnish once per day to verify the readings from the moisture meter. For veneer redryers, you would have to continuously monitor and maintain the inlet veneer moisture content at or below 25 percent.

To demonstrate continuous compliance with the work practice requirements for softwood veneer dryers, you would have to follow the procedures in your operating plan for minimizing fugitive emissions from the green end and heated zones of the veneer dryer and maintain records documenting that you have followed your plan. For hardwood veneer dryers, you would have to continue to process less than 30 percent softwood veneer by volume and maintain records on veneer dryer production.

III. Rationale for Proposed Rule

A. How Did We Select the Source Category and Any Subcategories?

The PCWP source category includes the manufacture of many types of wood products, including (but not limited to) plywood, veneer, particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams. During our review of the available information on this source category, we found that the processes used to produce the different types of wood products were more similar than dissimilar with respect to the types of equipment used and the HAP emitted. Published definitions of the various wood products often group several types of products together or overlap with definitions developed for other similar wood products. As the wood products industry continues its relatively high rate of growth, new and different wood products are coming into the marketplace, some of which are hybrids of existing wood products or modified versions of existing wood products. Because the differences between many of the product lines are already somewhat blurred and the equipment that is used to manufacture wood products cuts across industry sectors, we determined that establishing subcategories based on product type was unwarranted and could seriously hamper applicability determinations. Therefore, today's proposed rule does not establish any subcategories under the PCWP source category.

B. How Did We Define the Affected Source?

In today's proposed rule, the affected source is the collection of process units associated with the manufacturing of PCWP at a plant site. The affected

source includes, but is not limited to, those process units found in green end operations, drying operations, blending and forming operations, pressing and board cooling operations, and miscellaneous finishing operations (such as sanding, sawing, patching, edge sealing, and other finishing operations not subject to other NESHAP). The affected source also includes onsite storage of raw materials used in the manufacture of PCWP, such as resins, onsite wastewater treatment operations specifically associated with PCWP manufacturing, and miscellaneous coating operations. The affected source includes lumber kilns at PCWP manufacturing facilities and at any other facility.

Miscellaneous coating operations are activities such as edge coating of PCWP, labeling and printing on PCWP, application of anti-skid coatings, putty/patching operations at plywood facilities, etc. Only those onsite miscellaneous coating operations at PCWP manufacturing facilities that are listed in § 63.2292 of today's proposed rule are covered by these proposed NESHAP. We specifically excluded these miscellaneous coatings operations from the proposed Wood Building Products Surface Coating NESHAP (40 CFR part 63, subpart QQQQ). We included these sources in the definition of affected source for PCWP because these miscellaneous coating operations are part of the PCWP manufacturing process and are performed at the same location.

To provide compliance flexibility, we defined the affected source as the combination of all of the process units at a PCWP manufacturing facility. Many of the PCWP facilities that already control HAP emissions to the levels that would be required in today's proposed rule do so by first combining emissions from different process units and then controlling the combined emissions in one or more emission control devices. Much of the control device efficiency data used to set the proposed compliance options for add-on control systems was based on control equipment that was used to control emissions from multiple types of process units. As a result, the required level of control would be the same for most types of process units. For example, the control level for new and existing reconstituted wood products presses would be the same as the control level for new and existing tube dryers. We believe that the proposed broad definition of affected source is consistent with the way the industry applies add-on control devices, and that it creates more meaningful opportunities for emissions averaging. The affected source definition we selected is the same for both new and existing sources.

The affected source includes lumber kilns co-located at PCWP manufacturing facilities and lumber kilns at other facilities that do not manufacture PCWP (*i.e.*, stand-alone kiln-dried lumber manufacturing facilities such as sawmills). Wood products industry representatives requested that all lumber kilns (regardless of location) be considered in today's proposed rule so there would be one MACT determination for all lumber kilns nationwide.

If lumber kilns at stand-alone kiln-dried lumber manufacturing facilities are not included in the PCWP NESHAP, those stand-alone facilities could be listed as a major source category under section 112(c) of the CAA in the future and may be subject to the provisions of section 112(g) of the CAA as well. We believe no additional emissions reductions would be accomplished by listing lumber kilns as a separate source category or by having them regulated by case-by-case MACT. We believe this because: (1) The design and operation of lumber kilns are essentially the same regardless of whether the kilns are located at a sawmill or co-located with PCWP manufacturing operations, (2) we know of no lumber kilns that are controlled for HAP, and (3) we know of no cost effective HAP controls for lumber kilns. In addition, we know of no additional recordkeeping or reporting that stand-alone facilities would incur by being part of the PCWP source category since the PCWP source category includes only major sources. Including stand-alone kilns in the PCWP source category will save resources for regulatory agencies and industry and does not forego HAP reductions; therefore, we are proposing stand-alone kilns as part of the PCWP source category.

C. How Did We Determine the MACT Floor for Existing Sources?

Section 112(l)(3) of the CAA specifies that each MACT standard be at least as stringent as the floor for the sources in the relevant source category or subcategory. Today's proposed PCWP rule does not have subcategories; therefore, the average emission limitation achieved by the best-performing 12 percent of all major PCWP facilities represents the MACT floor for the source category. In order to rank the PCWP facilities based on performance, we would need facilitywide uncontrolled emissions data and facilitywide controlled emissions data for each facility to determine the percent reduction in HAP emissions achieved by each facility. We do not have actual facilitywide emissions data; however, we have accurate and complete information on the type and number of individual process units at PCWP facilities. In addition, emissions data are based on process unit data. Therefore, we decided to apply the MACT floor methodology at the process-unit level. Our information is especially accurate and complete for dryers and presses, which are generally the highest-emitting process units and the ones most likely to have add-on control systems that reduce HAP emissions from PCWP facilities. With this approach, the sourcewide MACT floor is represented by the MACT floor level of control established for each process unit group. We believe that applying the MACT floor methodology to process unit groups results in the closest possible approximation of the true sourcewide MACT floor, since it better enables us to take into account process unit-specific emissions data. We do not believe the results from this approach are significantly different from what they would be if facilitywide source-specific data had been available.

We determined the MACT floor control level for existing sources using the following procedure:

- We reviewed available data on pollution prevention techniques and the performance of add-on control devices and identified those add-on control systems that were best at reducing HAP emissions;
- For each process unit group identified in Table 1 of this preamble, we ranked the process units in that group from the best performing to the worst performing based on the type of add-on control system applied to each process unit;
- For each process unit group, we then identified the add-on control system that represented the MACT floor technology; and
- Using available information on the performance of the add-on control systems, we determined the performance level of the add-on control systems.

This procedure is explained in more detail in the following paragraphs. Additional information on how we determined the proposed MACT floor for the PCWP industry is available in the docket for this rule (Docket Number A–98–44).

1. Identifying the Best-Performing Add-On Control Systems

Although we believe that the potential for pollution prevention exists for some

facilities in the PCWP industry, we are not aware of any demonstrated pollution prevention techniques that can be universally applied across the industry. Furthermore, we have no information on the degree of emissions reduction that can be achieved through pollution prevention measures. The PCWP facilities use add-on control devices because there currently are no feasible pollution prevention measures. Therefore, we focused our analysis on the performance of add-on control devices. We reviewed the available data on control device performance to determine which add-on control systems are best at reducing HAP emissions. We focused our analysis on THC, formaldehyde, and methanol because these three pollutants are the most prevalent pollutants emitted from the PCWP industry and represent the majority of the available data on control device performance. The design and operating factors that affect a control system's ability to reduce emissions of formaldehyde, methanol, or THC are generally the same. For example, an RTO designed to reduce THC emissions will also reduce formaldehyde or methanol emissions.

Based on a review of the available control device performance data for the PCWP industry, we concluded that only two types of add-on air pollution control devices (APCD) consistently and continuously reduced HAP emissions: incineration-based controls (including RTOs, RCOs, and incineration of pollutants in onsite process combustion equipment used to control emissions from various PCWP process units) and biofilters (used to control PCWP press emissions). The control device efficiency data showed that APCD installed for particulate matter (PM) abatement had no effect on gaseous HAP or THC emissions. These APCD include cyclones, multiclones (or multicyclones), baghouses (or fabric filters), and electrified filter beds (EFB). The performance data for wet electrostatic precipitators (WESP) and wet scrubbers installed for PM control also showed no effect on HAP and THC emissions. These wet systems may achieve short-term reductions in THC or gaseous HAP emissions, however, the HAP and THC control efficiency data, which range from slightly positive to negative values, indicate that the ability of these wet systems to absorb water-soluble compounds (such as formaldehyde) diminishes as the recirculating scrubbing liquid becomes saturated with these compounds.

The performance data for the incineration-based controls and biofilters showed methanol and formaldehyde emissions reductions equal to or greater than 90 percent, except in those cases where the pollutant loadings of the emission stream entering the control systems were very low. The performance data for THC showed that incineration-based control systems could achieve THC emissions reductions equal to or greater than 90 percent. The THC emissions reductions achieved with biofilters varied somewhat, with an average THC reduction of about 80 percent. Although biofilters are less effective in reducing some of the less water-soluble VOC compounds, such as pinenes, that make up a portion of the THC measurements, they can achieve HAP emissions reductions equal to or greater than 90 percent. These emissions reductions are reported only for biofilters treating emissions from presses at PCWP facilities. No PCWP process units other than presses are currently using biofilters to reduce air pollution. Both incineration-based controls and biofilters can achieve identical formaldehyde and methanol emissions reductions.

2. Ranking of Process Units

We ranked the process units within each process unit group according to the HAP control devices that were applied. Information on the number of process units nationwide and the types of add-on control devices applied to process units was based primarily on responses to a survey of the industry.

When we ranked the process units, we treated process units equipped with any type of incineration-based control system or biofilters as being equivalent with respect to their potential to reduce HAP emissions. We ranked the process units by control device rather than actual unit-specific emissions reductions because we have limited inlet/outlet data on which to calculate control efficiency. Based on available information (*e.g.*, RTO operating temperatures), we are not aware of any significant design or operational differences among each type of control system evaluated that would affect the ranking of process units. Furthermore, we are not aware of factors other than the type of control system used that would significantly affect the ranking of process units.

3. Identifying Control Technologies To Establish the MACT Floor

We established MACT floor control levels by applying the floor procedures to similar process units. We believe that this approach results in the closest approximation of the true sourcewide MACT floor.

With a few exceptions, there were at least 30 process units in each process unit group. As discussed in section I.C, when there are at least 30 sources in the source category, the MACT floor for existing sources is equivalent to the average emission limitation achieved by the best-performing 12 percent of existing sources in that group. Our interpretation of the ''average emission limitation'' is that it is a measure of central tendency, such as the median. If the median is used when there are at least 30 process units in a process unit group, then the emission level achievable by the process unit and its control system that is at the bottom of the top 6 percent of the best-performing process units (*i.e.*, the 94th percentile) represents the MACT floor control level for that component of the sourcewide floor. For example, there are approximately 303 softwood veneer dryers nationwide, and HAP emissions from approximately 64 of these dryers (21 percent nationwide) are controlled using incineration-based control systems. The HAP emissions from the remainder of the softwood veneer dryers are uncontrolled. In this example, the 94th percentile is represented by the control system applied to the softwood plywood dryer ranked at number 18 (18/303 = 6 percent). However, incineration-based controls are also used by softwood veneer dryers ranked below the 94th percentile. Assuming that there are no significant design or operational differences between the different types of incineration-based control systems that would affect their performance, we would consider the incineration-based control technologies as being equivalent for control of HAP emissions. Thus, all of the softwood veneer dryers equipped with incineration-based control systems would be representative of the MACT floor level of control for softwood veneer dryers.

For those process unit groups where there were fewer than 30 but at least five process units, such as hardboard ovens, the emission level achievable by the process unit and its control system that is the median of the best-performing five sources represents the MACT floor level of control. For example, the MACT floor level of control for fiberboard mat dryers is no emissions reductions because there are ten fiberboard mat dryers nationwide, and emissions from only two of the ten fiberboard mat dryers are controlled (both via incineration). Therefore, the top five fiberboard mat dryers include the two that are controlled, plus three that are uncontrolled. In this example, the

median source (the fiberboard mat dryer ranked ''number 3'') is uncontrolled.

When a process unit group had fewer than five process units, we determined the appropriate control technology based on the control technology used by the majority of the process units in the process unit group.

For those process units not required to meet the control requirements in today's proposed rule, we determined that: (1) The MACT floor level of control is no emissions reductions, and beyond the floor control options are too costly to be feasible; or (2) insufficient information is available to conclude that the MACT floor level of control is represented by any emissions reductions (miscellaneous coating operations and wastewater operations). We are requesting comment on whether no emissions reductions for miscellaneous coating operations and for wastewater operations is appropriate. Commenters should submit any information they have on HAP or VOC emissions from miscellaneous coatings and wastewater operations.

4. Determining the Performance Level of MACT Floor Technologies

Using the procedures described above, we determined that the proposed MACT floor level of control for process units was either no emissions reductions or equivalent to the emissions reductions achieved by incineration-based control systems or biofilters. Although some process units are equipped with add-on controls that perform at a level somewhere between zero emissions reductions and the performance level achievable with incineration-based controls and biofilters, none of these control systems were identified as MACT floor control technologies because they either do not reduce organic HAP emissions (bag houses) or do so on an inconsistent and unreliable basis (wet electrostatic precipitators). Therefore, we focused our analysis on incineration-based controls and biofilters.

For the purpose of establishing the performance level of the MACT floor control systems, we decided to group all of the available data on incineration-based controls and biofilters together. We grouped all the data together because the available data for incineration-based controls is incomplete. Without complete data, we could not identify which were the best performing incinerators; therefore, we could not identify the top performing 12 percent. By considering all of the performance data together, we maximized the amount of available data on which we could base the MACT floor level of performance.

The reasons the available data are incomplete are: Multiple emission points are treated, inlet/outlet data are limited, data among pollutants vary, and pollutant loadings are variable. These are discussed below.

Multiple emission points treated. Some of the control systems treat HAP emissions from multiple types of process units, such as tube dryers, reconstituted panel presses, and board coolers. In those cases, separate determinations of the performance of the control system on emissions from each type of process unit were not possible.

Limited inlet/outlet data. Limited or no inlet/outlet data were available for the control systems applied to the process units in each group.

Variability in data among pollutants. In some cases, it was not possible to directly compare the performance of different control systems because data were not available for the same pollutant. For example, for one RTO, we might only have THC emissions data, and for another RTO, we might only have formaldehyde data.

Variability in pollutant loadings. Our ability to compare the performance of the different types of incineration-based control systems with each other and with biofilters was also hampered by the fact that the uncontrolled emissions being treated by the different control systems varied with respect to pollutant loading (inlet concentration) and pollutant type. For example, the available THC concentration data for the inlet of the control systems ranged from as low as 45 ppmvd to as high as 5,100 ppmvd. With the exception of some control systems with lower pollutant inlet concentrations, the available data for incineration-based controls and biofilters show that these control systems can achieve THC, methanol or formaldehyde emissions reductions greater than or equal to 90 percent.

We considered basing the control system performance level on just one pollutant, such as THC as a surrogate for HAP. Many of the existing PCWP facilities with MACT control systems are already required to meet a specified VOC control efficiency, and these facilities generally measure THC emissions as a surrogate for VOC emissions. Source VOC mass emissions (as required in new source review or prevention of significant deterioration reviews and emission limits for VOC by definition) must be expressed on a mass basis. This requires an adjustment for other compounds, such as formaldehyde, to the measured THC emissions. However, THC emissions data sometimes include methane which is neither a HAP nor a VOC. The THC emissions data also frequently include other non-HAP compounds, such as terpenes, which are associated with processing of softwoods. We also considered basing the control system performance level on HAP, measured as total HAP, or methanol as a surrogate for HAP, or formaldehyde as a surrogate for HAP. Methanol and formaldehyde are the predominant HAP emitted from PCWP process units, and they can be measured directly. However, not all process units emit formaldehyde at detectable levels, and not all process units emit methanol at detectable levels, so basing the performance level only on methanol or only on formaldehyde was not possible. For process units where both the methanol and formaldehyde emissions are low, THC emissions may be the only viable option for defining the control system performance. We rejected basing the control system performance level on total HAP emissions because it seemed overly burdensome to require testing of multiple pollutants at the outlet of a control device when testing of one dominant pollutant would be sufficient for determining control device performance. Furthermore, the total HAP control efficiency could be negatively affected by those measurements for HAP not detected at either the inlet or outlet of the control device (*e.g.*, the method detection limit used in the calculation of total HAP control efficiency may be slightly higher at the inlet than the outlet resulting in decreased total HAP control efficiency).

Another consideration in determining the performance level that represents the MACT floor level of control is the format of this performance level (*e.g.*, percent reduction, outlet concentration level). In general, applying an incineration-based MACT control system to a process unit that emits high concentrations of HAP and THC will result in a greater percentage of emissions reductions than if that same incineration-based MACT control system was applied to a process unit that emits lower concentrations of HAP and THC. Therefore, a performance level solely in the form of a percent reduction in emissions could not adequately characterize the performance level of the MACT floor control technology. In similar MACT rulemakings where incineration-based control technologies represent the MACT floor, we have defined the performance level of the incineration-based control technologies as either a

percent reduction or an outlet concentration, whichever is less stringent, with both forms being considered equivalent to the other. We have recognized in these previous MACT rulemakings that there are practical limits to the ability of incineration-based control systems to treat more dilute emission streams. We consider the practical limit of control of THC via incineration to be approximately 20 ppmvd in the outlet of the control device.

To account for the variability in the type and amount of HAP in the uncontrolled emissions from the various process units and the effect of this variability on control system performance, we decided to base the MACT floor performance level on all three of the pollutants we analyzed and include maximum concentration levels in the outlet of the control systems as an alternative to emissions reductions. The MACT floor performance level is a 90 percent reduction in THC or methanol or formaldehyde emissions. The maximum concentration level in the outlet of the MACT floor control system is 20 ppmvd for THC, or 1 ppmvd for methanol, or 1 ppmvd for formaldehyde. We chose 20 ppmvd as the alternative maximum concentration for THC because 20 ppmvd represents the practical limit of control for THC. We chose 1 ppmvd as the maximum outlet concentration for both methanol and formaldehyde because this concentration is achievable by MACT control systems and the method detection limits for these compounds using the NCASI impinger/canister method (NCASI Method IM/CAN/WP–99.01, proposed to be incorporated by reference in today's proposed rule) are less than 1 ppmvd. Based on the available data for MACT control systems, these six emission levels for add-on control systems are considered equivalent options for defining the performance level of a MACT control system.

D. How Did We Determine the MACT Floor for New Sources?

For new sources, the CAA requires the MACT floor to be based on the degree of emissions reductions achieved in practice by the best-controlled similar source. We believe for most process unit groups that the existing source MACT floor control level also represents the level of control appropriate for new sources because the same types of emission control systems, such as thermal oxidizers and biofilters, are used. In these cases, the existing source MACT floor technology represents the greatest degree of emissions reductions that is achievable under all circumstances within each particular operation regulated by the proposed rule. For a few process units, the MACT floor level of control for new units is more stringent than for existing units. In those cases, we determined the MACT floor control level for existing process units was no emissions reductions, and that the MACT control level for new sources was represented by incineration-based controls or biofilters.

E. What Control Options Beyond the MACT Floor Did We Consider?

The control devices that represent the MACT floor control level achieve the greatest HAP emissions reductions of any available control technologies. There are no controls that achieve greater emissions reductions than the MACT floor control level for process unit groups with MACT floor control levels represented by incineration-based controls or biofilters; therefore, we only looked at beyond the floor options for process unit groups at existing sources where the MACT floor level of control was no emissions reductions. Process units that were inherently lower-emitting, such as sanding and sawing operations, were excluded from the beyond-the-floor analyses because emissions from these process units would not be cost effective to control. Based on a review of the HAP emissions data for process units where the MACT floor level of control was determined to be no emissions reductions, we selected blenders and stand-alone digesters for a beyond-the-floor analysis because these process units emit higher levels of HAP emissions relative to other process units. We also conducted beyond-the-floor analyses for three process unit groups with no emissions reductions at the MACT floor control level for existing sources but requiring control for new sources. These process units included fiberboard mat dryers, press predryers, and board coolers. We determined that the environmental benefits of requiring controls for these process units did not justify the cost. Moreover, many of the existing control devices at well-controlled facilities would not have the additional capacity to treat the emissions from these process units, and thus, these facilities would have to install new controls. Therefore, we decided that the control level for blenders, stand-alone digesters, fiberboard mat dryers, press predryers, and board coolers should be no emissions reductions at existing sources.

F. How Did We Select the Format of the Proposed Rule?

We decided to offer several formats for complying with today's proposed rule. The purpose of multiple formats is to provide you the flexibility to comply in the most cost-effective and efficient manner. We considered the following factors in selecting the format of the proposed rule:

- The format should allow for multiple compliance techniques for the various types of facilities in the industry.
- The format should simplify compliance and ensure that the cost of compliance is not excessive.
- The format must be enforceable.

The format of this proposed rule is based on a combination of production-based compliance options, percent emissions reduction compliance options, pollutant concentration compliance options, and work practice requirements. We are also including emissions averaging as an option for complying with the proposed rule. The following subsections describe the selection of the formats for each compliance option and work practice requirement included in the proposed rule.

1. Production-Based Compliance Options

The production-based total HAP compliance options apply to process unit emissions prior to entering an add-on control system. This option allows for future pollution prevention techniques and cost-effective control of inherently lower-emitting process units. The production-based compliance options were determined by applying a 90 percent reduction to the highest total HAP test for each type of process unit with a controlled MACT floor. A 90 percent reduction was selected because it is equivalent to the emissions reductions achievable through the use of MACT. The 90 percent reduction was applied to the highest tests rather than the average emission factors because the production-based options calculated using the highest tests more closely correlate with actual emissions from process units with MACT control systems. If the average emission factors were used in the calculation of the production-based compliance options, some of the process units with MACT control systems would not be capable of meeting those options. Use of statistical methods for predicting the highest test value likely to be observed for each process unit was also considered. However, the available total HAP test data sets are too small to justify use of

such statistical methods, and the resulting compliance options, in many cases, seemed unreasonably high compared to the actual emissions from process units with MACT control systems. Therefore, statistical methods were not used. We based the production-based compliance options on total HAP emissions, as defined in today's proposed rule, because of the variability in uncontrolled HAP emissions within and among the different types of process units. Total HAP emissions varied less than the emissions of individual HAP and the emissions of THC.

2. Add-On Control System Compliance Options

The six compliance options for add-on control systems in today's proposed rule are based on the performance of incineration-based control systems and biofilters. We included two formats in these compliance options: Emissions reductions (percent) and maximum outlet pollutant concentrations. Many of the well-controlled facilities are already subject to permit limits that are in the form of a percent reduction in emissions. Therefore, we expect that some of those facilities may choose to comply with an emissions reduction option. We are also including outlet concentration options so that sources that have lower inlet pollutant concentrations (and thus, have lesser ability to achieve higher emissions reductions) can demonstrate compliance. We consider the emissions reduction options and the outlet concentration options to be equivalent limits. We are not requiring an oxygen correction to the outlet concentration options because most of our outlet concentration data were measured at ambient oxygen levels due to the relatively dilute emission streams being treated. Dilution to achieve compliance with the proposed PCWP rule is prohibited by 40 CFR 63.4.

We are restricting the use of the formaldehyde and methanol concentration-based options to only those sources with formaldehyde or methanol emissions entering the control device that are greater than 10 ppmvd. We have included this restriction to prevent circumvention of the proposed standards. For example, if a process unit emits primarily formaldehyde and only a very small amount of methanol (slightly less than 1 ppmvd), without the 10 ppmvd restriction, you could demonstrate compliance with the 1 ppmvd methanol concentration option without using a control system or using a control system that does not reduce HAP, such as a baghouse. The 10 ppmvd restriction does not apply to the percent reduction compliance options.

3. Emissions Averaging Compliance Option

Today's proposed rule includes an emissions averaging compliance option because we believe that emissions averaging represents an equivalent, more flexible, and less costly alternative to controlling certain emission points to MACT floor levels. Prior to an industry-sponsored emissions test program carried out by NCASI, the majority of the available emissions test data for the PCWP industry was limited to THC and formaldehyde emissions data for dryers and presses. The industry-sponsored test program provided speciated HAP emissions data for a variety of process units at 29 different PCWP plants. For some of these previously untested process units, the NCASI data represent the only available HAP emissions data for those sources. A few of these process units, such as blenders, may emit quantities of HAP equal to or greater than the quantities emitted from some types of dryers and presses. In addition to emitting more HAP, these other types of process units often have a lower volume of exhaust gas to be treated compared to dryers and presses. The combination of higher pollutant concentrations and lower exhaust gas flow rates may make these other process units more cost effective to control. However, very few PCWP facilities have installed emission control devices on process units other than dryers and presses. Therefore, when determining the MACT floors for existing process units, the process units most likely to have controlled MACT floors have been dryers and presses, with some exceptions. Most other types of process units are largely uncontrolled throughout the industry and based on our MACT analysis, we did not include existing source control requirements for these process units in today's proposed rule. Therefore, emissions from these other types of process units at existing sources would not be controlled under the point-by-point compliance options in today's proposed rule. By allowing emissions averaging across the affected source, which is broadly defined in today's proposed rule, sources can achieve the same environmental gains as point-by-point compliance, but at reduced cost.

The emissions averaging provisions in today's proposed rule are based in part on the emissions averaging provisions in the Hazardous Organic NESHAP (HON). The legal basis and rationale for the HON emissions averaging provisions were provided in the preamble to the final HON (59 FR 19425, April 22, 1994). The rationale for including certain limitations and requirements as part of today's emissions averaging provisions follows the HON and is summarized below.

Emission points allowed in emissions averaging. Only those emission points (process units) that are part of the affected source (PCWP manufacturing facility), as defined in today's proposed rule, can be included in an emissions average. Therefore, a PCWP facility collocated with a pulp and paper mill, for example, cannot include emission points in the pulp and paper mill as part of the emissions average.

Today's proposed rule also excludes new affected sources from the proposed emissions averaging provisions. Today's proposed rule defines affected sources broadly, such that a new source is essentially a whole new ''green field'' mill. Therefore, not allowing emissions averaging at new sources does not affect existing sources' ability to use emissions averaging. New sources have historically been held to a stricter standard than existing sources because it is most cost effective to integrate state-of-the-art controls into equipment design and to install the technology during construction of new sources. One reason we allow emissions averaging is to give existing sources flexibility to achieve compliance at diverse points with varying degrees of control already in place in the most cost-effective and technically reasonable fashion. This concern does not apply to new sources which can be designed and constructed with compliance in mind.

Today's proposed rule also excludes from emissions averaging any process units equipped with emission control systems that were installed to comply with a State or Federal rule or statute (other than today's proposed rule). We are including this restriction because credits for controls applied to comply with another rule increase your ability to generate credits, but do not generate any new emissions reductions, thus creating more emissions. However, if a process unit in your approved EAP used to generate emission credits later becomes subject to a State or Federal rule other than the proposed PCWP rule, the process unit can continue to generate credits in the approved plan. Work practice requirements are excluded from emissions averaging because, by definition, the level of emissions reduction achieved by compliance with those requirements is not sufficiently quantifiable.

Limits on credit for control efficiencies. The proposed emissions averaging provisions limit the value of

the control system efficiency (CD_i) to 90 percent in the equation for calculating the AMR of total HAP from all process units generating credits. No credit above 90 percent is allowed.

Differences from the HON emissions averaging approach. Some aspects of the HON emissions averaging approach have not been included in the proposed PCWP rule. Specifically, today's proposed rule does not limit the number of emission points allowed in an emissions average, does not require a hazard or risk analysis, and does not include a discount factor. The HON limited the number of emission points that could be used in an emissions average because of significant enforcement concerns. The HON sources have many emission points, are complex and diverse, and as a result are subject to a more complex set of emissions averaging provisions. The PCWP facilities have fewer emission points within each facility. Therefore, the enforcement concerns arising due to the large number of emission points in each HON facility are minimized for PCWP facilities. As a result, we believe a simpler set of emissions averaging provisions is appropriate for PCWP facilities, and the limitation on the number of points available for averaging was not included in the proposed rule.

The HON requires a hazard and risk study for emission points included in an emissions average largely because of the many pollutants and many emission points at the source. The PCWP facilities have fewer pollutants of concern and are likely to have similar HAP emissions from the emission points that would be used to generate debits and credits. Thus, we believe that averages will achieve a comparable hazard/risk benefit as point-by-point compliance. Although States would still have the discretion to require a PCWP facility that requested approval of an emissions average to conduct a hazard and risk study (or preclude the facility from using emissions averaging altogether), the proposed rule does not require a hazard or risk study.

The HON requires a discount factor of 10 percent in credit calculations to share with the environment some portion of the cost savings due to emissions averaging and to account for uncertainty in emissions estimation. Due to differences between PCWP and HON sources (discussed below), we do not believe it is necessary for the proposed PCWP rule to include a discount factor.

The HON proposal preamble (57 FR 62652, December 31, 1992) and the HON final preamble discuss how cost savings due to emissions averaging should be shared between industry and the environment. For the HON, we decided that it was appropriate that industry share any cost savings realized from emissions averaging and included a discount factor because the costs of controlling different emission points could vary significantly. The HON proposal preamble also discussed the level of uncertainty in estimating emissions reductions that may result from facilities using emissions averaging. For the HON, the uncertainty arose from differing accuracies available for estimating emissions from the number of emission points at a HON facility, the number of HAP emitted from HON facilities, and the different types of emission points.

The PCWP industry differs in almost every relevant factor from the HON. First, HON facilities can cover several square miles and some emission points, such as storage vessels, could be some distance from other emission points making them relatively costly to control. Second, as discussed previously, the number of points that might be included in an emissions average at a PWCP facility is fewer than could be included in a HON average and, therefore, less of a concern. Third, the magnitude of emissions from HON emission points is typically much greater than the emissions from PCWP emission points. Fourth, there are six HAP of primary concern emitted from PCWP facilities compared to over 140 HAP emitted from HON facilities. Fifth, the kinds of emission points found at PCWP facilities are much more similar than those regulated by the HON and, therefore, unlikely to introduce additional uncertainty.

We believe the inclusion of emissions averaging into rules and the decision on how to design an emission averaging approach for a particular source category must be evaluated for each source category. Although the HON and the proposed PCWP rule share the same legal basis for including emission averaging as a compliance option and the same basic system of credits and debits, some of the restrictions reasonable for the HON emissions averaging provisions are unnecessary for the proposed PCWP rule.

4. Work Practice Requirements

Section 112(h) of the CAA states that ''* * * if it is not feasible in the judgement of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof * * *'' Section 112(h)(2) further defines the phrase ''not feasible to prescribe or enforce an emission standard'' as any situation in which ''* * * a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, * * * or the application of measurement methodology to a particular class of sources is not practicable * * *''

Today's proposed rule includes work practice requirements for softwood veneer dryers, dry rotary dryers, hardwood veneer dryers, and veneer redryers. The proposed work practice requirements for softwood veneer dryers include a requirement to minimize fugitive emissions from the veneer dryer doors and the green end of the dryer. It is not practical for sources to measure the fugitive emissions from the softwood veneer dryers; therefore, in lieu of establishing an emission limit for fugitive emissions, we are proposing that sources develop a plan for minimizing these emissions and keep records to document they are following their plan.

For dry rotary dryers, hardwood veneer dryers, and veneer redryers, the proposed work practice requirements would establish limits on how these process units are operated and the types of materials processed in these units. The MACT floors for dry rotary dryers, hardwood veneer dryers and veneer redryers are all equivalent to no emissions reductions because none of these process units have add-on control devices. The emissions from these three types of process units are relatively low compared to the emissions from other PCWP process units subject to today's proposed rule. However, if these three types of process units were operated in a manner that was inconsistent with how they are defined in today's proposed rule, the emissions from these process units could increase.

For example, a green rotary dryer, which has proposed compliance options in today's proposed rule, is essentially the same in terms of equipment as a dry rotary dryer. However, a dry rotary dryer emits much less HAP than a green rotary dryer because it dries wood particles that have been previously dried to some extent; thus, much of the HAP present in the wood has already been released. The dry rotary dryers also operate at lower temperatures, which further reduces the amount of HAP emitted. Therefore, the operation of the rotary dryer, and not the equipment design, determines whether it is classified as a green or dry rotary dryer. Because the dry rotary dryers, veneer redryers and hardwood veneer dryers

are defined and classified based on how they are operated, and we made MACT floor determinations based on those classifications, we believe that proposing work practice requirements (such as continuously monitoring dryer temperature and wood moisture content) that ensure that these process units continuously operate as defined in today's proposed rule is more appropriate than proposing compliance options for these process units.

G. How Did We Select the Test Methods for Determining Compliance With the Proposed Rule?

Today's proposed rule would require you to conduct performance tests to demonstrate compliance with the production-based compliance options, compliance options for add-on control devices, and the emissions averaging alternative. Depending upon which compliance option you use, you would be required to measure emissions of methanol, formaldehyde, THC, or total HAP. When determining compliance with compliance options for presses and board coolers, you also would be required to determine the capture efficiency of the enclosures for those presses and board coolers that have enclosures that do not qualify as PTE. For presses and board coolers that have partial enclosures or no enclosures, you must determine the capture efficiency of the emissions capture device by installing a TTE as described in EPA Method 204 or using the tracer gas method as described in Appendix A to today's proposed rule. The test methods you would have to use to measure these pollutants and capture efficiency are discussed below.

We are proposing the use of EPA Method 25A (Determination of Total Gaseous Organic Matter Concentration Using a Flame Ionization Analyzer) for measuring THC emissions because most of the PCWP facilities that are already required to measure THC emissions use this method. Also, most of the available emissions data that we used to establish THC control efficiencies for the various control systems were measured using Method 25A and reported on an ''as carbon'' basis. Method 25A is better suited than EPA Method 25 (Measurement of Total Gaseous Nonmethane Organic Emissions as Carbon (TGNMO)) for measuring emission streams from PCWP process units which typically have lower THC concentrations (*e.g.*, less than 50 ppm) and relatively high moisture contents. However, unlike Method 25, Method 25A does measure methane as a THC. Because many of the well-controlled PCWP facilities are required by permit to reduce VOC emissions, these facilities generally are allowed to subtract methane emissions from the THC measurement when reporting VOC emissions because methane is not a VOC, according to EPA's definition of VOC. Therefore, we also would allow you to subtract methane emissions from measured THC values using EPA Method 18 (Measurement of Gaseous Organic Compound Emissions by Gas Chromotography). Method 18 is a self-validating method.

We are proposing the use of the NCASI Method (NCASI Method CI/WP–98.01, Chilled Impinger Method for Use at Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol, 1998) for measuring methanol or formaldehyde. We are also proposing the NCASI Chilled Impinger Canister Method (NCASI Method IM/CAN/WP–99.01) for measuring total HAP emissions. Total HAP emissions are defined, for purposes of today's proposed rule, as the sum of the emissions of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. The NCASI Chilled Impinger Method (NCASI Method CI/WP–98.01), which we are proposing to incorporate by reference, has been validated (using EPA Method 301 criteria) for measuring formaldehyde, methanol, and phenol from dryers and press vents at PCWP facilities. The NCASI Method IM/CAN/WP–99.01, which we are proposing to incorporate by reference (pending EPA review of the method), is a self-validating method that can be used to measure numerous HAP compounds.

As an alternative to the NCASI methods, we are proposing use of other applicable EPA test methods in order to increase the flexibility of the proposed rule. You could use EPA Method 320 (Measurement of Vapor Phase Organic and Inorganic Emission by Extractive FTIR) to measure emissions of methanol, formaldehyde and total HAP. Method 320 is a self-validating method that uses Fourier transform infrared (FTIR) spectroscopy. You could also use EPA Method 308 (Procedure for Determination of Methanol Emission from Stationary Sources) for measuring emissions of methanol. Method 308 predates the NCASI Chilled Impinger Method and the NCASI Impinger Canister Method and has been used to test PCWP emission sources in the past. You could use EPA Method 0011 (Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources) or EPA Method 316 (Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries) to measure formaldehyde emissions. Although EPA Method 0011 has not been validated for use in the PCWP industry, it predates the NCASI methods and EPA Method 320 and is frequently used to measure formaldehyde emissions from PCWP process units. A comparison of formaldehyde measurements made using the NCASI methods and EPA Method 0011 showed no significant differences (see Docket number A–98–44); therefore, we would allow you to use EPA Method 0011 as an alternative to the NCASI Methods for measuring formaldehyde. Although EPA Method 316 has not been validated for testing of PCWP process units, it is a relatively new method for measuring formaldehyde concentrations as low as 11 parts per billion. Therefore, it is included as an alternative to the other test methods for formaldehyde in today's proposed rule.

We are proposing the use of EPA Method 204 (Criteria for and Verification of Permanent or Temporary Total Enclosure) and Methods 204A through 204F for determining the capture efficiency of enclosures. Methods 204A through 204F include the following: Method 204A—Volatile Organic Compounds Content In Liquids Input Stream; Method 204B—Volatile Organic Compounds Emissions In Captured Stream; Method 204C—Volatile Organic Compounds Emissions In Captured Stream (Dilution Technique); Method 204D—Volatile Organic Compounds Emissions In Uncaptured Stream From Temporary Total Enclosure; Method 204E—Volatile Organic Compounds Emissions In Uncaptured Stream From Building Enclosure; and Method 204F—Volatile Organic Compounds Content In Liquid Input Stream (Distillation Approach). If the enclosure meets the definition and criteria in EPA Method 204 for a PTE, then you may assume that its capture efficiency is 100 percent. If the enclosure is not a PTE, then you would have to build a total temporary enclosure (TTE) around the process unit that meets the definition of a TTE in EPA Method 204, and you would be required to determine the capture efficiency of the TTE using Methods 204A through 204F (as appropriate). You would then have to measure emissions from both the control device (if applicable) and the TTE and use the combined emissions to determine compliance. If the process unit is uncontrolled, you would have to use the capture efficiency of the TTE in determining the uncontrolled emissions from the process unit.

Industry representatives have expressed concern with using EPA Methods 204 and 204A through F for determining capture efficiency of press enclosures. The industry representatives have indicated that some facilities may have difficulty retrofitting a PTE or TTE that meets the EPA Method 204 criteria. Partial enclosures may be able to achieve high capture. We recognize the need for flexibility in determining capture efficiency for PCWP press enclosures and, therefore, as an alternative to Methods 204 and 204A through F, we are working with PCWP industry representatives to develop and propose a tracer gas procedure that may be used to determine the capture efficiency of PCWP press partial enclosures. This alternative tracer gas procedure is provided as Appendix A to today's proposed rule. This procedure would be applicable for determination of capture efficiency for press enclosures that are not considered to be PTE as defined in EPA Method 204, and the procedure is proposed as an alternative to the construction of TTE. Sulfur hexafluoride (SF6) is used as a tracer gas. This gas is not indigenous to the ambient atmosphere and is nonreactive. The alternative tracer gas procedure provided as Appendix A to today's proposed rule is a ''work in progress.'' Industry representatives are testing the tracer gas procedure and are expected to provide data and feedback that may be used in revising the procedure if necessary. Discussions with industry representatives regarding development of the proposed alternative tracer gas procedure are documented in Docket A–98–44. We welcome your comments on the proposed alternative tracer gas procedure. We also welcome your comments on additional approaches for determining capture efficiency, such as the use of computational fluid dynamics (CFD) models or other methods that would meet the data quality objective (DQO) or lower confidence limit (LCL) statistical criteria outlined in Appendix A to subpart KK of 40 CFR part 63 (National Emission Standards for the Printing and Publishing Industry). Today's proposed rule would allow facilities to petition the Administrator for use of alternative test methods.

H. How Did We Select the Monitoring and Recordkeeping Requirements?

We are proposing monitoring and recordkeeping requirements based on a combination of general monitoring and recordkeeping requirements in the NESHAP General Provisions (40 CFR part 63, subpart A) and specific monitoring methods already in use at PCWP plants. The proposed monitoring requirements we selected pertain to the operating requirements for control devices and the work practice requirements for various dryers.

The proposed recordkeeping requirements include submitting a copy of each notification and report, as well as documentation supporting any Initial Notification or Notification of Compliance Status, according to the requirements in § 63.10(b)(2)(xiv). You would also have to keep the records specified in § 63.6(e)(3) related to startup, shutdown, and malfunction (SSM), records of performance tests, as required in § 63.7(g)(1), and records for each continuous monitoring system (CMS), including CPMS or CEMS. The records for the CMS would include records of the applicable operating requirements and monitoring data required in today's proposed rule. You also would have to keep records to demonstrate compliance with any work practice requirements that apply to you.

How we selected the specific proposed monitoring and recordkeeping requirements is discussed in the following subsections.

1. Control Device Parameter Monitoring and Recordkeeping Requirements

According to today's proposed rule, you would have the option of either monitoring control device operating parameters or operating a THC CEMS at the control device outlet to demonstrate continuous compliance with the operating requirements. The operating parameters for thermal oxidizers, catalytic oxidizers, and biofilters were selected based on information from the questionnaire responses and information from other source categories regarding the parameters that are currently used as reliable indicators of control device performance.

For thermal oxidizers, we would require monitoring for the temperature in the firebox or in the ductwork immediately downstream of the firebox. A sufficiently high temperature in the firebox helps to ensure complete combustion of pollutants. We also would require you to monitor the static pressure at the inlet of the thermal oxidizer as an indicator of capture efficiency and the process unit exhaust flow rate entering the thermal oxidizer. You may monitor gas flow rate at the thermal oxidizer stack as an alternative to monitoring static pressure. Monitoring of gas flow or static pressure can alert the operator to problems such as plugging of the thermal oxidizer. Parameter monitoring would not be required for combustion units with greater than or equal to 44 MW heat input capacity that accept process exhausts into the flame zone.

For catalytic oxidizers, we would require monitoring of the temperature at the inlet of the catalyst bed. The rate at which pollutants in the exhaust stream are oxidized on the catalyst is greatly affected by temperature, as well as other parameters (such as residence time and turbulence) that are fixed by the design of the catalytic oxidizer. Monitoring of the inlet temperature to the catalytic oxidizer helps to ensure that the system is operating as designed with a temperature high enough to oxidize the pollutants. As for thermal oxidizers, we also would require you to monitor the static pressure at the inlet of the catalytic oxidizer or stack gas flow rate.

If you operate a thermal oxidizer or catalytic oxidizer, you would be required to calculate and record 3-hour block averages of the operating parameter values. We selected the 3-hour averaging time because the initial performance test provisions in today's proposed rule require you to perform a minimum of three 1-hour test runs, and the control device operating requirements would be based on the average values obtained using all test data obtained during the performance test. Each 3-hour average parameter value must remain within the level established during the performance test in order for you to demonstrate continuous compliance with the operating requirement.

The proposed operating parameters for biofilters are based on information about parameters currently monitored for biofilters operated in the PCWP industry and on information supplied by a biofilter vendor. For biofilters, you would be required to monitor the following parameters to demonstrate continuous compliance: (1) Temperature of the air stream entering the biofilter, (2) pressure drop across the media bed, and (3) pH of the effluent. Monitoring temperature and pH help determine the health of the microorganism population. Extremes in either temperature or pH can slow or halt microbial activity. Monitoring the pressure drop across the biofilter can alert the operator to problems such as plugging or drying of the bed media. Because factors that affect the performance of biofilters and biofilter monitoring methods can be site specific, you would be allowed to establish your biofilter operating parameter requirements and their corresponding monitoring methods, monitoring frequencies, and averaging times based on historical biofilter operating records. We allow the use of historical records in setting the biofilter parameter limits

because establishing limits during a 3-hour performance test may not adequately identify acceptable operating ranges for biofilter parameters. Some facilities in the PCWP industry have been operating biofilters for years, and these facilities have learned through experience the most appropriate monitoring methods, monitoring frequencies, and optimal operating ranges for their biofilters. Because historical biofilter operating records may not be available for some biofilters (such as new biofilter installations), today's proposed rule would allow up to 180 days following the compliance date for the necessary operating data to be gathered for use in setting parameter requirements. To ensure compliance, all historical operating data used to establish the operating parameter limits must be accompanied by performance test data for the same time period that show that the biofilter was meeting the emission limits in today's proposed rule, and that the data were collected using the test methods in today's proposed rule. In addition, you would have to certify that no modifications have been made to the biofilter or associated process unit(s) subsequent to the date the historical data were collected. Because there are only a few biofilters operating in the PCWP industry and we have limited information on how changes in biofilter operating parameters affect biofilter performance, we welcome your comments on these proposed monitoring requirements for biofilters.

If you operate a control device other than a thermal oxidizer, catalytic oxidizer, or biofilter, you would be required to petition the Administrator for site-specific operating parameters to indicate proper operation and continued performance of the control device. You would establish the operating parameter values during the performance test and maintain the parameters within the range established during the performance test. The Administrator would determine whether maximum value, minimum value, or a range of operating parameters is appropriate. The Administrator would also determine the appropriate averaging time for each monitoring parameter for the control device.

If you comply with the production-based compliance options, then you would be required to continuously monitor a process operating parameter (temperature). You would monitor dryer inlet temperature for green rotary dryers, tube dryers, or strand dryers. You would monitor operating temperature for hardboard ovens, press predryers, reconstituted wood product presses, fiberboard mat dryer hot zones, and softwood veneer dryer hot zones. You would not be required to monitor process parameters for reconstituted wood product board coolers or pressurized refiners. We request comment on whether the temperature parameters are appropriate for monitoring to show compliance with the production-based compliance options. The production-based compliance options were developed for inherently low-emitting process units or process units using pollution prevention. We believe that process unit HAP emissions are somewhat dependent on dryer or press temperature; however, other factors such as resin HAP content and percent of furnish that enters the plant already dried may also affect HAP emissions. It is not clear what pollution prevention techniques will be used to comply with the production-based compliance options (partly because pollution prevention measures are expected to evolve in the future), therefore, we request your feedback on how facilities that will use pollution prevention could show continuous compliance with the production-based compliance options.

Instead of monitoring process or control system operating parameters for thermal oxidizers, catalytic oxidizers, biofilters, or other control systems, you could choose to monitor THC concentration with a CEMS at the control device outlet to show compliance with the operating requirements. If you use a THC CEMS, you would be required to maintain the average THC concentration at the control device outlet below the maximum THC concentration established during the performance test. The purpose of monitoring THC concentration is to show compliance with the operating requirements (as opposed to the compliance options); thus, you could use the THC CEMS instead of CPMS regardless of whether you demonstrate compliance with the THC, formaldehyde, methanol, or total HAP compliance options. For example, you could conduct a performance test to show that you reduce formaldehyde by 90 percent while simultaneously operating the THC CEMS to determine the maximum 3-hour block outlet THC concentration that would become your parameter value representing your operating requirement. Generally, the same parameters that affect control device formaldehyde, methanol, or total HAP reduction efficiency also impact the THC reduction efficiency; thus, we believe that allowing use of a THC CEMS instead of a operating CPMS to demonstrate continuous compliance with the operating requirements is appropriate. If you choose to do so, you may subtract methane from the THC concentration measured with your THC CEMS (*e.g.*, by using a CEMS that measures TGNMO).

Control device maintenance requirements vary significantly from facility to facility. Although we believe that most of the maintenance activities can be accomplished during scheduled facilitywide or partial shutdowns, we recognize that some facilities may need to perform more maintenance on their control systems than other facilities due to site-specific factors, such as the nature and quantity of particulate entering an RTO or the ability of an RTO to perform online bakeouts (a feature often incorporated into newer RTO designs).

The most widely used add-on control systems at PCWP facilities are RTO, RCO, and biofilters. As with any control device in any industry, these control devices require routine maintenance. Routine maintenance includes activities such as cleaning or replacement of corroded parts, media replacement, bakeouts (RTO and RCO), washouts (RTO and RCO), and cleaning of ducts. Some PCWP drying processes release particulates and salts that can plug and weaken RTO and RCO media beds. Frequent bakeouts and washouts are necessary to combat the particulate and salt buildup. Partial or total media replacement is done when bakeouts and washouts are no longer effective.

Plywood and composite wood products industry representatives have requested that today's proposed rule include a downtime allowance that would allow process units to operate while the control device is offline for routine maintenance. After considering the available data, we included in today's proposed rule a routine control device maintenance exemption. To obtain the exemption, you must explain to the Administrator why you cannot perform routine control device maintenance during process shutdowns and describe how you plan to minimize emissions to the greatest extent possible during the maintenance. The routine control device maintenance exemption may not exceed 3 percent of annual operating uptime for each green rotary dryer, tube dryer, strand dryer, or pressurized refiner controlled. The routine control device maintenance exemption is limited to 0.5 percent of annual operating uptime for each softwood veneer dryer, reconstituted wood product press, reconstituted wood product board cooler, hardboard oven, press predryer, or fiberboard mat dryer

controlled. If your control device is used to control a combination of equipment with different downtime allowances (*e.g.*, a tube dryer and a press), then the highest (*i.e.*, 3 percent) downtime allowance applies. The maximum percentages of operating time allowed for the routine control device maintenance exemption are based on our independent analysis of data from an extensive control device downtime survey conducted by the PCWP industry.

We are requesting comment on the appropriateness of including a routine control device maintenance exemption in today's proposed rule and whether or not the downtime allowance allotted is appropriate as the maximum amount of time per year for such an exemption. Commenters should submit information and data that support their comments such as detailed maintenance records and descriptions of the add-on control systems, sources controlled by the control system, and any particulate removal devices that precede the control system.

2. Monitoring and Recordkeeping Requirements for Process Units Without Add-On Control Devices

If you comply with the production-based compliance options in today's proposed rule without using an add-on control system, then you would be required to monitor and record process unit operating parameters. For most process units, temperature would be the required process monitoring parameter. Although HAP emissions vary within and among process units and no one process parameter is responsible for these variations, we selected temperature as the proposed required process monitoring parameter for most process units. We chose operating temperature because it affects HAP emissions and can be controlled and monitored relatively easily.

As for the control device operating requirements, you could choose to monitor THC concentration using a CEMS at the process unit outlet instead of monitoring process unit temperature. If you use a THC CEMS, you would be required to maintain the average THC concentration at the process unit outlet below the maximum THC concentration established during the performance test.

If you elect to use emissions averaging, you would not be required to monitor process parameters for those uncontrolled process units that are used to generate debits. However, when you determine the total HAP emissions from these uncontrolled process units, you would have to perform the emissions measurements under representative operating conditions, and you would be required to keep records of the hours of operation for these uncontrolled process units.

3. Monitoring and Recordkeeping Requirements for Dry Rotary Dryer Work Practice Requirements

Rotary dryers that meet the definition of ''dry rotary dryers'' in today's proposed rule would not be subject to the proposed control requirements. Green rotary dryers and dry rotary dryers are essentially the same in terms of equipment design. The differences between the two types of dryers are operational. Green rotary dryers are used to dry green furnish, and dry rotary dryers are used to dry furnish that has been previously dried. Green rotary dryers are defined as dryers that dry wood particles that have a moisture content greater than 30 percent on a dry basis or operate at an inlet dryer temperature greater than 600° F. Conversely, dry rotary dryers dry wood particles that have a moisture content less than or equal to 30 percent on a dry basis and operate at an inlet dryer temperature less than or equal to 600° F. The 30 percent moisture and 600° F values were selected for the definitions of dry and green rotary dryers based on values reported in literature, in the questionnaire responses, and in the emissions test reports.

Because the differences in dry rotary dryers and green rotary dryers are operational, we are including monitoring requirements for dry rotary dryers in today's proposed rule that would ensure that these dryers operate as dry rotary dryers on a continuous basis. If you own or operate a dry rotary dryer, you would be required to continuously monitor, calculate, and record the 24-hour average dryer inlet temperature and the 24-hour average moisture content of the incoming wood particles. In addition to monitoring dryer inlet temperature and furnish moisture, you would be required to take representative grab samples of wood particles at the dryer inlet once each day of dryer operation and manually determine the moisture content of the sample on a dry basis. We have included the grab sampling requirement as a means of checking the accuracy of the correlation between the moisture content measured by the continuous moisture sensor and the dry basis moisture content manually determined using a grab sample. The continuous moisture sensors measure moisture level as the ratio of the weight of water to the volume of wood (in the sensing zone). Today's proposed rule defines moisture content, on a dry basis, as the ratio of the weight of water to the weight of dry wood, multiplied by 100.

The requirements for the continuous moisture sensor and the grab sample requirement are specified in § 63.2268(f). We plan to add performance specifications for the continuous moisture sensor to include such parameters as the amount of drift allowed. We request comment on drift and any other performance specifications that should be added to ensure moisture content is being measured accurately, to ensure flexibility in the type of continuous moisture sensor that can be used by a facility, and to ensure compliance and enforceability. We also plan to add specifications to the grab sample requirements, such as including the period of time a sample must maintain a constant weight. We request comment on what this period of time should be and any other specifications that should be added to ensure accurate and precise results.

However, if you choose or are required by some other regulatory action to install a control device designed to reduce VOC or HAP emissions from a dry rotary dryer, you would be exempted from the process monitoring requirements for dry rotary dryers in today's proposed rule.

4. Monitoring and Recordkeeping Requirements for Veneer Redryer Work Practice Requirements

Veneer dryers that meet the definition of ''veneer redryers'' in today's proposed rule would not be subject to the proposed control requirements. Like the differences between green and dry rotary particle dryers, the differences between veneer dryers and veneer redryers are operational. Veneer dryers are used to dry green veneer, and veneer redryers are used to redry veneer that has been previously dried but requires some additional moisture reduction. Thus, in today's proposed rule, veneer redryers are defined as veneer dryers with an inlet veneer moisture content of less than 25 percent (by weight, dry basis). The 25 percent value was selected as the criterion for distinguishing between veneer dryers and veneer redryers because 25 percent was the highest reported veneer dryer outlet moisture content in responses to a survey. If you own or operate a veneer redryer, you would be required to continuously monitor, calculate, and record the 24-hour average inlet veneer moisture content to show that you continuously meet the definition of a veneer redryer.

For purposes of today's proposed rule, process units heated by microwaves or

radio frequency that are used to remove moisture from veneer are not considered to be veneer dryers or veneer redryers, although these process units are typically used to redry veneer. Emissions test data from the NCASI sampling program indicate that emissions from radio frequency veneer redryers are minimal compared to the emissions from veneer dryers heated by conventional means (such as direct firing or steam heating). Thus, the monitoring requirements for veneer redryers described above would not apply to process units that dry or redry veneer using microwaves or radio frequency.

5. Monitoring and Recordkeeping Requirements for Hardwood Veneer Dryer Work Practice Requirements

Veneer dryers that meet the definition of ''hardwood veneer dryer'' in today's proposed rule would not be subject to the proposed control requirements. Hardwood veneer dryers are defined in the proposed rule as veneer dryers that process less than 30 percent softwood species on an annual volume basis. If you own or operate a hardwood veneer dryer, you would be required to keep a record (such as a purchase or production record) of the annual volume percentage of softwood species processed in the dryer to show that your dryer continuously meets the definition of a hardwood veneer dryer.

6. Monitoring and Recordkeeping Requirements for Softwood Veneer Dryer Work Practice Requirements

The proposed work practice requirement for softwood veneer dryers is to minimize fugitive emissions from the dryer doors and green end. If you own or operate a softwood veneer dryer, you would be required to develop a plan for minimizing fugitive emissions from the dryer, and you would have to keep records to document that you are following your plan to show continuous compliance with the work practice requirement.

7. Additional Recordkeeping Requirements for Sources Complying With Emissions Averaging Alternative

If you comply with the emissions averaging provisions, you would be required to keep records of all information necessary to calculate debits and credits, including records of your process unit operating hours, records of total HAP measurements for debit-generating process units, and records of performance tests for credit-generating process units. You would also have to keep monitoring records for add-on control systems used to control credit-generating process units.

I. How Did We Select the Notification and Reporting Requirements?

We selected the proposed notification and reporting requirements based on requirements in the NESHAP General Provisions (40 CFR part 63, subpart A) and specific requirements for the PCWP source category.

The notification requirements that we are proposing include Initial Notifications, notification of performance test, Notification of Compliance Status, and notification dates. These notification requirements are based on requirements in §§ 63.7(b) and (c), 63.8(e) and (f), 63.9(b) through (h), and 63.10(d)(2).

In addition, we selected notification requirements for the emissions averaging provisions. If you comply with the emissions averaging provisions, you would have to submit an EAP to the Administrator for approval at least 1 year prior to the compliance date, or 1 year prior to the date you would begin using an emissions average to comply with the proposed rule, whichever is later. The EAP would have to be submitted prior to the date you would begin using an emissions average so that the Administrator would have time to review and approve or disapprove the plan, and so that you would have time to ensure that the emissions credits would equal or exceed the emissions debits.

The proposed reporting requirements that we selected include semiannual compliance reports, required in § 63.10(e)(3), and immediate SSM reports, required in § 63.10(d)(5)(ii). If there are no deviations from the compliance options, operating requirements, or work practice requirements during the reporting period, then you would only be required to include a statement that there were no deviations in your semiannual compliance report. If there are deviations from the compliance options, operating requirements, or work practice requirements during a reporting period, then you would be required to submit the information required in today's proposed rule in your semiannual compliance report. If you have a startup, shutdown or malfunction during the reporting period, and you take actions consistent with your SSM plan (SSMP), then your compliance report would have to include the information in § 63.10(d)(5)(i). The submittal date for the compliance report is based on information in § 63.10(e)(3)(v).

If there is a startup, shutdown, or malfunction during the reporting period, and you take actions inconsistent with the SSMP, then you would be required to submit an immediate SSM report. The report would have to include the actions taken for the event and the information provided in § 63.10(d)(5)(ii). The submittal date for the immediate SSM report is based on § 63.10(d)(5)(ii). For facilities complying with the emissions averaging provisions, the semiannual compliance report would have to contain calculations showing that the AMR equals or exceeds the RMR in addition to the requirements outlined above for semiannual compliance reports.

We have included a routine control device maintenance exemption in today's proposed rule to provide an allowance for control device downtime associated with routine maintenance such as bakeouts, washouts, and media replacement. We would like to clarify that there will also be instances when a control device is offline for correction of malfunctions such as electrical problems, mechanical problems, utility supply problems, pre-filer upsets, production malfunctions (*e.g.,* dryer fires), and weather-related problems. Because these malfunctions are sudden, infrequent, and not reasonably preventable, they would be covered under the SSM provisions of today's proposed rule. In addition, control device downtime due to process upsets that require shutdown and restarting of equipment would be covered under the SSM provisions.

IV. Summary of Environmental, Energy and Economic Impacts

A. How Many Facilities Are Impacted by This Proposed Rule?

This proposed rule is expected to affect an estimated 223 existing major source facilities that manufacture PCWP. The impacted facilities generally manufacture one or more of the following products: softwood plywood, softwood veneer, medium density fiberboard (MDF), oriented strandboard (OSB), particleboard, hardboard, laminated strand lumber, and laminated veneer lumber. The number of impacted facilities was determined based on the estimated potential to emit (*i.e.,* uncontrolled HAP emissions) from each facility and whether or not the facility already operates control systems necessary to meet the proposed standards. Facilities with estimated potential to emit 25 tons or more of total HAP or 10 or more tons of an individual HAP are major sources of HAP and are

subject to today's proposed rule. Of the estimated 223 facilities affected by this proposed rule, an estimated 166 are expected to install add-on control systems to reduce emissions. The remaining facilities already have installed add-on controls, do not have any process units subject to the compliance options, or are expected to comply with work practice requirements only.

The environmental and cost impacts presented in this preamble represent the estimated impacts for the 223 facilities. The impact estimates were based on the use of RTOs (or in some cases a combination WESP and RTO) because RTOs are the most prevalent HAP emissions control technology used in the PCWP industry. However, technologies other than RTOs could be used to comply with today's proposed standards. For a facility that we believe already achieves the emissions reductions required by today's proposed rule, only recordkeeping cost impacts were estimated.

The number of affected facilities presented above (223) does not include major source facilities with lumber kilns that are not otherwise PCWP facilities. Some of these facilities may be major sources of HAP emissions due to lumber drying operations. Because today's proposed rule contains no control requirements for lumber kilns, we expect there to be no cost, environmental, or energy impacts associated with today's proposed rule for these facilities.

B. What Are the Air Quality Impacts?

We estimate nationwide baseline HAP emissions from the PCWP source category to be 17,000 Mg/yr (19,000 tons/yr) at the current level of control. We estimate that the proposed standards would reduce total HAP emissions from the PCWP source category by about 9,700 Mg/yr (11,000 tons/yr). In addition, we estimate that the proposed standards would reduce VOC emissions (approximated as THC) by about 25,000 Mg/yr (27,000 tons/yr) from a baseline level of 45,000 Mg/yr (50,000 tons/yr).

In addition to reducing emissions of HAP and VOC, the proposed standards would also reduce emissions of criteria pollutants, such as carbon monoxide (CO) from direct-fired emission sources and particulate matter less than 10 microns in diameter (PM_{10}). We estimate that the proposed standards would reduce CO emissions by about 10,000 Mg/yr (11,000 tons/yr). We estimate that the proposed standards would reduce PM_{10} emissions by about 11,000 Mg/yr (13,000 tons/yr).

Combustion of exhaust gases in an RTO generates some emissions of nitrogen oxides (NO_X). We estimate that the nationwide increase in NO_X emissions due to the use of RTOs would be about 4,300 Mg/yr (4,800 tons/yr). This estimated increase in NO_X emissions may be an overestimate because some plants may select control technologies other than RTOs to comply with the proposed standards.

Indirect air impacts of today's proposed rule would result from increased electricity usage associated with operation of control devices. Assuming that plants will purchase electricity from a power plant, we estimate that the proposed standards may increase secondary emissions of criteria pollutants such as PM_{10}, sulfur dioxide (SO_2), NO_X, and CO from power plants by about 6,200 Mg/yr (6,900 tons/yr).

C. What Are the Water Quality Impacts?

Wastewater is produced from WESP blowdown, washing out of RTOs, and biofilters. We based all of our impact estimates on the use of RTOs (with or without a WESP upstream depending on the process unit). We estimate that the wastewater generated from WESP blowdown and RTO washouts would increase by about 43 thousand cubic meters per year (m^3/yr)(11 million gal/yr) as a result of today's proposed rule. Facilities would likely dispose of this wastewater by sending it to a municipal treatment facility, evaporating it onsite, incinerating it in an onsite boiler, reusing it onsite (*e.g.*, in log vats or resin mix), or hauling it offsite for spray irrigation.

D. What Are the Solid Waste Impacts?

Solid waste is produced in the form of solids from WESPs and by RTO or RCO media replacement. We estimate that 4,500 Mg/yr (5,000 tons/yr) of solid waste would be generated as a result of today's proposed rule. This solid material may be disposed of in a landfill or used for other purposes. Some PCWP facilities have been able to use RTO or RCO media as aggregate in onsite roadbeds. Some facilities have also been able to identify a beneficial reuse for wet control device solids (such as giving them away to local farmers for soil amendment).

E. What Are the Energy Impacts?

The overall energy demand (*i.e.*, electricity and natural gas) is expected to increase by about 4.3 million gigajoules per year (GJ/yr) (4.1 trillion British thermal units per year (Btu/yr)) nationwide under the proposed standards. The estimated increase in the energy demand is based on the electricity requirements associated with RTOs and WESPs and the fuel requirements associated with RTOs. Electricity requirements are expected to increase by about 718 gigawatt hours per year (Gwh/yr) under the proposed standards. Natural gas requirements are expected to increase by about 45 million m^3/yr (1.6 billion cubic feet per year (ft^3/yr)) under the proposed standards.

F. What Are the Cost Impacts?

The cost impacts estimated for today's proposed rule represent a high-end estimate of costs. Although the use of RTO technology to reduce HAP emissions represents the most expensive compliance option, we based our nationwide cost estimates on the use of RTO technology at all of the impacted facilities because: (1) RTO technology can be used to reduce emissions from all types of PCWP process units; and (2) we could not accurately predict which facilities would use emissions averaging or production-based emissions limits or install less expensive add-on control devices, such as RCO and biofilters. Therefore, our cost estimates are likely to be overstated, as we anticipate that owners and operators of impacted sources will take advantage of available cost saving opportunities.

The high-end estimated total capital costs of today's proposed rule are $479 million. These capital costs apply to existing sources and include the costs to purchase and install both the RTO equipment (and in some cases, a WESP upstream of the RTO) and the monitoring equipment, and the costs of performance tests. Permanent total enclosure costs are also included for reconstituted wood products presses.

The high-end estimated annualized costs of the proposed standards are $142 million. The annualized costs account for the annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, and recordkeeping and reporting costs. Potential control device cost savings and increased recordkeeping and reporting costs associated with today's proposed emissions averaging alternative standard are not accounted for in either the capital or annualized cost estimates.

G. Can We Achieve the Goals of the Proposed Rule in a Less Costly Manner?

We have made every effort in developing this proposal to minimize the cost to the regulated community and allow maximum flexibility in compliance options consistent with our statutory obligations. We recognize, however, that the proposal may still

require some facilities to take costly steps to further control emissions even though those emissions may not result in exposures which could pose an excess individual lifetime cancer risk greater than one in one million, or which exceed thresholds determined to provide an ample margin of safety for protecting public health and the environment from the effects of hazardous air pollutants. We are, therefore, specifically soliciting comment on whether there are further ways to structure the proposed rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment.

Representatives of the plywood and composite wood products industry provided EPA with descriptions of three mechanisms that they believed could be used to implement more cost-effective reductions in risk. The docket for today's proposed rule contains ''white papers'' prepared by industry that outline their proposed approaches (see docket number A–98–44, Item # II–D–525). These approaches could be effective in focusing regulatory controls on facilities that pose significant risks and avoiding the imposition of high costs on facilities that pose little risk to public health or the environment, and we are seeking public comment on the utility of each of these approaches with respect to this proposed rule.

One of the approaches, an applicability cutoff for threshold pollutants, would be implemented under the authority of CAA section 112(d)(4); the second approach, subcategorization and delisting, would be implemented under the authority of CAA section 112(c)(1) and (c)(9); and, the third approach, would involve the use of a concentration-based applicability threshold. We are seeking comment on whether these approaches are legally justified and, if so, we ask for information that could be used to support such approaches.

The maximum achievable control technology, or MACT, program outlined in CAA section 112(d) is intended to reduce emissions of HAP through the application of MACT to major sources of toxic air pollutants. Section 112(c)(9) is intended to allow EPA to avoid setting MACT standards for categories or subcategories of sources that pose less than a specified level of risk to public health and the environment. The EPA requests comment on whether the approaches described here appropriately rely on the provisions of CAA section 112. While the approaches focus on assessing the inhalation exposures of HAP emitted by a source, EPA specifically requests comment on the appropriateness and necessity of extending these approaches to account for non-inhalation exposures or to account for adverse environmental impacts. In addition to the specific requests for comment noted in this section, we are also interested in any information or comment concerning technical limitations, environmental and cost impacts, compliance assurance, legal rationale, and implementation relevant to the identified approaches. We also request comment on appropriate practicable and verifiable methods to ensure that sources' emissions remain below levels that protect public health and the environment. We will evaluate all comments before determining whether either of the three approaches will be included in the final rule.

1. Industry Emissions and Potential Health Effects

For the PCWP source category, six HAP make up about 96 percent of the total organic HAP (*i.e.*, does not include metals that are HAP). Those six HAP are methanol, formaldehyde, acetaldehyde, phenol, acrolein, and propionaldehyde. All HAP are not emitted by all sources. However, all of the 223 major sources emit all six of the predominant HAP, with a few exceptions. Some engineered wood plants do not emit phenol; these plants are major sources but would not be affected by the proposed rule because they have no equipment subject to the proposed rule. Also, several particleboard plants do not emit propionaldehyde; these particleboard plants have dry rotary particle dryers (as opposed to green particle dryers), which are not subject to control requirements. (For more information, see section III.C.3).

In accordance with section 112(k), EPA developed a list of 33 HAP which present the greatest threat to public health in the largest number of urban areas. Some of the PCWP HAP are included on this list for the EPA's Urban Air Toxics Program. These HAP include three of the six most predominant PCWP HAP (acetaldehyde, acrolein, and formaldehyde). Additional urban HAP that may be emitted by PCWP facilities include benzene, carbon tetrachloride, chloroform, and methylene chloride.

In November 1998, EPA published ''A Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants.'' The organic HAP emitted by PCWP facilities do not appear on the published list of PBT compounds referenced in the EPA strategy.

To estimate the potential baseline risks posed by the PCWP source category and the potential impact of applicability cutoffs, EPA performed a ''rough'' risk assessment for 185 of the 223 facilities in the PCWP source category. The HAP included in the assessment were acetaldehyde, acrolein, benzene, formaldehyde, manganese, methanol, methylene chloride, and phenol. Of these HAP, four are presently not considered to have thresholds for cancer effects: acetaldehyde, benzene, formaldehyde, and methylene chloride.

Of the 185 facilities assessed, 148 facilities were found to pose cancer risks equal to or greater than one in one million to their surrounding population. Forty-six facilities were predicted to pose cancer risks of one in 100,000 or greater, and two PCWP facilities were found to pose cancer risks equal to or greater than one in 10,000.

2. Applicability Cutoffs for Threshold Pollutants Under Section 112(d)(4) of the CAA

The first approach is an ''applicability cutoff'' for threshold pollutants that is based on EPA's authority under CAA section 112(d)(4) to establish standards for HAP which are ''threshold pollutants.'' A ''threshold pollutant'' is one for which there is a concentration or dose below which adverse effects are not expected to occur over a lifetime of exposure. For such pollutants, section 112(d)(4) allows EPA to consider the threshold level, with an ample margin of safety, when establishing emission standards. Specifically, section 112(d)(4) allows EPA to establish emission standards that are not based upon the MACT specified under section 112(d)(2) for pollutants for which a health threshold has been established. Such standards may be less stringent than MACT. Historically, EPA has interpreted section 112(d)(4) to allow categories of sources that emit only threshold pollutants to avoid further regulation if those emissions result in ambient levels that do not exceed the threshold, with an ample margin of safety.[1]

A different interpretation would allow us to exempt individual facilities within a source category that meet the section 112(d)(4) requirements. There are three potential scenarios under this interpretation of the section 112(d)(4) provision. One scenario would allow an exemption for individual facilities that emit only threshold pollutants and can demonstrate that their emissions of

[1] *See* 63 FR 18754, 18765–66 (April 15, 1998) (Pulp and Paper Combustion Sources Proposed NESHAP)

threshold pollutants would not result in air concentrations above the threshold levels, with an ample margin of safety, even if the category is otherwise subject to MACT. A second scenario would allow the section 112(d)(4) provision to be applied to both threshold and non-threshold pollutants, using the one in a million cancer risk level for decisionmaking for non-threshold pollutants. A third scenario would allow a section 112(d)(4) exemption at a facility that emits both threshold and non-threshold pollutants. For those emission points where only threshold pollutants are emitted and where emissions of the threshold pollutants would not result in air concentrations above the threshold levels, with an ample margin of safety, those emission points could be exempt from the MACT standard. The MACT standard would still apply to non-threshold emissions from other emission points at the source. For this third scenario, emission points that emit a combination of threshold and non-threshold pollutants that are co-controlled by MACT would still be subject to the MACT level of control. However, any threshold HAP eligible for exemption under section 112(d)(4) that are controlled by control devices different from those controlling non-threshold HAP would be able to use the exemption, and the facility would still be subject to the provisions of the standard that control non-threshold pollutants or that control both threshold and non-threshold pollutants.

Estimation of hazard quotients and hazard indices. Under the section 112(d)(4) approach, EPA would have to determine that emissions of each of the threshold pollutants emitted by PCWP sources at the facility do not result in exposures which exceed the threshold levels, with an ample margin of safety. The common approach for evaluating the potential hazard of a threshold air pollutant is to calculate a ''hazard quotient'' by dividing the pollutant's inhalation exposure concentration (often assumed to be equivalent to its estimated concentration in air at a location where people could be exposed) by the pollutant's inhalation Reference Concentration (RfC). An RfC is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure that, over a lifetime, likely would not result in the occurrence of adverse health effects in humans, including sensitive individuals. The EPA typically establishes an RfC by applying uncertainty factors to the critical toxic effect derived from the lowest- or no-observed-adverse-effect level of a pollutant.[2] A hazard quotient less than one means that the exposure concentration of the pollutant is less than the RfC and, therefore, presumed to be without appreciable risk of adverse health effects. A hazard quotient greater than one means that the exposure concentration of the pollutant is greater than the RfC. Further, EPA guidance for assessing exposures to mixtures of threshold pollutants recommends calculating a ''hazard index'' by summing the individual hazard quotients for those pollutants in the mixture that affect the same target organ or system by the same mechanism.[3] Hazard index (HI) values would be interpreted similarly to hazard quotients; values below one would generally be considered to be without appreciable risk of adverse health effects, and values above one would generally be cause for concern.

For the determinations discussed herein, EPA would generally plan to use RfC values contained in EPA's toxicology database, the Integrated Risk Information System (IRIS). When a pollutant does not have an approved RfC in IRIS, or when a pollutant is a carcinogen, EPA would have to determine whether a threshold exists based upon the availability of specific data on the pollutant's mode or mechanism of action, potentially using a health threshold value from an alternative source, such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the California Environmental Protection Agency (CalEPA). Table 2 of this preamble provides RfC's, as well as unit risk estimates, for the HAP emitted by facilities in the PCWP source category. A unit risk estimate is defined as the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 μg/m^3 in air.

TABLE 2.—DOSE-RESPONSE ASSESSMENT VALUES FOR SOME HAP REPORTED EMITTED BY THE PLYWOOD AND COMPOSITE WOOD PRODUCTS SOURCE CATEGORY [a, b]

Chemical name	CAS No.	Reference concentration [c] (mg/m^3)	Unit risk estimate [d] (1/(ug/m^3))
Acetaldehyde	75–07–0	9.0E–03 (IRIS)	2.2E–06 (IRIS)
Acrolein	107–02–8	2.0E–05 (IRIS)	
Benzene	71–43–2	6.0E–02 (CAL)	7.8E–06 (IRIS)
Carbon tetrachloride [e]	56–23–5	4.0E–02 (CAL)	1.5E–05 (IRIS)
Chloroform [e]	67–66–3	9.8E–02 (ATSDR)	
Formaldehyde	50–00–0	9.8E–03 (ATSDR)	1.3E–05 (IRIS)
Manganese compounds	7439–96–5	5.0E–05 (IRIS)	
Methanol	67–56–1	4.0E+00 (CAL)	
Methyl ethyl ketone	78–93–3	1.0E+00 (IRIS)	
Methylene chloride	75–09–2	1.0E+00 (ATSDR)	4.7E–07 (IRIS)

[2] ''Methods for Derivation of Inhalation Reference Concentrations and Applications of Inhalation Dosimetry.'' EPA–600/8–90–066F, Office of Research and Development, USEPA, October 1994.

[3] ''Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum Technical Panel,'' EPA/630/R–00/002. USEPA, August 2000. *http://www.epa.gov/nceawww1/pdfs/chem mix/chem mix 08 2001.pdf.*

TABLE 2.—DOSE-RESPONSE ASSESSMENT VALUES FOR SOME HAP REPORTED EMITTED BY THE PLYWOOD AND COMPOSITE WOOD PRODUCTS SOURCE CATEGORY [a, b]—Continued

Chemical name	CAS No.	Reference concentration [c] (mg/m³)	Unit risk estimate [d] (1/(ug/m³))
Phenol	108–95–2	2.0E–01 (CAL)	

[a] Propionaldehyde, a HAP emitted by the PCWP source category, is not included in Table 2 because there are no dose-response values for it.

[b] The table includes many, but not all, of the HAP emitted by the PCWP source category. The following additional HAP have been detected at more than one PCWP facility: cumene, methyl isobutyl ketone (MIBK), styrene, toluene, m,p-xylene, o-xylene, methylene diphenyl diisocyanate (MDI), chloromethane, and ethyl benzene. In addition, the following HAP have been detected at only one PCWP facility: acetophenone, biphenyl, bis-(2-ethylhexyl phthalate), bromomethane, carbon disulfide, di-n-butyl phthalate, ethyl benzene, hydroquinone, n-hexane, 1,1,1-trichloroethane, 4-methyl-2-pentanone, chloroethane, m,p-cresol, and o-cresol. Other HAP, including metal compounds (in addition to manganese compounds) may be emitted by facilities in the PCWP source category.

[c] *Reference Concentration:* An estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups which include children, asthmatics and the elderly) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from various types of human or animal data, with uncertainty factors generally applied to reflect limitations of the data used.

[d] Unit Risk Estimate: The upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 μg/m³ in air. The interpretation of the Unit Risk Estimate would be as follows: if the Unit Risk Estimate = 1.5 × 10–6 per μg/m³, 1.5 excess tumors are expected to develop per 1,000,000 people if exposed daily for a lifetime to 1 μg of the chemical in 1 cubic meter of air. Unit Risk Estimates are considered upper bound estimates, meaning they represent a plausible upper limit to the true value. (Note that this is usually not a true statistical confidence limit.) The true risk is likely to be less, but could be greater.

[e] This HAP was detected at only one PCWP facility.

Sources:

IRIS = EPA Integrated Risk Information System (*http://www.epa.gov/iris/subst/index.html*).

ATSDR = U.S. Agency for Toxic Substances and Disease Registry (*http://www.atsdr.cdc.gov/mrls.html*).

CAL = California Office of Environmental Health Hazard Assessment (*http://www.oehha.ca.gov/air/hot_spots/index.html*).

HEAST = EPA Health Effects Assessment Summary Tables (#PB(=97–921199, July 1997).

To establish an applicability cutoff under section 112(d)(4), EPA would need to define ambient air exposure concentration limits for any threshold pollutants involved. There are several factors to consider when establishing such concentrations. First, we would need to ensure that the concentrations that would be established would protect public health with an ample margin of safety. As discussed above, the approach EPA commonly uses when evaluating the potential hazard of a threshold air pollutant is to calculate the pollutant's hazard quotient, which is the exposure concentration divided by the RfC.

The EPA's ''Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures'' suggests that the noncancer health effects associated with a mixture of pollutants ideally are assessed by considering the pollutants' common mechanisms of toxicity.[4] The guidance also suggests, however, that when exposures to mixtures of pollutants are being evaluated, the risk assessor may calculate an HI. The recommended method is to calculate multiple hazard indices for each exposure route of interest and for a single specific toxic effect or toxicity to a single target organ. The default approach recommended by the guidance is to sum the hazard quotients for those pollutants that induce the same toxic effect or affect the same target organ. A mixture is then assessed by several HI, each representing one toxic effect or target organ. The guidance notes that the pollutants included in the HI calculation are any pollutants that show the effect being assessed, regardless of the critical effect upon which the RfC is based. The guidance cautions that if the target organ or toxic effect for which the HI is calculated is different from the RfC's critical effect, then the RfC for that chemical can be an overestimate, that is, the resultant HI potentially may be overprotective. Conversely, since the calculation of an HI does not account for the fact that the potency of a mixture of HAP can be more potent than the sum of the individual HAP potencies, an HI may potentially be underprotective in some situations.

Options for establishing a hazard index limit. One consideration in establishing a hazard index limit is whether the analysis considers the total ambient air concentrations of all the emitted HAP to which the public is exposed.[5] There are at least several options for establishing a hazard index limit for the section 112(d)(4) analysis that reflect, to varying degrees, public exposure.

One option is to allow the hazard index posed by all threshold HAP emitted from PCWP sources at the facility to be no greater than one. This approach is protective if no additional threshold HAP exposures would be anticipated from other sources in the vicinity of the facility or through other routes of exposure (*e.g.,* through ingestion).

A second option is to adopt a ''default percentage'' approach, whereby the hazard index limit of the HAP emitted by the facility is set at some percentage of one (*e.g.,* 20 percent or 0.2). This approach recognizes the fact that the facility in question is only one of many sources of threshold HAP to which people are typically exposed every day. Because noncancer risk assessment is predicated on total exposure or dose, and because risk assessments focus only on an individual source, establishing a hazard index limit of 0.2 would account for an assumption that 20 percent of an individual's total exposure is from that individual source. For the purposes of this discussion, we will call all sources of HAP, other than the facility in question, ''background'' sources. If the facility is allowed to emit HAP such that its own impacts could result in HI values of one, total exposures to threshold HAP in the vicinity of the facility could be substantially greater than one due to background sources, and this would not be protective of public health since only HI values below one are considered to be without appreciable risk of adverse health effects. Thus, setting the hazard index limit for the facility at some default percentage of one will provide a buffer which would help to ensure that total exposures to threshold HAP near the facility (*i.e.,* in combination with exposures due to background sources) will generally not exceed one and can

[4] Ibid.

[5] Senate Debate on Conference Report (October 27, 1990), reprinted in ''A Legislative History of the Clean Air Act Amendments of 1990,'' Comm. Print S. Prt. 103–38 (1993) (''Legis. Hist.'' at 868.

generally be considered to be without appreciable risk of adverse health effects.

The EPA requests comment on using the ''default percentage'' approach and on setting the default hazard index limit at 0.2. The EPA is also requesting comment on whether an alternative HI limit, in some multiple of one, would be a more appropriate applicability cutoff.

A third option is to use available data (from scientific literature or EPA studies, for example) to determine background concentrations of HAP, possibly on a national or regional basis. These data would be used to estimate the exposures to HAP from non-PCWP sources in the vicinity of an individual facility. For example, the EPA's National-Scale Air Toxics Assessment (NATA) [6] and ATSDR's Toxicological Profiles [7] contain information about background concentrations of some HAP in the atmosphere and other media. The combined exposures from PCWP sources and from other sources (as determined from the literature or studies) would then not be allowed to exceed a hazard index limit of one. The EPA requests comment on the appropriateness of setting the hazard index limit at one for such an analysis.

A fourth option is to allow facilities to estimate or measure their own facility-specific background HAP concentrations for use in their analysis. With regard to the third and fourth options, the EPA requests comment on how these analyses could be structured. Specifically, EPA requests comment on how the analyses should take into account background exposure levels from air, water, food and soil encountered by the individuals exposed to PCWP emissions. In addition, we request comment on how such analyses should account for potential increases in exposures due to the use of a new or the increased use of a previously emitted HAP, or the effect of other nearby sources that release HAP.

The EPA requests comment on the feasibility and scientific validity of each of these or other approaches. Finally, EPA requests comment on how we should implement the section 112(d)(4) applicability cutoffs, including appropriate mechanisms for applying cutoffs to individual facilities. For example, would the title V permit process provide an appropriate mechanism?

Tiered analytical approach for predicting exposure. Establishing that a facility meets the cutoffs under section 112(d)(4) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would promote a tiered analytical approach for these determinations. A tiered analysis involves making successive refinements in modeling methodologies and input data to derive successively less conservative, more realistic estimates of pollutant concentrations in air and estimates of risk.

As a first tier of analysis, EPA could develop a series of simple look-up tables based on the results of air dispersion modeling conducted using conservative input assumptions. By specifying a limited number of input parameters, such as stack height, distance to property line, and emission rate, a facility could use these look-up tables to easily determine whether the emissions from their sources might cause a hazard index limit to be exceeded.

A facility that does not pass this initial conservative screening analysis could implement increasingly more site-specific but more resource-intensive tiers of analysis using EPA-approved modeling procedures in an attempt to demonstrate that exposure to emissions from the facility does not exceed the hazard index limit. The EPA's guidance could provide the basis for conducting such a tiered analysis.[8]

The EPA requests comment on methods for constructing and implementing a tiered analytical approach for determining applicability of the section 112(d)(4) criterion to specific PCWP sources. It is also possible that ambient monitoring data could be used to supplement or supplant the tiered modeling approach described above. It is envisioned that the appropriate monitoring to support such a determination could be extensive. The EPA requests comment on the appropriate use of monitoring in the determinations described above.

Accounting for dose-response relationships. In the past, EPA routinely treated carcinogens as non-threshold pollutants. The EPA recognizes that advances in risk assessment science and policy may affect the way EPA differentiates between threshold and non-threshold HAP. The EPA's Draft Revised Guidelines for Carcinogen Risk Assessment [9] suggest that carcinogens be assigned non-linear dose-response relationships where data warrant. Moreover, it is possible that dose-response curves for some pollutants may reach zero risk at a dose greater than zero, creating a threshold for carcinogenic effects. It is possible that future evaluations of the carcinogens emitted by this source category would determine that one or more of the carcinogens in the category is a threshold carcinogen or is a carcinogen that exhibits a non-linear dose-response relationship but does not have a threshold.

The dose-response assessments for formaldehyde and acetaldehyde are currently undergoing revision by the EPA. As part of this revision effort, EPA is evaluating formaldehyde and acetaldehyde as potential non-linear carcinogens. The revised dose-response assessments will be subject to review by the EPA Science Advisory Board, followed by full consensus review, before adoption into the EPA IRIS. At this time, EPA estimates that the consensus review will be completed by the end of 2003. The revision of the dose-response assessments could affect the potency factors of these HAP, as well as their status as threshold or non-threshold pollutants. At this time, the outcome is not known. In addition to the current reassessment by EPA, there have been several reassessments of the toxicity and carcinogenicity of formaldehyde in recent years, including work by the World Health Organization and the Canadian Ministry of Health.

The EPA requests comment on how we should consider the state of the science as it relates to the treatment of threshold pollutants when making determinations under section 112(d)(4). In addition, EPA requests comment on whether there is a level of emissions of a non-threshold carcinogenic HAP (*e.g.*, benzene, methylene chloride) at which it would be appropriate to allow a facility to use the approaches discussed in this section.

Risk assessment results. The results of the human health risk assessments described below are based on approaches for quantifying exposure, risk, and cancer incidence that carry significant assumptions, uncertainties, and limitations. For example, in conducting these types of analyses, there are typically many uncertainties regarding dose-response functions, levels of exposure, exposed populations, air quality modeling applications, emission levels, and control effectiveness. Because the estimates derived from the various scoping approaches are necessarily rough, we are concerned that they not convey a

[6] *See http://www.epa.gov/ttn/atw/nata.*

[7] *See http://www.atsdr.cdc.gov/toxpro2.html.*

[8] ''A Tiered Modeling Approach for Assessing the Risks due to Sources of Hazardous Air Pollutants.'' EPA–450/4–92–001. David E. Guinnup, Office of Air Quality Planning and Standards, USEPA, March 1992.

[9] ''Draft Revised Guidelines for Carcinogen Risk Assessment.'' NCEA–F–0644. USEPA, Risk Assessment Forum, July 1999. pp 3–9ff. *http://www.epa.gov/ncea/raf/pdfs/cancer_gls.pdf*

false sense of precision. It is expected that any point estimate of risk reduction or benefits generated by these approaches should be considered as part of a range of potential estimates.

If the final rule is implemented as proposed at all PCWP facilities, annual cancer incidence would be reduced from about 0.09 cases/year to about 0.02 cases/year, while the number of people at or above a cancer risk level of one in a million would be reduced from about 900,000 to 150,000. In addition, the number of people exposed to HI values equal to or greater than one was estimated to be reduced from about 270,000 to about 30,000, and the number of people exposed to HI values of 0.2 or greater was predicted to decrease from about 1,500,000 to about 250,000. (Details of these analyses are available in the docket.)

Based on the results of this rough assessment, if the section 112(d)(4) approach is applied only to threshold pollutants, EPA estimates that few, if any, of the 223 facilities in the plywood source category could obtain an exemption from the rule, since it appears that all or nearly all facilities emit some amount of one or more non-threshold pollutants. If the revised dose-response assessments for formaldehyde and acetaldehyde determine that they are threshold carcinogens, these estimates could increase. This application of the section 112(d)(4) approach is estimated to produce minimal potential cost savings.

The second scenario under the section 112(d)(4) provision would apply to both threshold and non-threshold pollutants. If this interpretation is selected, EPA estimates that, if a HI limit of one and a cancer risk level of 10^{-6} were used, as many as 33 of the 223 facilities in the source category may be exempt from the proposed rule and that, if a HI limit of 0.2 and a cancer risk level of 10^{-6} were used, as many as 26 of the 223 facilities may be exempt. The EPA estimates that the cost of the rule as proposed would be approximately $142 million per year, resulting in an annual cost savings of about $9 million per year (for a HI limit of one) or about $7 million per year (for a HI limit of 0.2) (as compared to establishing a MACT standard for all plants in the industry).

The EPA does not expect the third scenario, which would allow emission point exemptions, to be applicable for the PCWP source category because mixtures of threshold and non-threshold pollutants are co-emitted, and the same emission controls would apply to both. The risk estimates from this rough assessment are based on typical facility configurations (*i.e.*, model plants) and, as such, they are subject to significant uncertainties, such that the actual risks at any one facility could be significantly higher or lower. Therefore, while these risk estimates assist in providing a broad picture of impacts across the source category, they should not be the basis for an exemption from the requirements of the proposed rule. Rather, facility-specific risks would require site-specific data and a more refined analysis.

For either of the first two approaches described above, the actual number of facilities that would qualify for an exemption would depend upon site-specific risk assessments and the specified hazard index limit. If the section 112(d)(4) approach were adopted, the rulemaking would likely indicate that the requirements of the rule do not apply to any source that demonstrates, based on a tiered approach that includes EPA-approved modeling of the affected source's emissions, that the anticipated HAP exposures do not exceed the specified hazard index limit.

3. Subcategory Delisting Under Section 112(c)(9)(B) of the CAA

The EPA is authorized to establish categories and subcategories of sources, as appropriate, pursuant to CAA section 112(c)(1), in order to facilitate the development of MACT standards consistent with section 112 of the CAA. Further, section 112(c)(9)(B) allows EPA to delete a category (or subcategory) from the list of major sources for which MACT standards are to be developed when the following can be demonstrated: (1) In the case of carcinogenic pollutants, that "* * * no source in the category * * * emits (carcinogenic) air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source"; (2) in the case of pollutants that cause adverse noncancer health effects, that "* * * emissions from no source in the category or subcategory * * * exceed a level which is adequate to protect public health with an ample margin of safety"; and (3) in the case of pollutants that cause adverse environmental effects, that "* * * no adverse environmental effect will result from emissions from any source."

Given these authorities and the suggestions from the white paper prepared by industry representatives (see docket number A–98–44), EPA is considering whether it would be possible to establish a subcategory of facilities within the larger PCWP category that would meet the risk-based criteria for delisting. Such criteria would likely include the same requirements as described previously for the second scenario under the section 112(d)(4) approach, whereby a facility would be in the low-risk subcategory if its emissions of threshold pollutants do not result in exposures which exceed the HI limits and if its emissions of non-threshold pollutants do not result in exposures which exceed a cancer risk level of 10^{-6}. The EPA requests comment on what an appropriate HI limit would be for a determination that a facility be included in the low-risk subcategory.

Since each facility in such a subcategory would be a low-risk facility (*i.e.*, if each met these criteria), the subcategory could be delisted in accordance with section 112(c)(9), thereby limiting the costs and impacts of the proposed MACT rule to only those facilities that do not qualify for subcategorization and delisting. The EPA estimates that the maximum potential effect of this approach would be the same as that of applying the section 112(d)(4) approach that allows exemption of facilities emitting threshold and non-threshold pollutants if exemption criteria are met (*i.e.*, as many as 33 of the 223 facilities may be exempt under this approach, if an HI limit of one and a cancer risk level of 10^{-6} are used; or, as many as 26 of the 223 may be exempt if an HI limit of 0.2 and a cancer risk level of 10^{-6} are used).

Facilities seeking to be included in the delisted subcategory would be responsible for providing all data required to determine whether they are eligible for inclusion. Facilities that could not demonstrate that they are eligible to be included in the low-risk subcategory would be subject to MACT and possible future residual risk standards. The EPA solicits comment on implementing a risk-based approach for establishing subcategories of PCWP facilities.

Establishing that a facility qualifies for the low-risk subcategory under section 112(c)(9) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would employ the same tiered analytical approach described earlier in the section 112(d)(4) discussion for these determinations.

One concern that EPA has with respect to this section 112(c)(9) approach is the effect that it could have on the MACT floors. If many of the facilities in the low-risk subcategory are well-controlled, that could make the

MACT floor less stringent for the remaining facilities. One approach that has been suggested to mitigate this effect would be to establish the MACT floor now, based on controls in place for the entire category, and to allow facilities to become part of the low-risk subcategory in the future, after the MACT standard is established. This would allow low risk facilities to use the section 112(c)(9) exemption without affecting the MACT floor calculation. The EPA requests comment on this suggested approach.

Another approach under section 112(c)(9) would be to define a subcategory of facilities within the PCWP source category based upon technological differences, such as differences in production rate, emission vent flow rates, overall facility size, emissions characteristics, processes, or air pollution control device viability. The EPA requests comment on how we might establish PCWP subcategories based on these, or other, source characteristics. If it could then be determined that each source in this technologically-defined subcategory presents a low risk to the surrounding community, the subcategory could then be delisted in accordance with section 112(c)(9). The EPA requests comment on the concept of identifying technologically-based subcategories that may include only low-risk facilities within the PCWP source category.

If this section 112(c)(9) approach were adopted, the rulemaking would likely indicate that the rule does not apply to any source that demonstrates that it belongs in a subcategory which has been delisted under section 112(c)(9).

Consideration of criteria pollutants. Finally, EPA projects that adoption of the MACT floor level of controls would result in increases in NO_X emissions. This pollutant is a precursor in the formation of fine PM, which has been associated with a variety of adverse health effects (including premature mortality, chronic bronchitis, and increased frequency of asthma attacks). The EPA requests comment on the extent to which consideration should be given to the adverse effects of the possible increase in NO_X emissions from applying MACT technology, in the context of implementing our authority under section 112(c)(9) or other exemptions.

H. What Are the Economic Impacts?

The economic impact analysis shows that the expected price increases for affected output would range from only 0.7 to 2.5 percent as a result of the proposed NESHAP for PCWP manufacturers. The expected change in production of affected output is a reduction of 0.1 to 0.7 percent for PCWP manufacturers as a result of the proposed rule. There is only one plant closure expected out of the 223 facilities affected by the proposed rule. It should be noted that the baseline economic condition of the facility predicted to close rather than incur the costs of compliance with the proposed rule affects the closure estimate provided by the economic model, and that the facility predicted to close appears to have low profitability levels currently. Therefore, it is likely that there is no adverse impact expected to occur for those industries that produce output affected by the proposed rule, such as hardboard, softwood plywood and veneer, engineered wood products, and other wood composites.

I. What Are the Social Costs and Benefits?

Our assessment of costs and benefits of the proposed rule is detailed in the ''Regulatory Impact Analysis for the Proposed Plywood and Composite Wood Products MACT.'' The Regulatory Impact Analysis (RIA) is located in Docket number A–98–44.

It is estimated that 3 years after implementation of the proposed requirements, HAP would be reduced by 9,700 Mg/yr (11,000 tons/yr) due to reductions in formaldehyde, acetaldehyde, acrolein, methanol, phenol and several other HAP from existing PCWP emission sources. The health effects associated with these HAP are discussed earlier in this preamble.

At this time, we are unable to provide a comprehensive quantification and monetization of the HAP-related benefits of this proposal. Nevertheless, it is possible to derive rough estimates for one of the more important benefit categories, *i.e.*, the potential number of cancer cases avoided and cancer risk reduced as a result of the imposition of the MACT level of control on this source category. Our analysis suggests that imposition of the MACT level of control would reduce cancer cases by zero to less than one case per year, on average, starting some years after implementation of the standards. We present these results in the RIA. This risk reduction estimate is uncertain and should be regarded as an extremely rough estimate and should be viewed in the context of the full spectrum of unquantified noncancer effects associated with the HAP reductions.

The control technologies used to reduce the level of HAP emitted from PCWP sources are also expected to reduce emissions of CO, PM_{10}, and VOC. It is estimated that CO emission reductions total approximately 10,000 Mg/yr (11,000 tons/yr), PM_{10} emission reductions total approximately 11,000 Mg/yr (13,000 tons/yr), and VOC emission reductions (approximated as THC) total approximately 25,000 Mg/yr (27,000 tons/yr). These estimated reductions occur from existing sources in operation 3 years after the implementation of the requirements of the proposed rule and are expected to continue throughout the life of the sources. Human health effects associated with exposure to CO include cardiovascular system and central nervous system (CNS) effects, which are directly related to reduced oxygen content of blood and which can result in modification of visual perception, hearing, motor and sensorimotor performance, vigilance, and cognitive ability. The VOC emissions reductions may lead to some reduction in ozone concentrations in areas in which the affected sources are located. There are both human health and welfare effects that result from exposure to ozone, and these effects are listed in Table 3 of this preamble.

At the present time, we cannot provide a monetary estimate for the benefits associated with the reductions in CO. We also did not provide a monetary estimate for the benefits associated with the changes in ozone concentrations that result from the VOC emission reductions since we are unable to do the necessary air quality modeling to estimate the ozone concentration changes. For PM_{10}, we did not provide a monetary estimate for the benefits associated with the reduction of the emissions, although these reductions are likely to have significant health benefits to populations living in the vicinity of affected sources.

There may be increases in NO_X emissions associated with the proposed rule as a result of increased use of incineration-based controls. These NO_X emission increases by themselves could cause some increase in ozone and PM concentrations, which could lead to impacts on human health and welfare as listed in Table 3. The potential impacts associated with increases in ambient PM and ozone due to these emission increases are discussed in the RIA. In addition to potential NO_X increases at affected sources, the proposed rule may also result in additional electricity use at affected sources due to application of controls. These potential increases in electricity use may increase emissions of SO_2 and NO_X from electricity generating utilities. As such, the proposed rule may result in additional health impacts from increased ambient PM and ozone from these increased

utility emissions. We did not quantify or monetize these impacts.

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon monoxide. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. These general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references.

A full listing of the benefit categories that could not be quantified or monetized in our analysis are provided in Table 3 of this preamble. A full appreciation of the overall economic consequences of the proposed PCWP standards requires consideration of all benefits and costs expected to result from today's proposed rule, not just those benefits and costs which could be expressed here in dollar terms.

TABLE 3.—UNQUANTIFIED BENEFIT CATEGORIES FROM HAP, OZONE-RELATED, AND PM EMISSIONS REDUCTIONS

	Unquantified effect categories associated with HAP	Unquantified effect categories associated with ozone	Unquantified effect categories associated with PM
Health Categories	Carcinogenicity mortality, Genotoxicity mortality, Noncancer lethality, Pulmonary function, decrement, Dermal irritation, Eye irritation, Neurotoxicity, Immunotoxicity, Pulmonary function decrement, Liver damage, Gastrointestinal toxicity, Kidney damage, Cardiovascular impairment, Hematopoietic (Blood disorders), Reproductive/Developmental toxicity.	Airway responsiveness, Pulmonary inflammation, Increased susceptibility to respiratory infection, Acute inflamation and respiratory cell damage, Chronic respiratory damage/Premature aging of lungs, Emergency room visits for asthma, Hospital admissions for respiratory diseases, Asthma attacks, Minor restricted activity days.	Premature mortality, Chronic bronchitis, Hospital admissions for chronic obstructive pulmonary disease, pneumonia, cardiovascular diseases, and asthma, Changes in pulmonary function, Morphological changes, Altered host defense mechanisms, Cancer, Other chronic respiratory disease, Emergency room visits for asthma, Lower and upper respiratory symptoms, Acute bronchitis, Shortness of breath, Minor restricted activity days, Asthma attacks, Work loss days.
Welfare Categories	Corrosion/Deterioration, Unpleasant odors, Transportation safety concerns, Yield reductions/ Foliar injury, Biomass decrease, Species richness decline, Species diversity decline, Community size decrease, Organism lifespan, decrease, Trophic web shortening.	Ecosystem and vegetation effects in Class I areas (*e.g.,* national parks), Damage to urban ornamentals (*e.g.,* grass, flowers, shrubs, and trees in urban areas), Commercial field crops, Fruit and vegetable crops, Reduced yields of tree seedlings, commercial and non-commercial forests, Damage to ecosystems, Materials damage, Reduced worker productivity.	Materials damage, Damage to ecosystems (*e.g.,* acid sulfate deposition), Nitrates in drinking water.

V. Relationship to Other Standards and Programs Under the CAA and Other Statutes

A. Wood Building Products Surface Coating NESHAP Proposal

The proposed PCWP rule includes some miscellaneous coating operations that are performed where the substrate is manufactured. We included these miscellaneous coating operations in the proposed PCWP rule instead of the upcoming Wood Building Products Surface Coating NESHAP (40 CFR part 63, subpart QQQQ) so that most facilities would be subject to only one of the rules. The miscellaneous coating operations proposed today include the application of any of the following to plywood or composite wood products: edge seals, moisture sealants, anti-skid coatings, company logos, trademark or grade stamps, nail lines, synthetic patches, wood patches, wood putty, concrete forming oils, glues for veneer composing, and shelving edge fillers. In addition, miscellaneous coating operations also include the application of primer to OSB siding that occurs at the same site as the OSB manufacture.

B. Wood Furniture Manufacturing Operations NESHAP (40 CFR Part 63, Subpart JJ)

The Wood Furniture Manufacturing Operations NESHAP apply to wood furniture manufacturing facilities that are engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components that are located at a plant site that is a major source of HAP emissions. In the preamble to the final rule (60 FR 62936, December 7, 1995), we stated that wood furniture manufacturing operations involving urea-formaldehyde resins were excluded from the Wood Furniture Manufacturing Operations NESHAP and would be covered by the proposed PCWP rule. Today's proposed rule covers manufacturing operations at wood furniture manufacturing facilities that use urea-formaldehyde resins. These operations include, but are not limited to, the manufacture of hardwood plywood, particleboard, and medium density fiberboard, all of which are included in the definition of a PCWP manufacturing facility. Although some wood furniture plants may be subject to both the Wood Furniture Manufacturing Operations NESHAP and today's proposed rule, there are no overlapping

requirements for individual process units.

C. Combustion Related NESHAP

Plywood and composite wood products facilities operate combustion units such as boilers, fuel cells, and thermal oil heaters that supply heat to process units such as dryers and presses that are used in the manufacture of PCWP. When the combustion unit supplies heat by directly exhausting the combustion gas through a dryer, the dryer is considered a ''direct-fired dryer.'' Therefore, the HAP emissions from a direct-fired dryer are actually a combination of the emissions from the combustion unit exhausting into the dryer and the emissions that result from drying the wood. Because today's proposed rule regulates emissions from direct-fired dryers, those combustion units associated with direct-fired dryers are excluded from the requirements of other combustion-related NESHAP, such as the Industrial/Commercial/Institutional Boilers NESHAP and the Process Heaters NESHAP. However, those combustion units that supply heat or steam to indirect-fired dryers or presses (*i.e.*, combustion unit exhaust does not contact wood particles or veneers), and those thermal oil heaters that supply hot oil for presses but which don't exhaust through dryers are not covered by today's proposed rule and would be subject to the requirements of the applicable combustion related NESHAP.

D. New Source Review/Prevention of Significant Deterioration Applicability

We expect that many of the PCWP facilities impacted by today's proposed rule will install RTOs to comply with the proposed HAP control requirements. However, RTOs can generate NO_X emissions during normal operation. If NO_X emission increases are great enough, they may trigger the need for preconstruction permits under the nonattainment new source review (NSR) or prevention of significant deterioration (PSD) program (referred to in the remainder of this preamble as ''major NSR''). During the development of today's proposed rule, representatives from the PCWP industry requested that we consider the application of an RTO to reduce HAP emissions to be a pollution control project (PCP), as defined within the context of PSD and NSR, such that RTOs installed to meet today's proposed rule would qualify for an exemption from NSR/PSD.

In 1992, the EPA adopted an explicit PCP exclusion for electric utility steam generating units (57 FR 32314). In a July 1, 1994 guidance memorandum, we provided guidance to permitting authorities on the approvability of PCP exclusions for source categories other than electric utilities. In that guidance (available on the TTN; see ''Pollution Control Projects and New Source Review (NSR) Applicability'' from John S. Seitz, Director, OAQPS, to EPA Regional Air Division Directors), we indicated that add-on controls and fuel switches to less polluting fuels may qualify for an exclusion from major NSR as a PCP. To be eligible to be excluded from otherwise applicable major NSR requirements, a PCP must, on balance, be ''environmentally beneficial,'' and the permitting authority must ensure that the project will not cause or contribute to a violation of the NAAQS or PSD increment, or adversely affect visibility or other air quality related values (AQRV) in a Class I area, and that offsetting reductions are secured in the case of a project which would result in a significant increase of a nonattainment pollutant. The permitting authority can make these determinations outside of the major NSR process. The 1994 guidance did not supercede existing NSR requirements, including approved State NSR programs, nor void or create an exclusion from any applicable minor source preconstruction review requirements in an approved SIP. Any minor NSR permitting requirements in a SIP would continue to apply, regardless of any exclusion from major NSR that might be approved for a source under the PCP exclusion policy.

In the July 1, 1994 guidance memorandum, we specifically identified the RTO as an example of an add-on control that is an appropriate candidate for a case-by-case exclusion from major NSR as a PCP. We believe that the current guidance on the PCP exclusion adequately provides for the possible exemption from major NSR for PCP resulting from today's proposed rule. Permitting authorities should follow that guidance to the extent allowed under the applicable SIP in order to determine whether the installation of an RTO in a given circumstance qualifies as a PCP. Projects that qualify for the exclusion would be covered under minor source regulations in the applicable SIP, and permitting authorities would be expected to provide adequate safeguards against NAAQS and increment violations and adverse impacts on AQRV in Federal Class I areas. Only in those areas where potential adverse impacts cannot be resolved through the minor NSR programs or other mechanisms would major NSR apply.

E. Interrelationship Between MACT Provisions and PSD

We have received comments from some in industry who would like to use the provisions of the proposed PCWP rule to satisfy requirements for PSD. While many of the proposed PCWP provisions for HAP may be used to comply with PSD, the PCWP provisions are not universally applicable. In cases where one rule is more stringent than the other, you must comply with both rules.

We do not usually state this explicitly in rule preambles because it is established as a matter of law and precedence. However, because of some misunderstandings from some in industry and our on-going enforcement review of PSD compliance in the PCWP industry, we believe it is helpful to discuss areas where the proposed PCWP rule and PSD may have different requirements.

First, the proposed PCWP rule is a rule that would regulate HAP. Decisions on control levels and compliance demonstrations are based on HAP reductions. If decisions had been based on control of VOC, the control level may have been different. For example, this proposed rule requires 90 percent reduction of HAP from affected process units. Prevention of significant deterioration may require control efficiencies in excess of 90 percent. Another example is which process units require control. In the proposed PCWP rule, the level of control that represents the MACT floor for dry rotary dryers and hardwood veneer dryers is no emissions reductions. We determined that requiring controls was not cost effective for HAP. However, these process units emit more VOC than HAP; therefore, we may determine for PSD that dry rotary dryers and hardwood veneer dryers should be controlled.

Second, we want to clarify that THC is not the same as VOC. Two of the compliance options in the proposed PCWP rule are based on measurement of THC, as carbon, either with or without methane, as a surrogate for measuring HAP. While THC, as carbon, is a good way to determine percent reduction of a control device for HAP of concern for the PCWP industry, it may not be appropriate for VOC.

F. Effluent Guidelines

Effluent guidelines applicable to categories and subcategories of industrial point sources are issued under authority of the Clean Water Act (sections 301, 304, 306, 307, 308, 402, and 501). The current effluent guidelines are applicable to many PCWP

facilities and are found at 40 CFR part 429. Effluent limitations for a number of the subcategories covered in 40 CFR part 429 prohibit discharge of process wastewater pollutants into navigable waters of the United States. Industry has requested that we propose to amend the effluent guidelines in 40 CFR part 429, specifically the definition of process wastewaters at § 429.11(c), which affects all subparts requiring no discharge of process wastewater pollutants, to allow discharge of certain wastewaters, specifically wastewaters associated with APCD operation and maintenance, by excluding them from the applicability of these subparts. Industry has asserted that effluent limitations for these wastewaters could be developed by permit writers on a case-by-case basis based upon best professional judgment. Industry comments are in Docket number A–98–44.

At this time, we are not proposing to amend the effluent guidelines because many PCWP facilities are disposing of these wastewaters in compliance with the existing regulations, for example, by recycling them in the process or discharging them to a publicly owned treatment works. We lack comprehensive information to support the industry's suggestion that simultaneous compliance with the proposed rule and the existing effluent guidelines would not be possible.

In order to consider industry's request, we would need to obtain additional and more-detailed information than currently available that: (1) Quantifies the volumes and pollutants present in the wastewaters generated by APCD used to comply with the proposed rule so that comparisons can be made with wastewaters regulated by the existing effluent guidelines, and (2) documents the industry's wastewater treatment and disposal practices to support the assertions that any additional APCD wastewaters that may not have been considered in the original rulemaking for part 429 are not or could not be disposed of in a manner compliant with the existing effluent guidelines. We are requesting comment and additional detailed information and supporting data from interested parties on whether 40 CFR part 429, subparts B, C, D, F, K, L, M, and O, should be amended by revising the applicability of any or all of these subparts requiring no discharge of process wastewater pollutants (*i.e.*, by changing the definition of process wastewater at § 429.11(c)), such that the effluent guidelines would not apply to wastewater produced by operation or maintenance of APCD that are used to comply with the proposed rule. Any new information and data will be considered and, if appropriate, could serve as the basis for amending the definition of process wastewater found at 40 CFR § 429.11(c) at the time the final PCWP MACT rule is promulgated. (The EPA would consider employing a direct final rule to promulgate any such amendment if we receive convincing supporting information as described above and do not receive significant adverse comment on this issue in response to today's proposed rule. If we do receive adverse comments, we would need to propose the amendment prior to promulgation.) If appropriate and promulgated, this amendment, or a similar amendment designed to achieve the same result, would allow for the discharge of such APCD wastewater that may result from compliance with the PCWP MACT rule. We are considering an amendment to 40 CFR § 429.11(c), to read as follows (amending language in italics): The term ''process wastewater'' specifically excludes non-contact cooling water, material storage yard runoff (either raw material or processed wood storage), *boiler blowdown, and wastewater from air pollution control devices installed to comply with the proposed national emissions standards for hazardous air pollutants (NESHAP) for plywood and composite wood products (PCWP) facilities (40 CFR § 63.22).* For the dry process hardboard, veneer, finishing, particleboard, and sawmills and planing mills subcategories, fire control water is excluded from the definition.

The actual discharge allowances would be determined initially on a case-by-case basis by NPDES permitting authorities using their best professional judgment (*See* 40 CFR § 125.3). (In this regard, the industry has suggested that discharge limitations could be expressed in the form of allowances for the discharges attributable to the proposed PCWP MACT rule.) If we promulgate an amendment to part 429 of the type described above at the time we promulgate the final PCWP MACT rule, we will consider, through the CWA section 304(m) planning process, whether it is appropriate to revise part 429 at a later time in order to establish category-or subcategory-specific effluent limitations and standards for such APCD wastewater discharges.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is a ''significant regulatory action'' because the annual costs of complying with the rule as proposed are expected to exceed $100 million. Consequently, this action was submitted to OMB for review under Executive Order 12866. Any written comments from OMB and written EPA responses are available in the docket (see **ADDRESSES** section of this preamble).

We did not estimate health and welfare benefits associated with changes in emissions of HAP, CO, VOC, PM, NO_X and SO2 for this proposed rule.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with

State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed 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, as specified in Executive Order 13132. The proposed rule would not impose directly enforceable requirements on States, nor would it preempt them from adopting their own more stringent programs to control emissions from PCWP facilities. Moreover, States are not required under the CAA to take delegation of Federal NESHAP and bear their implementation costs, although States are encouraged and often choose to do so. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule. Although section 6 of Executive Order 13132 does not apply to this proposed rule, EPA is providing State and local officials an opportunity to comment on this proposed rule. A summary of the concerns raised during the notice and comment process and EPA's response to those concerns will be provided in the final rulemaking notice.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected plant sites are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The Agency does not have reason to believe the environmental health or safety risks associated with the emissions addressed by this proposed rule present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assess the results of early life exposure to the pollutants addressed by this proposed rule and suggest a disproportionate impact.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Since this rule is estimated to impose costs to the private sector in excess of $100 million per year, it is considered a significant regulatory action. Therefore, we have prepared the following statement with respect to sections 202 through 205 of the UMRA.

1. Statutory Authority

This proposed rule establishes control requirements for existing and new PCWP sources pursuant to section 112 of the CAA. The CAA requires NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This is commonly referred to as MACT. Section 112(d)(3) further

defines a minimum level of control that can be considered for MACT standards, commonly referred to as the MACT floor—which for new sources, is the level of control achieved by the best controlled similar source, and for existing sources is the level of control achieved by the average of the best performing 12 percent of sources in the category (or the best-performing five sources for categories with fewer than 30 sources).

Control technologies and their performance are discussed in the background information document for this proposal (Docket number A–98–44). We considered emission reductions, costs, environmental impacts, and energy impacts in selecting the proposed MACT standards. The proposed standards achieve sizable reductions in HAP and other pollutant emissions.

2. Social Costs and Benefits

The regulatory analyses prepared for this proposed rule, including our assessment of costs and benefits, is detailed in the ''Regulatory Impact Analysis for the Proposed Plywood and Composite Wood Products NESHAP'' in Docket A–98–44. Based on estimated compliance costs associated with this proposed rule and the predicted change in prices and production in the affected industries, the estimated social costs of this proposed rule are $134.2 million (1999 dollars). The social costs of this proposed rule are the costs imposed upon society as a result of efforts toward compliance, and include the effects upon consumers of products made by the affected facilities.

It is estimated that 3 years after implementation of the requirements as proposed, HAP would be reduced by 9,700 Mg/yr (11,000 tons/yr) due to reductions in formaldehyde, acetaldehyde, acrolein, methanol and other HAP from PCWP sources. Formaldehyde and acetaldehyde have been classified as ''probable human carcinogens.'' Acrolein, methanol and the other HAP are not considered carcinogenic, but produce several other toxic effects. If implemented, the requirements of this proposed rule would also achieve reductions of 10,000 Mg/yr (11,000 tons/yr) of CO, approximately 11,000 Mg/yr (13,000 tons/yr) of PM_{10}, and approximately 25,000 Mg/yr (27,000 tons/yr) of VOC (approximated as THC). Exposure to CO can effect the cardiovascular system and the central nervous system. The PM emissions can result in fatalities and many respiratory problems (such as asthma or bronchitis).

At the present time, we cannot provide a monetary estimate for the benefits associated with the reductions in HAP and CO. For VOC, we are not able to estimate the benefits associated with the reductions due to a lack of available air quality modeling to estimate the change in ozone concentrations that occur with VOC emissions reductions. We estimated the benefits associated with health effects of PM_{10} but were unable to quantify all categories of benefits (particularly those associated with ecosystem and environmental effects). The estimated benefits include the effects of potential additional NO_X emissions that result from additional combustion controls. The estimates of the potential additional NO_X emissions are presented in Section IV of this preamble. Nitrogen oxides are transformed into PM_{10} in the atmosphere, and these emissions hence offset the benefits from the PM_{10} reductions mentioned above. Total monetized benefits for the PME_{10} and NO_X emissions changes using our preferred approach to value benefits is $8.5 million (1999 dollars), and $5.3 million (1999 dollars) using an alternative age-adjusted approach recommended by others. The two approaches to valuing benefits is discussed in more detail in this preamble in the Executive Order 12866 section and in the Regulatory Impact Analysis. The monetized benefits should be considered along with the many categories of benefits that we are unable to place a dollar value on to consider the total benefits of this proposed rule.

3. Regulatory Alternatives Considered

The proposed standards reflect the MACT floor, the least stringent regulatory alternative we may propose. In addition, we are proposing the least burdensome and most flexible monitoring, reporting, and recordkeeping requirements that we believe will assure compliance with the compliance options and requirements of this proposed rule. Therefore, the proposed regulatory alternative reflects the least costly, most cost-effective, and least burdensome regulatory option that achieves the objectives of the proposed rule.

4. Effects on the National Economy

The economic impact analysis for this proposed rule estimates effects upon employment and foreign trade for the industries affected by this proposed rule. The total reduction in employment for the affected industries is 0.3 percent of the current employment level (or 225 employees). This estimate includes the increase in employment among firms in these industries that do not incur any cost associated with the proposed rule. There is also minimal change in the foreign trade behavior for the firms in these industries since the level of imports of affected composite wood products only increases by less than 0.1 percent.

5. Consultation With Government Officials

Throughout the development of this proposed rule, we interacted with representatives of affected State and local officials to inform them of the progress of our rulemaking efforts. We also consulted with representatives from other entities affected by the proposed rule, such as the American Forest & Paper Association, National Council for Air and Stream Improvement, APA—The Engineered Wood Association, Composite Panel Association, American Hardboard Association, Hardwood Plywood and Veneer Association, and representatives from affected companies. We will continue to interact with government officials and other entities during the public comment period for this proposed rule and throughout development of the promulgated PCWP standards.

The number of small entities that are significantly affected by today's proposed PCWP standards is not expected to be substantial. This proposed rule contains no regulatory requirements that might significantly affect small governments because no PCWP facilities are owned by such governments. The full analysis of potential regulatory impacts on small organizations, small governments, and small businesses is included in the economic impact analysis in the docket and is listed at the beginning of today's action under **SUPPLEMENTARY INFORMATION**. Because the number of small entities that are likely to experience significant economic impacts as a result of today's proposed standards is not expected to be substantial, no plan to inform and advise small governments is required under section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a

substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business ranging from 500 to 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed rule on small entities, we certify that this action will not have a significant impact on a substantial number of small entities. In accordance with the RFA, we conducted an assessment of the proposed standards on small businesses in the industries affected by the proposed rule. Based on SBA size definitions for the affected industries and reported sales and employment data, the Agency identified 17 of the 52 companies, or 32 percent, owning affected facilities as small businesses. Although small businesses represent 32 percent of the companies within the source category, they are expected to incur only 8 percent of the total industry compliance costs of $142 million. There are only three small firms with compliance costs equal to or greater than 3 percent of their sales. In addition, there are seven small firms with cost-to-sales ratios between 1 and 3 percent.

We performed an economic impact analysis to estimate the changes in product price and production quantities for the firms affected by this proposed rule. The analysis shows that of the 32 facilities owned by affected small firms, only one would be expected to shut down rather than incur the cost of compliance with the proposed rule. Although any facility closure is cause for concern, it should be noted that the baseline economic condition of the facilities predicted to close affects the closure estimate provided by the economic model. Facilities which are already experiencing adverse economic conditions for reasons unconnected to this proposed rule are more vulnerable to the impact of any new costs than those that are not.

The analysis indicates that the proposed rule should not generate a significant impact on a substantial number of small entities for the PCWP manufacturing source category for the following reasons. First, of the ten small firms that have compliance costs greater than 1 percent of sales, only three have compliance costs of greater than 3 percent of sales. Second, the results of the economic impact analysis show that only one facility owned by a small firm out of the 32 facilities owned by affected small firms may close due to the implementation of this proposed rule. The facility that may close rather than incur the cost of compliance appears to have low profitability levels currently. It also should be noted that the estimate of compliance costs for this facility is likely to be an overestimate due to the lack of facility-specific data available to assign a precise control cost in this case. In sum, the analysis supports today's certification under the RFA because, while a few small firms may experience significant impacts, there will not be a substantial number incurring such a burden.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, we minimized the impact of this proposed rule on small entities in several ways. First, we considered subcategorization based on production and throughput level to determine whether smaller process units would have a different MACT floor than larger process units. Our data show that subcategorization based on size would not result in a less stringent level of control for the smaller process units. Second, we chose to set the control requirements at the MACT floor control level and not at a control level more stringent. Thus, the control level specified in the proposed PCWP rule is the least stringent allowed by the CAA. Third, the proposed rule contains multiple compliance options to provide facilities with the flexibility to comply in the least costly manner while maintaining a workable and enforceable rule. The compliance options include emissions averaging and production-based compliance options which allow inherently low-emitting process units to comply without installing add-on control devices and facilities to use innovative technology and pollution prevention methods. Fourth, the proposed rule includes multiple test method options for measuring methanol, formaldehyde, and total HAP. In addition, we worked with various trade associations during the development of the proposed rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (1984.01), and you may obtain a copy from Susan Auby by mail at Office of Environmental Information, Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. You may also download a copy off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the NESHAP General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the rule) is estimated to be 4,658 labor hours per year, at a total annual cost of $207,322. This estimate includes notifications that facilities are subject to the rule; notifications of performance tests; notifications of compliance status, including the results of performance tests and other initial compliance demonstrations that do not include performance tests; startup, shutdown, and malfunction reports; semiannual compliance reports; and recordkeeping. In addition to the requirements of 40 CFR part 63, subpart A, facilities that wish to implement emissions averaging provisions must submit an emissions averaging plan. Facilities may also submit a request for a routine control device maintenance exemption to justify the need for routine

maintenance on the control device and to show how the facilities plan to minimize emissions to the greatest extent possible during the maintenance. Total capital/startup costs associated with the testing, monitoring, reporting, and recordkeeping requirements over the 3-year period of the ICR are estimated to be $122,040, with operation and maintenance costs of $3,957.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: (1) Review instructions; (2) develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 9, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by February 10, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through annual reports to the OMB, with explanations when we do not use available and applicable voluntary consensus standards.

In this proposed rule, we are proposing requirements to use EPA Methods 1, 1a, 2, 2a, 2c, 2d, 2f, 2g, 3, 3a, 3b, 4, 18, 25a, 204, 204(a–f), 308, 316, 320, and SW 846 0011, and the NCASI methods previously discussed in this preamble. Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards that could be used in addition to the EPA methods.

No voluntary consensus standards were identified as applicable to this proposed rule. For EPA Methods 1a, 2a, 2d, 2f, 2g, 204, 204a–f, 308, 316, and SW 846 0011, no applicable voluntary consensus standards were found. The search and review results are documented in Docket A–98–44. For EPA Methods 1, 2, 2c, 3, 3a, 3b, 4, 18, and 25a, we identified voluntary consensus standards that would not be practical due to lack of equivalency, detail, and/or quality assurance/quality control requirements. Specific reasons why the voluntary consensus standards are not practical are detailed in Docket A–98–44. For EPA Methods 2, 3a, 25a, and 320, we identified voluntary consensus standards that are under development or under EPA review. These voluntary consensus standards are listed in Docket A–98–44. Therefore, we do not propose to use any voluntary consensus standards.

We are requesting comment on compliance demonstration requirements in this proposed rule and specifically invite you to identify potentially-applicable voluntary consensus standards. You should explain why this regulation should adopt a particular voluntary consensus standard in lieu of or in addition to EPA's methods and/or the NCASI methods. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A, was used).

Table 4 of proposed subpart DDDD lists the testing methods and performance standards included in the proposed regulations. Several of the methods have been used by States and industry for more than 10 years. Nevertheless, under § 63.7(e)(2)(ii) and (f), the proposal also allows any State or source to apply to EPA for permission to use an alternative method in place of any of the EPA testing methods or performance standards listed in Table 4 of proposed subpart DDDD.

I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1) (i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' The proposed rule is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for the determination is as follows.

This proposed rule affects manufacturers in the softwood veneer and plywood (NAICS 321212), reconstituted wood products (NAICS 321219), and engineered wood products (NAICS 321213) industries. There is no crude oil, fuel, or coal production from these industries. Hence, there is no direct effect on such energy production related to implementation of this proposal. In fact, as previously mentioned in this preamble, there will be an increase in energy consumption, and hence an increase in energy

production, resulting from installation of RTO and WESP likely needed for sources to meet the requirements of the proposed rule. This increase in energy consumption is equal to 718 million kilowatt-hours/year (kWh/yr) for electricity and 45 million cubic meters/year (m^3/yr) for natural gas. These increases are equivalent to 0.012 percent of 1998 U.S. electricity production and 0.000001 percent of 1998 U.S. natural gas production.[10] It should be noted, however, that the reduction in demand for product output from these industries may lead to a negative indirect effect on such energy production, for the output reduction will lead to less energy use by these industries and thus some reduction in overall energy production.

For fuel production, the result of this indirect effect from reduced product output is a reduction of only about 1 barrel per day nationwide, or a 0.00001 percent reduction nationwide based on 1998 U.S. fuel production data.[11] For coal production, the resulting indirect effect from reduced product output is a reduction of only 2,000 tons per year nationwide, or only a 0.00001 percent reduction nationwide based on 1998 U.S. coal production data. For electricity production, the resulting indirect effect from reduced product output is a reduction of 42.8 million kWh/yr, or only a 0.00013 percent reduction nationwide based on 1998 U.S. electricity production data. Given that the estimated price increase for product output from any of the affected industries is no more than 2.5 percent, there should be no price increase for any energy type by more than this amount. The cost of energy distribution should not be affected by this proposal at all since the rule does not affect energy distribution facilities. Finally, with changes in net exports being a minimal percentage of domestic output (0.01 percent) from the affected industries, there will be only a negligible change in international trade, and hence in dependence on foreign energy supplies. No other adverse outcomes are expected to occur with regards to energy supplies.Thus, the net effect of this proposed rule on energy production is an increase in electricity output of 0.012 percent compared to 1998 output data, and a negligible change in output of other energy types. All of the results presented above account for the passthrough of costs to consumers, as well as the cost impact to producers. These results also account for how energy use is related to product output for the affected industries.[12] For more information on the estimated energy effects, please refer to the background memo [13] to these calculations and the economic impact analysis for the proposed rule. The background memo and economic impact analysis are available in the public docket.

Therefore, we conclude that the rule if implemented as proposed is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

2. Section 63.14 is amended by revising paragraph (f) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(f) The following material is available from the National Council of the Paper Industry for Air and Stream Improvement, Inc. (NCASI), Methods Manual, P.O. Box 133318, Research Triangle Park, NC 27709–3318, (919) 558–1987, or at *http://www.ncasi.org.*

(1) NCASI Method DI/MEOH–94.02, Methanol in Process Liquids GC/FID (Gas Chromatography/Flame Ionization Detection), August 1998, IBR approved for § 63.457(c)(3)(ii).

(2) NCASI Method CI/WP–98.01, Chilled Impinger Method For Use At Wood Products Mills to Measure Formaldehyde, Methanol, and Phenol, 1998, IBR approved for proposed § 63.2262.

(3) NCASI Method IM/CAN/WP–99.01, Impinger/Canister Source Sampling Method For Speciated HAPs at Wood Products Facilities, 1999, IBR approved for proposed § 63.2262.

* * * * *

3. Part 63 is amended by adding subpart DDDD to read as follows:

Subpart DDDD—National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

What This Subpart Covers

Sec.

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63.2233 When do I have to comply with this subpart?

Compliance Options, Operating Requirements, and Work Practice Requirements

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63.2241 What are the work practice requirements and how must I meet them?

General Compliance Requirements

63.2250 What are the requirements for periods of startup, shutdown, and malfunction?

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Initial Compliance Requirements

63.2260 How do I demonstrate initial compliance with the compliance options, operating requirements, and work practice requirements?

63.2261 By what date must I conduct performance tests or other initial compliance demonstrations?

63.2262 How do I conduct performance tests and establish operating requirements?

63.2263 Initial compliance demonstration for a dry rotary dryer.

63.2264 Initial compliance demonstration for a hardwood veneer dryer.

63.2265 Initial compliance demonstration for a softwood veneer dryer.

63.2266 Initial compliance demonstration for a veneer redryer.

63.2267 Initial compliance demonstration for a reconstituted wood product press or board cooler.

63.2268 What are my monitoring installation, operation, and maintenance requirements?

Continuous Compliance Requirements

63.2270 How do I monitor and collect data to demonstrate continuous compliance?

63.2271 How do I demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements?

[10] U.S. Department of Energy, Energy Information Administration. Annual Energy Review, End-Use Energy Consumption for 1998. Located on the Internet at *http://www.eia.doe.gov/emeu/aer/enduse.html.*

[11] Ibid.

[12] U.S. Department of Energy, Energy Information Administration. 1998 Manufacturing Energy Consumption Survey. Located on the Internet at *http://www.eia.doe.gov/emeu/mecs/mecs98/datatables/contents.html.*

[13] U.S. Environmental Protection Agency. ''Energy Impact Analysis of the Proposed Plywood and Composite Wood Products NESHAP.'' July 30, 2001.

Notifications, Reports, and Records

63.2280 What notifications must I submit and when?
63.2281 What reports must I submit and when?
63.2282 What records must I keep?
63.2283 In what form and how long must I keep my records?

Other Requirements and Information

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63.2291 Who implements and enforces this subpart?
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Tables

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Table 1B to Subpart DDDD—Add-On Control Systems Compliance Options
Table 2 to Subpart DDDD—Operating Requirements
Table 3 to Subpart DDDD—Work Practice Requirements
Table 4 to Subpart DDDD—Requirements for Performance Tests
Table 5 to Subpart DDDD—Performance Testing and Initial Compliance Demonstrations for the Compliance Options and Operating Requirements
Table 6 to Subpart DDDD—Initial Compliance Demonstrations for Work Practice Requirements
Table 7 to Subpart DDDD—Continuous Compliance With the Compliance Options and Operating Requirements
Table 8 to Subpart DDDD—Continuous Compliance With the Work Practice Requirements
Table 9 to Subpart DDDD—Requirements for Reports
Table 10 to Subpart DDDD—Applicability of General Provisions to Subpart DDDD

Appendix

Appendix A to Subpart DDDD—Alternative Procedure to Determine Capture Efficiency From A Hot Press Enclosure in the Plywood and Composite Wood Products Industry Using Sulfur Hexafluoride Tracer Gas

What This Subpart Covers

§ 63.2230 What is the purpose of this subpart?

This subpart establishes national compliance options, operating requirements, and work practice requirements for hazardous air pollutants (HAP) emitted from plywood and composite wood products manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the compliance options, operating requirements, and work practice requirements.

§ 63.2231 Does this subpart apply to me?

This subpart applies to you if you meet the criteria in paragraphs (a) and (b) of this section.

(a) You own or operate a plywood and composite wood products (PCWP) manufacturing facility. A PCWP manufacturing facility is a plant site that manufactures plywood and/or composite wood products by bonding wood material (fibers, particles, strands, veneers, etc.) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. Plywood and composite wood products manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any facility. Plywood and composite wood products include (but are not limited to) plywood, veneer, particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams.

(b) The PCWP manufacturing facility is located at a major source of HAP emissions. A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.2232 What parts of my plant does this subpart cover?

(a) This rule applies to each new, reconstructed, or existing affected source at a PCWP manufacturing facility.

(b) The affected source is the collection of dryers, blenders, formers, presses, board coolers, and other process units associated with the manufacturing of plywood and composite wood products at a plant site. The affected source includes, but is not limited to, green end operations, drying operations, blending and forming operations, pressing and board cooling operations, and miscellaneous finishing operations (such as sanding, sawing, patching, edge sealing, and other finishing operations not subject to other NESHAP). The affected source also includes onsite storage of raw materials used in the manufacture of plywood and/or composite wood products, such as resins; onsite wastewater treatment operations specifically associated with plywood and composite wood products manufacturing; and miscellaneous coating operations (defined in § 63.2292). The affected source includes lumber kilns at PCWP manufacturing facilities and at any other kind of facility.

(c) An affected source is a new affected source if you commenced construction of the affected source after January 9, 2003 and you meet the applicability criteria at the time you commenced construction.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.2233 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraph (a)(1) or (2) of this section, whichever is applicable.

(1) If the initial startup of your affected source is before the effective date of the subpart, then you must comply with the compliance options, operating requirements, and work practice requirements for new and reconstructed sources in this subpart no later than the effective date of the subpart.

(2) If the initial startup of your affected source is after the effective date of the subpart, then you must comply with the compliance options, operating requirements, and work practice requirements for new and reconstructed sources in this subpart upon initial startup of your affected source.

(b) If you have an existing affected source, you must comply with the compliance options, operating requirements, and work practice requirements for existing sources no later than the date 3 years after the effective date of the subpart.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart by the date 3 years after the effective date of the subpart or upon initial startup of your affected source as a major source, whichever is later.

(d) You must meet the notification requirements according to the schedule in § 63.2280 and according to 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the compliance options, operating requirements, and work practice requirements in this subpart.

Compliance Options, Operating Requirements, and Work Practice Requirements

§ 63.2240 What are the compliance options and operating requirements and how must I meet them?

You must meet the compliance options and operating requirements described in Tables 1A, 1B, and 2 of this subpart and in paragraph (c) of this section by using one or more of the compliance options listed in paragraphs (a), (b), and (c) of this section. The process units subject to the compliance options are listed in Tables 1A and 1B (the same process units are listed in both tables) and are defined in § 63.2292. You need only to meet one of the compliance options outlined in paragraphs (a) through (c) of this section for each process unit. You cannot use multiple compliance options for a single process unit. (For example, you cannot use a production-based compliance option for one vent of a veneer dryer and an add-on control system compliance option for another vent on the same veneer dryer. You must use either the production-based compliance option or an add-on control system compliance option for the entire dryer.)

(a) *Production-based compliance options.* Meet the production-based total HAP compliance options in Table 1A of this subpart and the applicable operating requirements in Table 2 of this subpart. You may not use an add-on control system to meet the production-based compliance options.

(b) *Compliance options for add-on control systems.* Use an emissions control system and demonstrate that the resulting emissions meet the compliance options and operating requirements in Tables 1B and 2 of this subpart. If you own or operate a reconstituted wood product press at a new or existing affected source or a reconstituted wood product board cooler at a new affected source, and you choose to comply with one of the concentration-based compliance options for a control system outlet (presented as option numbers 2, 4, and 6 in Table 1B of this subpart), you must have a capture device that either meets the EPA Method 204 criteria for a permanent total enclosure (PTE) or achieves a capture efficiency of greater than or equal to 95 percent.

(c) *Emissions averaging compliance option (for existing sources only).* Using the procedures in paragraphs (c)(1) through (3) of this section, demonstrate that emissions included in the emissions average meet the compliance options and operating requirements. New sources may not use emissions averaging to comply with this subpart.

(1) *Calculation of required and actual mass removal.* Limit emissions of total HAP, as defined in § 63.2292, to include acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde from your affected source to the standard specified by Equations 1, 2, and 3 of this section.

$$RMR = 0.90 \times \left(\sum_{i=1}^{n} UCEP_i \times OH_i \right) \qquad \text{(Eq. 1)}$$

$$AMR = \left(\sum_{i=1}^{n} CD_i \times OCEP_i \times OH_i \right) \qquad \text{(Eq. 2)}$$

$$AMR \geq RMR \qquad \text{(Eq. 3)}$$

Where:

RMR = required mass removal of total HAP from all process units generating debits (*i.e.*, all process units that are subject to the compliance options in Tables 1A and 1B of this subpart and that are either uncontrolled or under-controlled), pounds per semiannual period

AMR = actual mass removal of total HAP from all process units generating credits (*i.e.*, all process units that are controlled as part of the Emissions Averaging Plan), pounds per semiannual period

$UCEP_i$ = mass of total HAP from an uncontrolled or under-controlled process unit (i) that generates debits, pounds per hour

OH_i = number of hours a process unit (i) is operated during the semiannual period, hours per 6 month period

CD_i = control system efficiency for the emission point (i) for total HAP, expressed as a fraction, and not to exceed 90 percent, unitless

$OCEP_i$ = mass of total HAP from a process unit (i) that generates credits, pounds per hour

0.90 = required control system efficiency of 90 percent multiplied, unitless

(2) *Requirements for debits and credits.* You must calculate debits and credits as specified in paragraphs (c)(2)(i) through (vi) of this section.

(i) You must limit process units in the emissions average to those process units located at the existing affected source, as defined in § 63.2292.

(ii) You cannot use nonoperating process units to generate emissions averaging credits. You cannot use process units that are shutdown to generate emissions averaging debits or credits.

(iii) You may not include in your emissions average process units controlled to comply with a State, Tribal, or Federal rule other than this subpart, except when the control system installation and process unit inclusion in the emissions average both pre-date the effective date of the State, Tribal, or Federal rule.

(iv) You must use actual measurements of total HAP emissions from process units to calculate your required mass removal (RMR) and actual mass removal (AMR). The total HAP measurements must be obtained according to § 63.2262(b) through (d), (g), and (h), using the methods specified in Table 4 of this subpart.

(v) Your initial demonstration that the credit-generating process units will be capable of generating enough credits to offset the debits from the debit-generating process units must be made under representative operating conditions. After the compliance date, you must use actual operating data for all debit and credit calculations.

(vi) Do not include emissions from the following time periods in your emissions averaging calculations:

(A) Emissions during periods of startup, shutdown, and malfunction as

described in the startup, shutdown, and malfunction plan.

(B) Emissions during periods of monitoring malfunctions, associated repairs, and required quality assurance or control activities or during periods of control device maintenance covered in your routine control device maintenance exemption. No credits may be assigned to credit-generating process units, and maximum debits must be assigned to debit-generating process units during these periods.

(3) *Operating requirements.* You must meet the operating requirements in Table 2 of this subpart for each process unit or control device used in calculation of emissions averaging credits.

§ 63.2241 What are the work practice requirements and how must I meet them?

(a) You must meet each work practice requirement in Table 3 of this subpart that applies to you.

(b) As provided in § 63.6(g), we, the EPA, may choose to grant you permission to use an alternative to the work practice requirements in this section.

General Compliance Requirements

§ 63.2250 What are the requirements for periods of startup, shutdown, and malfunction?

(a) You must be in compliance with the compliance options, operating requirements, and the work practice requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction; prior to initial startup; and during the routine control device maintenance exemption specified in § 63.2251.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) The compliance options, operating requirements, and work practice requirements do not apply during times when the process unit(s) subject to the compliance options, operating requirements, and work practice requirements are not operating, or during scheduled startup and shutdown periods, and during malfunctions. These startup and shutdown periods must not exceed the minimum amount of time necessary for these events, and during these events, you must minimize emissions to the greatest extent possible.

(e) You must, at the beginning of each semiannual compliance period, record your control device maintenance schedule for that period. To the extent practical, startup and shutdown of emission control systems must be scheduled during times when process equipment is also shutdown for routine maintenance.

(f) If you use a catalytic oxidizer, you must maintain and operate the catalyst according to the manufacturer's specifications.

§ 63.2251 What are the requirements for the routine control device maintenance exemption?

(a) You may request a routine control device maintenance exemption from the Administrator. Your request must justify the need for the routine maintenance on the control device and the time required to accomplish the maintenance activities, describe the maintenance activities and the frequency of the maintenance activities, explain why the maintenance cannot be accomplished during process shutdowns, describe how you plan to minimize emissions to the greatest extent possible during the maintenance, and provide any other documentation required by the Administrator.

(b) The routine control device maintenance exemption must not exceed the percentages of process unit operating uptime in paragraphs (b)(1) and (2) of this section.

(1) If the control device is used to control a green rotary dryer, tube dryer, strand dryer, or pressurized refiner, then the routine control device maintenance exemption must not exceed 3 percent of annual operating uptime for each process unit controlled.

(2) If the control device is used to control a softwood veneer dryer, reconstituted wood product press, reconstituted wood product board cooler, hardboard oven, press predryer, or fiberboard mat dryer, then the routine control device maintenance exemption must not exceed 0.5 percent of annual operating uptime for each process unit controlled.

(3) If the control device is used to control a combination of equipment listed in both paragraphs (b)(1) and (2) of this section, such as a tube dryer and a reconstituted wood product press, then the routine control device maintenance exemption must not exceed 3 percent of annual operating uptime for each process unit controlled.

(c) The request for the routine control device maintenance exemption, if approved by the Administrator, must be incorporated by reference in and attached to the affected source's title V permit.

(d) The compliance options and operating requirements do not apply during times when control device maintenance covered under your approved routine control device maintenance exemption is performed. You must minimize emissions to the greatest extent possible during these routine control device maintenance periods.

(e) You must, at the beginning of each semiannual compliance period, record your control device maintenance schedule for that period. To the extent practical, startup and shutdown of emission control systems must be scheduled during times when process equipment is also shutdown.

Initial Compliance Requirements

§ 63.2260 How do I demonstrate initial compliance with the compliance options, operating requirements, and work practice requirements?

(a) To demonstrate initial compliance with the compliance options and operating requirements, you must conduct performance tests and establish each site-specific operating requirement in Table 2 of this subpart according to the requirements in § 63.2262 and Table 4 of this subpart. Combustion units with heat input capacity of greater than or equal to 44 megawatts that accept process exhausts into the flame zone are exempt from the initial performance testing and operating requirements for thermal oxidizers.

(b) You must demonstrate initial compliance with each compliance option, operating requirement, and work practice requirement that applies to you according to Tables 5 and 6 of this subpart and according to §§ 63.2260 through 63.2268 of this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.2280(d).

§ 63.2261 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) You must conduct performance tests upon initial startup or no later than 180 calendar days after the compliance date that is specified for your source in § 63.2233 and according to § 63.7(a)(2), whichever is later.

(b) You must conduct initial compliance demonstrations that do not require performance tests upon initial startup or no later than 30 calendar days after the compliance date that is specified for your source in § 63.2233, whichever is later.

§ 63.2262 How do I conduct performance tests and establish operating requirements?

(a) You must conduct each performance test according to the requirements in § 63.7(e)(1), the requirements in paragraphs (b) through (o) of this section, and according to the methods specified in Table 4 of this subpart.

(b) *Periods when performance tests must be conducted.*

(1) You must not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(2) You must test under representative operating conditions as defined in § 63.2292. You must describe representative operating conditions in your performance test report for the process and control systems and explain why they are representative.

(c) *Number of test runs.* You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour except for: testing of a temporary total enclosure (TTE) conducted using Methods 204A through 204F which require three separate test runs of at least 3 hours each; and testing of an enclosure conducted using the alternative tracer gas method in appendix A to this subpart which requires a minimum of three separate runs of at least 20 minutes each.

(d) *Location of sampling sites.* Sampling sites must be located at the inlet (if emission reduction testing or documentation of inlet methanol or formaldehyde concentration is required) and outlet of the control device and prior to any releases to the atmosphere.

(e) *Collection of monitoring data.* You must collect operating parameter monitoring system or continuous emissions monitoring system (CEMS) data at least every 15 minutes during the entire initial performance test and determine the parameter or concentration value for the operating requirement during the performance test using the methods specified in paragraphs (k) through (o) of this section.

(f) *Collection of production data.* To comply with any of the production-based compliance options, you must measure and record the process unit throughput during each test.

(g) *Nondetect data.* When determining total HAP, formaldehyde, methanol, or THC emission rates, all nondetect data, as defined in § 63.2292, must be treated as one-half of the method detection limit.

(h) *Calculation of percent reduction across a control system.* When determining the control system efficiency for any control system included in your emissions averaging plan (not to exceed 90 percent) and when complying with any of the compliance options based on percent reduction across a control system in Table 1B of this subpart, as part of the performance test, you must calculate the percent reduction using Equation 1 of this section:

$$PR = CE \times \frac{ER_{in} - ER_{out}}{ER_{in}}(100) \qquad \text{(Eq. 1)}$$

Where:

PR = percent reduction, percent

CE = capture efficiency, percent (determined for reconstituted wood product presses and board coolers as required in Table 4 of this subpart)

ER_{in} = emission rate of total HAP (calculated as the sum of the emission rates of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde), THC, formaldehyde, or methanol in the inlet vent stream of the control device, pounds per hour

ER_{out} = emission rate of total HAP (calculated as the sum of the emission rates of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde), THC, formaldehyde, or methanol in the outlet vent stream of the control device, pounds per hour

(i) *Calculation of mass per unit production.* To comply with any of the production-based compliance options in Table 1A of this subpart, you must calculate your mass per unit production emissions for each test run using Equation 2 of this section:

$$MP = \frac{ER_{HAP}}{P \times CE} \qquad \text{(Eq. 2)}$$

Where:

MP = mass per unit production, pounds per oven dried ton OR pounds per thousand square feet on a specified thickness basis (see paragraph (j) of this section if you need to convert from one thickness basis to another)

ER_{HAP} = emission rate of total HAP (calculated as the sum of the emission rates of acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde) in the stack, pounds per hour

P = process unit production rate (throughput), oven dried tons per hour OR thousand square feet per hour on a specified thickness basis

CE = capture efficiency, percent (determined for reconstituted wood product presses and board coolers as required in Table 4 of this subpart)?≤

(j) *Thickness basis conversion.* Use Equation 3 of this section to convert from one thickness basis to another:

$$MSF_B = MSF_A \times \frac{A}{B} \qquad \text{(Eq. 3)}$$

Where:

MSF_A = thousand square feet on an A-inch basis

MSF_B = thousand square feet on a B-inch basis

A = old thickness you are converting from, inches

B = new thickness you are converting to, inches

(k) *Establishing thermal oxidizer operating requirements.* If you operate a thermal oxidizer, you must establish your thermal oxidizer operating parameters according to paragraphs (k)(1) through (4) of this section.

(1) During the initial performance test, you must continuously monitor the firebox temperature during each of the required 1-hour test runs. The minimum firebox temperature must then be established as the average of the three minimum 15-minute firebox temperatures monitored during the three test runs. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(2) If you choose to monitor inlet static pressure during the initial performance test, you must continuously monitor the static pressure at the inlet of the thermal oxidizer during each of the required 1-hour test runs. The static pressure operating range must then be established as the maximum and minimum of the 15-minute static pressures monitored during the entire 3-hour test. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(3) If you choose to monitor stack gas flow during the initial performance test, you must continuously monitor the gas flow rate at the thermal oxidizer stack during each of the required 1-hour test runs. The maximum flow rate must then be established as the average of the three maximum 15-minute flow rates monitored during the three test runs. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(4) You may establish a different minimum firebox temperature, static

pressure operating range, or maximum stack gas flow rate for your thermal oxidizer by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraphs (k)(1) and (3) of this section that demonstrates compliance with the compliance options in Table 1B of this subpart.

(5) If your thermal oxidizer is a combustion unit with a heat input capacity greater than or equal to 44 megawatts, then you are exempt from the initial performance testing and monitoring requirements specified in paragraphs (k)(1) through (4) of this section. To demonstrate initial compliance, you must submit documentation with your Notification of Compliance Status showing that your combustion unit has a heat input capacity of greater than or equal to 44 megawatts and that process exhausts controlled by the combustion unit enter into the flame zone.

(l) *Establishing catalytic oxidizer operating requirements.* If you operate a catalytic oxidizer, you must establish your catalytic oxidizer operating parameters according to paragraphs (l)(1) through (4) of this section.

(1) During the initial performance test, you must continuously monitor the temperature upstream of the catalyst bed during the required 1-hour test runs. The minimum upstream temperature must then be established as the average of the three minimum 15-minute temperatures upstream of the catalyst bed monitored during the three test runs. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(2) If you choose to monitor inlet static pressure during the initial performance test, you must continuously monitor the static pressure at the inlet of the catalytic oxidizer during each of the required 1-hour test runs. The static pressure operating range must then be established as the maximum and minimum of the 15-minute static pressures monitored during the entire 3-hour test. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(3) If you choose to monitor stack gas flow during the initial performance test, you must continuously monitor the gas flow rate at the catalytic oxidizer stack during each of the required 1-hour test runs. The maximum flow rate must then be established as the average of the three maximum 15-minute flow rates monitored during the three test runs. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(4) You may establish a different minimum upstream temperature, static pressure operating range, or maximum stack gas flow rate for your catalytic oxidizer by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraphs (l)(1) through (3) of this section that demonstrates compliance with the compliance options in Table 1B of this subpart.

(m) *Establishing biofilter operating requirements.* If you operate a biofilter, you must establish your average biofilter operating requirements according to paragraphs (m)(1) through (3) of this section.

(1) During the initial performance test, you must monitor the temperature of the air stream entering the biofilter, pH of the biofilter effluent, and pressure drop across the biofilter bed. You must specify appropriate monitoring methods, monitoring frequencies, and averaging times for the parameters. You also must specify appropriate minimum limits, maximum limits, or operating ranges for the parameters you will monitor. You may base operating ranges on values recorded during previous performance tests provided that the data used to establish the operating ranges have been obtained using the test methods required in this subpart. If you use data from previous performance tests, you must certify that the biofilter and associated process unit(s) have not been modified subsequent to the date the historical data were collected.

(2) If historical operating records are not readily available (as would be the case for a new biofilter installation), you will be allowed up to 180 days following the compliance date to gather data and complete the requirements in paragraph (m)(1) of this section.

(3) You may establish different operating ranges for your biofilter operating parameters by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (m)(1) of this section that demonstrates compliance with the compliance options in Table 1B of this subpart.

(n) *Establishing uncontrolled process unit operating requirements.* If you operate a process unit that meets a compliance option in Table 1A of this subpart without the use of a control device, you must establish your process unit operating parameters according to paragraphs (n)(1) through (2) of this section.

(1) During the initial performance test, you must continuously monitor the process unit inlet temperature or operating temperature (whichever applies, as specified for different process units in Table 2 of this subpart) during each of the required 1-hour test runs. The maximum inlet temperature or maximum operating temperature must then be established as the average of the three maximum 15-minute temperatures monitored during the three test runs. Multiple 3-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

(2) You may establish a different maximum temperature for your process unit by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (n)(1) of this section that demonstrates compliance with the compliance options in Table 1A of this subpart.

(o) *Establishing operating requirements using total hydrocarbon (THC) CEMS.* If you choose to meet the operating requirements by monitoring THC concentration instead of monitoring control device or process operating parameters, you must establish your THC concentration operating requirement according to paragraphs (o)(1) through (2) of this section.

(1) During the initial performance test, you must continuously monitor THC concentration using your CEMS during each of the required 1-hour test runs. The maximum THC concentration must then be established as the average of the three maximum 15-minute THC concentrations monitored during the three test runs. Multiple 3-run performance tests may be conducted to establish a range of THC concentration values under different operating conditions.

(2) You may establish a different maximum THC concentration by submitting the notification specified in § 63.2280(g) and conducting a repeat performance test as specified in paragraph (o)(1) of this section that demonstrates compliance with the compliance options in Tables 1A and 1B of this subpart.

§ 63.2263 Initial compliance demonstration for a dry rotary dryer.

If you operate a dry rotary dryer, you must demonstrate that your dryer processes furnish with an inlet moisture content of less than or equal to 30 percent (by weight, dry basis) and operates with a dryer inlet temperature of less than or equal to 600 °F. You must designate and clearly identify each dry rotary dryer. You must record the inlet furnish moisture content (dry basis) and inlet dryer

operating temperature according to § 63.2268(a), (b), and (f) for a minimum of 30 calendar days. You must submit the highest recorded 24-hour average inlet furnish moisture content and the highest recorded 24-hour average dryer inlet temperature with your Notification of Compliance Status. In addition, submit with the Notification of Compliance Status a signed statement by a responsible official that certifies with truth, accuracy, and completeness that the dry rotary dryer will dry furnish with a maximum inlet moisture content less than or equal to 30 percent (by weight, dry basis) and will operate with a maximum inlet temperature of less than or equal to 600°F in the future.

§ 63.2264 Initial compliance demonstration for a hardwood veneer dryer.

If you operate a hardwood veneer dryer, you must record the annual volume percentage of softwood veneer species processed in the dryer as follows:

(a) Use Equation 1 of this section to calculate the annual volume percentage of softwood species dried:

$$SW_{\%} = \frac{SW}{T}(100) \qquad \text{(Eq. 1)}$$

Where:

$SW_{\%}$ = annual volume percent softwood species dried

SW = softwood veneer dried during the previous 12 months, thousand square feet (3/8-inch basis)

T = total softwood and hardwood veneer dried duringthe previous 12 months, thousand square feet (3/8-inch basis)

(b) You must designate and clearly identify each hardwood veneer dryer. Submit with the Notification of Compliance Status the annual volume percentage of softwood species dried in the dryer based on your dryer production for the 12 months prior to the compliance date specified for your source in § 63.2233. If you did not dry any softwood species in the dryer during the 12 months prior to the compliance date, then you need only to submit a statement indicating that no softwood species were dried. In addition, submit with the Notification of Compliance Status a signed statement by a responsible official that certifies with truth, accuracy, and completeness that the veneer dryer will be used to process less than 30 volume percent softwood species in the future.

§ 63.2265 Initial compliance demonstration for a softwood veneer dryer.

If you operate a softwood veneer dryer, you must develop a plan for review and approval for minimizing fugitive emissions from the veneer dryer heated zones, and you must submit the plan with your Notification of Compliance Status.

§ 63.2266 Initial compliance demonstration for a veneer redryer.

If you operate a veneer redryer, you must record the inlet moisture content of the veneer processed in the redryer according to § 63.2268(a) and (f) for a minimum of 30 calendar days. You must designate and clearly identify each veneer redryer. You must submit the highest recorded 24-hour average inlet veneer moisture content with your Notification of Compliance Status to show that your veneer redryer processes veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis). In addition, submit with the Notification of Compliance Status a signed statement by a responsible official that certifies with truth, accuracy, and completeness that the veneer redryer will dry veneer with a moisture content less than 25 percent (by weight, dry basis) in the future.

§ 63.2267 Initial compliance demonstration for a reconstituted wood product press or board cooler.

If you operate a reconstituted wood product press at a new or existing affected source or a reconstituted wood product board cooler at a new affected source, then you must verify the capture efficiency of the capture device for the press or board cooler using Methods 204 and 204A through 204F of 40 CFR part 51, appendix M (as appropriate) or using the alternative tracer gas method contained in appendix A to this subpart. You must submit the results of the capture efficiency verification with your Notification of Compliance Status.

§ 63.2268 What are my monitoring installation, operation, and maintenance requirements?

(a) *General continuous parameter monitoring requirements.* You must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to paragraphs (a)(1) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. To calculate a valid hourly value, you must have at least three equally spaced data values for that hour from a CPMS that is not out of control.

(2) At all times, you must maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(3) Except as provided in paragraph (a)(4) of this section, determine the 3-hour block average of all recorded readings, calculated after every 3 hours of operation as the average of the previous 3 operating hours (not including startup, shutdown, and malfunction or periods of control device maintenance covered by any approved routine control device maintenance exemption).

(4) For dry rotary dryer and veneer redryer wood moisture monitoring and for dry rotary dryer temperature monitoring, determine the 24-hour block average of all recorded readings, calculated after every 24 hours of operation as the average of the previous 24 operating hours (not including startup, shutdown, and malfunction). To calculate the average wood moisture or temperature for each 24-hour averaging period, you must have at least 75 percent of the hourly averages for that period using only hourly average values that are based on valid data (*i.e.*, not from periods when the monitor is out of control).

(5) Record the results of each inspection, calibration, and validation check.

(b) *Temperature monitoring.* For each temperature monitoring device, you must meet the requirements in paragraphs (a) and (b)(1) through (6) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) Use a temperature sensor with a minimum tolerance of 4 °F or 0.75 percent of the temperature value, whichever is larger.

(3) If a chart recorder is used, it must have a sensitivity in the minor division of at least 20 °F.

(4) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 °F of the process temperature sensor's reading.

(5) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(6) At least quarterly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) *Pressure monitoring.* For each pressure measurement device, you must

meet the requirements in paragraphs (a) and (c)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum tolerance of 0.5 inches of water column or a transducer with a minimum tolerance of 1 percent of the pressure range.

(4) Check pressure tap daily to ensure it is not plugged.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(7) At least quarterly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) *pH monitoring.* For each pH measurement device, you must meet the requirements in paragraphs (a) and (d)(1) through (4) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least quarterly, inspect all components for integrity and all electrical connections for continuity.

(e) *Flow monitoring.* For each flow measurement device, you must meet the requirements in paragraphs (a) and (e)(1) through (5) of this section.

(1) Locate the flow sensor and other necessary equipment such as straightening vanes in a position that provides a representative flow.

(2) Use a flow sensor with a minimum tolerance of 2 percent of the flow rate.

(3) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(4) Conduct a flow sensor calibration check at least semiannually.

(5) At least quarterly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(f) *Wood moisture monitoring.* For each furnish or veneer moisture meter, you must meet the requirements in paragraphs (a)(1), (2), (4) and (5) and paragraphs (f)(1) through (4) of this section.

(1) Use a moisture monitor with a minimum accuracy of 1 percent moisture or better. Alternatively, you may use a moisture monitor with a minimum accuracy of 5 percent moisture or better for dry rotary dryers used to dry furnish with less than 25 percent moisture or for veneer redryers used to redry veneer with less than 20 percent moisture.

(2) Locate the moisture meter in a position that provides a representative measure of furnish or veneer moisture.

(3) Check the moisture meter's calibration by manually determining the moisture content of samples of furnish or veneer at least once each day of process operation as follows:

(i) Collect a sample of furnish or veneer just as it passes by the meter.

(ii) Record the moisture meter reading for the sample of furnish or veneer collected.

(iii) Determine the moisture content of the furnish or veneer sample by first weighing the wet sample and thoroughly drying the sample until it reaches a constant weight in a bench-scale dryer. Use Equation 1 of this section to calculate the furnish or veneer moisture weight percent on a dry basis:

$$MC = \frac{W_{wet} - W_{dry}}{W_{dry}}(100) \qquad \text{(Eq. 1)}$$

Where:

MC = moisture content of wood material (weight percent, dry basis)

W_{wet} = original weight of the wood, pounds

W_{dry} = weight of the dried wood, pounds

(4) At least quarterly, inspect all components of the moisture meter for integrity and all electrical connections for continuity.

(g) *Continuous emission monitoring system(s).* Each CEMS must be installed, operated, and maintained according to paragraphs (g)(1) through (4) of this section.

(1) Each CEMS for monitoring THC concentration must be installed, operated, and maintained according to Performance Specification 8 of 40 CFR part 60, appendix B. You must also comply with Procedure 1 of 40 CFR part 60, appendix F.

(2) You must conduct a performance evaluation of each CEMS according to the requirements in 40 CFR 63.8 and according to Performance Specification 8 of 40 CFR part 60, appendix B.

(3) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) The CEMS data must be reduced as specified in § 63.8(g)(2) and paragraph (a)(3) of this section.

Continuous Compliance Requirements

§ 63.2270 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for, as appropriate, monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must conduct all monitoring in continuous operation at all times that the process unit is operating. For purposes of calculating data averages, you must not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities. You must use all the data collected during all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities or data recorded during periods of control device downtime covered in any approved routine control device maintenance exemption in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control system.

§ 63.2271 How do I demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements?

(a) You must demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements in §§ 63.2240 and 63.2241 that apply to you according to the methods specified in Tables 7 and 8 of this subpart.

(b) You must report each instance in which you did not meet each compliance option, operating requirement, and work practice

requirement in Tables 7 and 8 of this subpart that applies to you. This includes periods of startup, shutdown, or malfunction and periods of control device maintenance specified in paragraphs (b)(1) and (3) of this section. These instances are deviations from the compliance options, operating requirements, and work practice requirements in this subpart. These deviations must be reported according to the requirements in § 63.2281.

(1) During periods of startup, shutdown, or malfunction, you must operate in accordance with the SSMP.

(2) Consistent with § 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(3) Deviations that occur during periods of control device maintenance covered by any approved routine control device maintenance exemption are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the approved routine control device maintenance exemption.

Notifications, Reports, and Records

§ 63.2280 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), (f)(4) and (f)(6), 63.9(b) through (e), and (g) and (h) by the dates specified.

(b) You must submit an Initial Notification no later than 120 calendar days after the effective date of the subpart or after initial startup, whichever is later, as specified in § 63.9(b)(2) and (3).

(c) If you are required to conduct a performance test, you must submit a written notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as specified in § 63.7(b)(1).

(d) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 4, 5, and 6 of this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration required in Table 5 or 6 of this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Tables 5 and 6 of this subpart that includes a performance test conducted according to the requirements in Table 4 of this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(e) If you request a routine control device maintenance exemption according to § 63.2251, you must submit your request for the exemption no later than 30 days before the compliance date.

(f) If you use the emissions averaging compliance option in § 63.2240(c), you must submit an Emissions Averaging Plan to the Administrator for approval no later than 1 year before the compliance date or no later than 1 year before the date you would begin using an emissions average, whichever is later. The Emissions Averaging Plan must include the information in paragraphs (f)(1) through (6) of this section.

(1) Identification of all the process units to be included in the emissions average indicating which process units will be used to generate credits, and which process units that are subject to compliance options in Tables 1A and 1B of this subpart will be uncontrolled or under-controlled (used to generate debits).

(2) Description of the control system used to generate emission credits for each process unit used to generate credits.

(3) Determination of the total HAP control efficiency for the control system used to generate emission credits for each credit-generating process unit.

(4) Calculation of the RMR and AMR, as calculated using Equations 1 through 3 of § 63.2240(c)(1).

(5) Documentation of total HAP measurements made according to § 63.2240(c)(2)(iv) and other relevant documentation to support calculation of the RMR and AMR.

(6) A summary of the operating parameters you will monitor and monitoring methods for each credit-generating process unit.

(g) You must notify the Administrator within 30 days before you take any of the actions specified in paragraphs (g)(1) through (3) of this section.

(1) You modify or replace the control system for any process unit subject to the compliance options and operating requirements in this subpart.

(2) You shutdown any process unit included in your Emissions Averaging Plan.

(3) You change a continuous monitoring parameter or the value or range of values of a continuous monitoring parameter for any process unit or control device.

§ 63.2281 What reports must I submit and when?

(a) You must submit each report in Table 9 of this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 9 of this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.2233 ending on June 30 or December 31, and lasting at least 6 months, but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for the semiannual reporting period ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information specified in § 63.10(d)(5)(i).

(5) A description of control device maintenance performed while the control device was offline and one or more of the process units controlled by the control device was operating, including the information specified in paragraphs (c)(5)(i) through (iii) of this section.

(i) The date and time when the control device was shutdown and restarted.

(ii) Identification of the process units that were operating and the number of hours that each process unit operated while the control device was offline.

(iii) A statement of whether or not the control device maintenance was included in your approved routine control device maintenance exemption developed pursuant to § 63.2251. If the control device maintenance was included in your approved routine control device maintenance exemption, then you must report the information in paragraphs (c)(5)(iii)(A) through (C) of this section.

(A) The total amount of time that each process unit controlled by the control device operated during the semiannual compliance period and during the previous semiannual compliance period.

(B) The amount of time that each process unit controlled by the control device operated while the control device was down for maintenance covered under the routine control device maintenance exemption during the semiannual compliance period and during the previous semiannual compliance period.

(C) Based on the information recorded under paragraphs (c)(5)(iii)(A) and (B) of this section for each process unit, compute the annual percent of process unit operating uptime during which the control device was offline for routine maintenance using Equation 1 of this section.

$$RM = \frac{PU_p + PU_c}{DT_p + DT_c} \qquad \text{(Eq. 1)}$$

Where:

RM = Annual percentage of process unit uptime during which control device is down for routine control device maintenance

PU_p = Process unit uptime for the previous semiannual compliance period

PU_c = Process unit uptime for the current semiannual compliance period

DT_p = Control device downtime claimed under the routine control device maintenance exemption for the previous semiannual compliance period

DT_c = Control device downtime claimed under the routine control device maintenance exemption for the current semiannual compliance period

(6) The results of any performance tests conducted during the semiannual reporting period.

(7) If there are no deviations from any applicable compliance option or operating requirement, and there are no deviations from the requirements for work practice requirements in Table 8 of this subpart, a statement that there were no deviations from the compliance options, operating requirements, or work practice requirements during the reporting period.

(8) If there were no periods during which the continuous monitoring system(s) (CMS), including CEMS and CPMS, was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from a compliance option or operating requirement and for each deviation from the work practice requirements in Table 8 of this subpart that occurs at an affected source where you are not using a CMS to comply with the compliance options, operating requirements, or work practice requirements in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (6) of this section and the information in paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction and routine control device maintenance.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from a compliance option or operating requirement occurring at an affected source where you are using a CMS to comply with the compliance options and operating requirements in this subpart, you must include the information in paragraphs (c)(1) through (6) and the information in paragraphs (e)(1) through (11) of this section. This includes periods of startup, shutdown, and malfunction and routine control device maintenance.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction; during a period of control device maintenance covered in your approved routine control device maintenance exemption; or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control system problems, control device maintenance, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) A brief description of the process units.

(9) A brief description of the CMS.

(10) The date of the latest CMS certification or audit.

(11) A description of any changes in CMS, processes, or controls since the last reporting period.

(f) If you comply with the emissions averaging compliance option in § 63.2240(c), you must include in your semiannual compliance report calculations based on operating data from the semiannual reporting period that demonstrate that actual mass removal equals or exceeds the required mass removal.

(g) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to

Table 9 of this subpart along with, or as part of, the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any compliance option, operating requirement, or work practice requirement in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

§ 63.2282 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (4) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related

to startup, shutdown, and malfunction.

(3) The records in § 63.2250(e) relating to control device maintenance and documentation of your approved routine control device maintenance exemption, if you request such an exemption under § 63.2251.

(4) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in Tables 7 and 8 of this subpart to show continuous compliance with each compliance option, operating requirement, and work practice requirement that applies to you.

(c) For each CEMS, you must keep the following records.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (*i.e.*, superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to relative accuracy testing for CEMS as required in § 63.8(f)(6)(i).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(d) If you comply with the emissions averaging compliance option in § 63.2240(c), you must keep records of all information required to calculate emission debits and credits.

§ 63.2283 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review as specified in § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.2290 What parts of the General Provisions apply to me?

Table 10 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.2291 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the compliance options, operating requirements, and work practice requirements in §§ 63.2240 and 63.2241 as specified in § 63.6(g). For the purposes of delegation authority under 40 CFR part 63, subpart E, ''compliance options'' represent ''emission limits''; ''operating requirements'' represent ''operating limits''; and ''work practice requirements'' represent ''work practice standards.''

(2) Approval of major alternatives to test methods as specified in § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring as specified in § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting as specified in § 63.10(f) and as defined in § 63.90.

§ 63.2292 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, the General Provisions, and in this section as follows:

Affected source means the collection of dryers, blenders, formers, presses, board coolers, and other process units associated with the manufacturing of plywood and composite wood products at a plant site. The affected source includes, but is not limited to, green end operations, drying operations, blending and forming operations, pressing and board cooling operations, and miscellaneous finishing operations (such as sanding, sawing, patching, edge sealing, and other finishing operations not subject to other NESHAP). The affected source also includes onsite storage of raw materials used in the manufacture of plywood and/or composite wood products, such as resins; onsite wastewater treatment operations specifically associated with plywood and composite wood products manufacturing; and miscellaneous coating operations (defined elsewhere in this section). The affected source includes lumber kilns at PCWP manufacturing facilities and at any other kind of facility.

Biofilter means an enclosed control system such as a tank or series of tanks with a fixed roof that are filled with media (such as bark) and use microbiological activity to transform organic pollutants in a process exhaust stream to innocuous compounds such as carbon dioxide, water, and inorganic salts. Wastewater treatment systems such as aeration lagoons or activated sludge systems are not considered to be biofilters.

Capture device means a hood, enclosure, or other means of collecting emissions into a duct so that the emissions can be measured.

Capture efficiency means the fraction (expressed as a percentage) of the pollutants from an emission source that are collected by a capture device.

Catalytic oxidizer means a control system that combusts or oxidizes, in the presence of a catalyst, exhaust gas from a process unit. Catalytic oxidizers include regenerative catalytic oxidizers and thermal catalytic oxidizers.

Control device means any equipment that reduces the quantity of a hazardous air pollutant that is emitted to the air. The device may destroy the hazardous air pollutant or secure the hazardous air pollutant for subsequent recovery. Control devices include, but are not limited to, thermal or catalytic oxidizers, combustion units that incinerate process exhausts, biofilters, and condensers.

Control system or add-on control system means the combination of capture and control devices used to reduce hazardous air pollutant emissions to the atmosphere.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any compliance option, operating requirement, or work practice requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart, and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any compliance option, operating requirement, or work practice requirement in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

Dryer heated zones means the zones of a softwood veneer dryer or fiberboard mat dryer that are equipped with heating and hot air circulation units. The cooling zone(s) of the dryer through which ambient air is blown are not part of the dryer heated zones.

Dry rotary dryer means a rotary dryer that dries wood particles or fibers with a maximum inlet moisture content of less than or equal to 30 percent (by weight, dry basis) and operates with a maximum inlet temperature of less than or equal to 600°F. A dry rotary dryer is a process unit.

Dry forming means the process of making a mat of resinated fiber to be compressed into a reconstituted wood product such as particleboard, oriented strandboard (OSB), medium density fiberboard (MDF), or hardboard.

Fiber means the slender threadlike elements of wood or similar cellulosic material, which are separated by chemical and/or mechanical means, as in pulping, that can be formed into boards.

Fiberboard means a composite panel composed of cellulosic fibers (usually wood or agricultural material) made by wet forming and compacting a mat of fibers. Fiberboard density is less than 0.50 grams per cubic centimeter (31.5 pounds per cubic foot).

Fiberboard mat dryer means a dryer used to reduce the moisture of wet-formed wood fiber mats by operation at elevated temperature. A fiberboard mat dryer is a process unit.

Furnish means the fibers, particles, or strands used for making boards.

Glue-laminated beam means a structural wood beam made by bonding lumber together along its faces with resin.

Green rotary dryer means a rotary dryer that dries wood particles or fibers with an inlet moisture content of greater than 30 percent (by weight, dry basis) at any dryer inlet temperature or operates with an inlet temperature of greater than 600 °F with any inlet moisture content. A green rotary dryer is a process unit.

Hardboard means a composite panel composed of cellulosic fibers made by dry or wet forming and pressing of a resinated fiber mat. Hardboard has a density of 0.50 to 1.20 grams per cubic centimeter (31.5 to 75 pounds per cubic foot).

Hardboard oven means an oven used to heat treat or temper hardboard after hot pressing. Humidification chambers are not considered as part of hardboard ovens. A hardboard oven is a process unit.

Hardwood means the wood of a broad-leafed tree, either deciduous or evergreen. Examples of hardwoods include (but are not limited to) aspen, birch, and oak.

Hardwood veneer dryer means a dryer that removes excess moisture from veneer by conveying the veneer through a heated medium on rollers, belts, cables, or wire mesh. Hardwood veneer dryers are used to dry veneer with less than 30 percent softwood species on an annual volume basis. Veneer kilns that operate as batch units, veneer dryers heated by radio frequency or microwaves that are used to redry veneer, and veneer redryers (defined elsewhere in this section) that are heated by conventional means are not considered to be hardwood veneer dryers. A hardwood veneer dryer is a process unit.

Kiln-dried lumber means solid wood lumber that has been dried in a lumber kiln.

Laminated strand lumber (LSL) means a composite product formed into a billet made of thin wood strands cut from whole logs, resinated, and pressed together with the grain of each strand oriented parallel to the length of the finished product.

Laminated veneer lumber (LVL) means a composite product formed into a billet made from layers of resinated wood veneer sheets or pieces pressed together with the grain of each veneer aligned primarily along the length of the finished product. Laminated veneer lumber includes parallel strand lumber (PSL).

Lumber kiln means an enclosed dryer operated at elevated temperature to reduce the moisture content of lumber.

Medium density fiberboard (MDF) means a composite panel composed of cellulosic fibers (usually wood) made by dry forming and pressing of a resinated fiber mat.

Method detection limit means the minimum concentration of an analyte that can be determined with 99 percent confidence that the true value is greater than zero.

Miscellaneous coating operations means application of any of the following to plywood or composite wood products: Edge seals, moisture sealants, anti-skid coatings, company logos, trademark or grade stamps, nail lines, synthetic patches, wood patches, wood putty, concrete forming oils, glues for veneer composing, and shelving edge fillers. Miscellaneous coating operations also include the application of primer to OSB siding that occurs at the same site as OSB manufacture.

MSF means thousand square feet (92.9 square meters). Square footage of panels is usually measured on a thickness basis, such as ⅜-inch, to define the total volume of panels. Equation 6 of § 63.2262(j) shows how to convert from one thickness basis to another.

Nondetect data means, for the purposes of this subpart, any value that is below the method detection limit.

Oriented strandboard (OSB) means a composite panel produced from thin wood strands cut from whole logs, formed into resinated layers (with the grain of strands in one layer oriented perpendicular to the strands in adjacent layers), and pressed.

Oven-dried ton(s) (ODT) means tons of wood dried until all of the moisture in the wood is removed. One oven-dried ton equals 907 oven-dried kilograms.

Particle means a distinct fraction of wood or other cellulosic material produced mechanically and used as the aggregate for a particleboard. Particles are larger in size than fibers.

Particleboard means a composite panel composed of cellulosic materials (usually wood or agricultural fiber) in the form of discrete pieces or particles, as distinguished from fibers, which are pressed together with resin.

Permanent total enclosure (PTE) means a permanently installed

containment that meets the criteria of Method 204 (40 CFR part 51, appendix M).

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Plywood and composite wood products (PCWP) manufacturing facility means a plant site that manufactures plywood and/or composite wood products by bonding wood material (fibers, particles, strands, veneers, etc.) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. Plywood and composite wood products manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any facility. Plywood and composite wood products include (but are not limited to) plywood, veneer, particleboard, oriented strandboard, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams.

Plywood means a panel product consisting of layers of wood veneers hot pressed together with resin. Plywood includes panel products made by hot pressing (with resin) veneers to a substrate such as particleboard, MDF, or lumber.

Press predryer means a dryer used to reduce the moisture and elevate the temperature of a wet-formed fiber mat before the mat enters a hot press. A press predryer is a process unit.

Pressurized refiner means a piece of equipment operated under pressure for preheating (usually by steaming) wood material and refining (rubbing or grinding) the wood material into fibers. Pressurized refiners are operated with continuous infeed and outfeed of wood material and maintain elevated internal pressures (*i.e.*, there is no pressure release) throughout the preheating and refining process. A pressurized refiner is a process unit.

Process unit means equipment classified according to its function such as a blender, dryer, press, former, or board cooler.

Reconstituted wood product board cooler means a piece of equipment designed to reduce the temperature of a board by means of forced air or convection within a controlled time period after the board exits the reconstituted wood product press unloader. Board coolers include wicket and star type coolers commonly found at MDF and particleboard plants. Board coolers do not include cooling sections of dryers (*e.g.*, veneer dryers or fiberboard mat dryers) or coolers integrated into or following hardboard bake ovens or humidifiers. A reconstituted wood product board cooler is a process unit.

Reconstituted wood product press means a press, including (if applicable) the press unloader, that presses a resinated mat of wood fibers, particles, or strands between hot platens or hot rollers to compact and set the mat into a panel by simultaneous application of heat and pressure. Reconstituted wood product presses are used in the manufacture of hardboard, medium density fiberboard, particleboard, and oriented strandboard. Extruders are not considered to be reconstituted wood product presses. A reconstituted wood product press is a process unit.

Representative operating conditions means operation of a process unit during performance testing under the conditions that the process unit will typically be operating in the future, including use of a representative range of materials (*e.g.*, wood material of a typical species mix and moisture content or typical resin formulation) and representative operating temperature range.

Resin means the synthetic adhesive (including glue) or natural binder, including additives, used to bond wood or other cellulosic materials together to produce plywood and composite wood products.

Responsible official means responsible official as defined in 40 CFR 70.2 and 71.2.

Softwood means the wood of a coniferous tree. Examples of softwoods include (but are not limited to) Southern yellow pine, Douglas fir, and White spruce.

Softwood veneer dryer means a dryer that removes excess moisture from veneer by conveying the veneer through a heated medium on rollers, belts, cables, or wire mesh. Softwood veneer dryers are used to dry veneer with greater than or equal to 30 percent softwood species on an annual volume basis. Veneer kilns that operate as batch units, veneer dryers heated by radio frequency or microwaves that are used to redry veneer, and veneer redryers (defined elsewhere in this section) that are heated by conventional means are not considered to be softwood veneer dryers. A softwood veneer dryer is a process unit.

Startup means bringing equipment online and starting the production process.

Startup, initial means the first time equipment is put into operation. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startups (as defined in this section) following malfunction or shutdowns or following changes in product or between batch operations. Initial startup does not include startup of equipment that occurred when the source was an area source.

Startup, shutdown, and malfunction plan (SSMP) means a plan developed according to the provisions of § 63.6(e)(3).

Strand means a long (with respect to thickness and width), flat wood piece specially cut from a log for use in oriented strandboard, laminated strand lumber, or other wood strand-based product.

Strand dryer means a dryer operated at elevated temperature and used to reduce the moisture of wood strands used in the manufacture of OSB, LSL, or other wood strand-based products. A strand dryer is a process unit.

Temporary total enclosure (TTE) means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source, as defined in Method 204 of 40 CFR part 51, appendix M.

Thermal oxidizer means a control system that combusts or oxidizes exhaust gas from a process unit. Thermal oxidizers include regenerative thermal oxidizers and burners or combustion units that accept process exhausts in the flame zone.

Total hazardous air pollutant (HAP) emissions means, for purposes of this rulemaking, the sum of the emissions of the following six compounds: acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde.

Tube dryer means a single-stage or multistage dryer operated at elevated temperature and used to reduce the moisture of wood fibers or particles as they are conveyed (usually pneumatically) through the dryer. Resin may or may not be applied to the wood material before it enters the tube dryer. A tube dryer is a process unit.

Veneer means thin sheets of wood peeled or sliced from logs for use in the manufacture of wood products such as plywood, laminated veneer lumber, or other products.

Veneer redryer means a dryer heated by conventional means, such as direct wood-fired, direct-gas-fired, or steam heated, that is used to redry veneer that has been previously dried. Because the veneer dried in a veneer redryer has been previously dried, the inlet

moisture content of the veneer entering the redryer is less than 25 percent (by weight, dry basis). Batch units used to redry veneer (such as redry cookers) are not considered to be veneer redryers. A veneer redryer is a process unit.

Wet forming means the process of making a slurry of water, fiber, and additives into a mat of fibers to be compressed into a fiberboard or hardboard product.

Wood I-joists means a structural wood beam with an I-shaped cross section formed by bonding (with resin) wood or laminated veneer lumber flanges onto a web cut from a panel such as plywood or oriented strandboard.

Work practice requirement means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

TABLE 1A TO SUBPART DDDD.—PRODUCTION-BASED COMPLIANCE OPTIONS

For the following process units . . .	You must meet the following production-based compliance option (total HAP[a] basis) . . .
(1) Fiberboard mat dryer heated zones (at new affected sources only)	0.022 lb/MSF ½″
(2) Green rotary dryers	0.058 lb/ODT
(3) Hardboard ovens	0.022 lb/MSF ⅛″
(4) Press predryers (at new affected sources only)	0.037 lb/MSF ½″
(5) Pressurized refiners	0.039 lb/ODT
(6) Tube dryers	0.26 lb/ODT
(7) Reconstituted wood product board coolers (at new affected sources only)	0.015 lb/MSF ¾″
(8) Reconstituted wood product presses	0.30 lb/MSF ¾″
(9) Softwood veneer dryer heated zones	0.022 lb/MSF ⅜″
(10) Strand dryers	0.18 lb/ODT

[a] Total HAP, as defined in § 63.2292, includes acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. lb/ODT = pounds per oven dried ton; lb/MSF = pounds per thousand square feet with a specified thickness basis (inches). Section 63.2262(j) shows how to convert from one thickness basis to another.

TABLE 1B TO SUBPART DDDD.—ADD-ON CONTROL SYSTEMS COMPLIANCE OPTIONS

For each of the following process units . . .	You must comply with one of the following six compliance options by using an emissions control system . . .
Fiberboard mat dryer heated zones (at new affected sources only); Green rotary dryers; Hardboard ovens; Press predryers (at new affected sources only); Pressurized refiners; Tube dryers; Reconstituted wood product board coolers (at new affected sources only); Reconstituted wood product presses; Softwood veneer dryer heated zones; and Strand dryers.	(1) Reduce emissions of total HAP, measured as THC (as carbon),[a] by 90 percent; or (2) Limit emissions of total HAP, measured as THC (as carbon),[a] to 20 parts per million by volume, dry (ppmvd); or (3) Reduce methanol emissions by 90 percent; or (4) Limit methanol emissions to less than or equal to 1 ppmvd if uncontrolled methanol emissions entering the control device are greater than or equal to 10 ppmvd; or (5) Reduce formaldehyde emissions by 90 percent; or (6) Limit formaldehyde emissions to less than or equal to 1 ppmvd if uncontrolled formaldehyde emissions entering the control device are greater than or equal to 10 ppmvd.

[a] You may choose to subtract methane from THC as carbon measurements.

TABLE 2 TO SUBPART DDDD.—OPERATING REQUIREMENTS

If you operate a(n) . . .	You must . . .	Or you must . . .	Or you must . . .
(1) Thermal oxidizer	Maintain the 3-hour block average firebox temperature above the minimum temperature established during the performance test; AND maintain in 3-hour block average static pressure at the inlet of the thermal oxidizer within the operating range established during the performance test.	Maintain the 3-hour block average firebox temperature above the minimum temperature established during the performance test; AND maintain the 3-hour block average gas flow at the outlet of the thermal oxidizer below the maximum flow rate established during the performance test.	Maintain the 3-hour block average THC concentration[a] in the thermal oxidizer exhaust below the maximum concentration established during performance test.

TABLE 2 TO SUBPART DDDD.—OPERATING REQUIREMENTS—Continued

If you operate a(n) . . .	You must . . .	Or you must . . .	Or you must . . .
(2) Catalytic oxidizer	Maintain the 3-hour block average temperature upstream of the catalyst bed above the minimum temperature established during the performance test; AND maintain the 3-hour block average static pressure at the inlet of the catalytic oxidizer within the operating range established during the performance test.	Maintain the 3-hour block average temperature upstrem of the catalyst bed above the minimum temperature established during the performance test; AND maintain the 3-hour block average gas flow at the outlet of the catalytic oxidizer below the maximum flow rate established during the performance test.	Maintain the 3-hour block average THC concentration [a] in the catalytic oxidizer exhaust below the maximum concentration established during the performance test.
(3) Biofilter	Maintain the temperature of the air stream entering the biofilter, pH of the biofilter effluent, and pressure drop across the biofilter bed within the ranges established according to § 63.2262(m).	Maintain the 3-hour block average THC concentration [a] in the biofilter exhaust below the maximum concentration established during the performance test.	
(4) Control device other than a thermal oxidizer, catalytic oxidizer, or biofilter.	Petition the Administrator for site-specific operating parameter(s) to be established during the performance test and maintain the average operating parameter(s) within the range(s) established during the performance test.	Maintain the 3-hour block average THC concentration [a] in the control device exhaust below the maximu concentration established during the performance test.	
(5) Process unit that meets a compliance option in Table 1A of this subpart.	Maintain the 3-hour block average inlet temperature below the maximum inlet temperature established during the performance test if the process unit is a green rotary dryer, tube dryer, or strand dryer; OR maintain the 3-hour block average process unit operating temperature below the maximum operating temperature established during the performance test if the process unit is a hardboard oven, press predryer, or reconstituted wood product press; OR maintain the 3-hour block average operating temperature in each of the hot zones below the maximum hot zone temperatures established during the performance test if the process unit is a fiberboard mat dryer or softwood veneer dryer.	Maintain the 3-hour block average tHC concentration [a] in the process unit exhaust below the maximum concentration established during the performance test.	

[a] You may choose to substract methane from THC measurements.

TABLE 3 TO SUBPART DDDD.—WORK PRACTICE REQUIREMENTS

For the following process units at existing or new affected sources . . .	You must . . .
(1) Dry rotary dryers	Process furnish with a 24-hour block average inlet moisture content of less than or equal to 30 percent (by weight, dry basis); AND operate with a 24-hour block average inlet dryer temperature of less than or equal to 600°F.
(2) Hardwood veneer dryers	Process less than 30 volume percent softwood species on an annual basis.
(3) Softwood veneer dryers	Minimize fugitive emissions from the dryer doors through (proper maintenance procedures) and the green end of the dryers (though proper balancing of the heated zone exhausts).

TABLE 3 TO SUBPART DDDD.—WORK PRACTICE REQUIREMENTS—Continued

For the following process units at existing or new affected sources . . .	You must . . .
(4) Veneer redryers	Process veneer that has been previously dried, such that the 24-hour block average inlet moisture content of the veneer is less than or equal to 25 percent (by weight, dry basis).

TABLE 4 TO SUBPART DDDD.—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .
(1) Each process unit subject to a compliance option in Table 1A or 1B of this subpart or used in calculation of an emissions average under § 63.2240(c).	Select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A (as appropriate).
(2) Each process unit subject to a compliance option in Table 1A or 1B of this subpart or used in calculation of an emissions average under § 63.2240(c).	Determine velocity and volumetric flow rate.	Method 2 in addition to Method 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 (as appropriate).
(3) Each process unit subject to a compliance option in Table 1A or 1B of this subpart or used in calculation of an emissions average under § 63.2240(c).	Conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A to 40 CFR part 60 (as appropriate).
(4) Each process unit subject to a compliance option in Table 1A or 1B of this subpart or used in calculation of an emissions average under § 63.2240(c).	Measure moisture content of the stack gas.	Method 4 in appendix A to 40 CFR part 60.
(5) Each process unit subject to a compliance option in Table 1B of this subpart for which you choose to demonstrate compliance using a total HAP as THC compliance option.	Measure emissions of total HAP as THC.	Method 25A in appendix A to 40 CFR part 60. You may measure emissions of methane using EPA Method 18 in appendix A to 40 CFR part 60 and subtract the methane emissions from the emissions of total HAP as THC.
(6) Each process unit subject to a compliance option in Table 1A; OR for each process unit used in calculation of an emissions average under § 63.2240(c).	Measure emissions of total HAP (as defined in § 63.2292).	Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method IM/CAN/WP–99.01 (incorporated by reference, see § 63.14(f)).
(7) Each process unit subject to a compliance option in Table 1B of this subpart for which you choose to demonstrate compliance using a methanol compliance option.	Measure emissions of methanol ...	Method 308 in appendix A to 40 CFR part 63; OR Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method CI/WP–98.01 (incorporated by reference, see § 63.14(f)); OR the NCASI Method IM/CAN/WP–99.01 (incorporated by reference, see § 63.14(f)).
(8) Each process unit subject to a compliance option in Table 1B of this subpart for which you choose to demonstrate compliance using a formaldehyde compliance option.	Measure emissions of formaldehyde.	Method 316 in appendix A to 40 CFR part 63; OR Method 320 in appendix A to 40 CFR part 63; OR Method 0011 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication No. SW–846) for formaldehyde; OR the NCASI Method CI/WP–98.01 (incorporated by reference, see § 63.14(f)); OR the NCASI Method IM/CAN/WP–99.01 (incorporated by reference, see § 63.14(f)).
(9) Each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in Table 1B or used in calculation of an emissions average under § 63.2240(c).	Determine the percent capture efficiency of the enclosure directing emissions to an add-on control device.	Methods 204 and 204A through 204F of 40 CFR part 51, appendix M. Enclosures that meet the Method 204 requirements for a PTE are assumed to have a capture efficiency of 100%. Enclosures that do not meet the PTE requirements must determine the capture efficiency by constructing a TTE according to the requirements of Method 204 and applying Methods 204A through 204F (as appropriate). As an alternative to Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart.

TABLE 4 TO SUBPART DDDD.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .
(10) Each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in Table 1A of this subpart.	Determine the percent capture efficiency.	A TTE and Methods 204 and 204A through 204F (as appropriate) of 40 CFR part 51, appendix M. As an alternative to installing a TTE and using Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart.
(11) Each process unit subject to a compliance option in Tables 1A and 1B of this subpart or used in calculation of emissions averaging credits under § 63.2240(c).	Establish the site-specific operating requirements (including the parameter limits or THC concentration limits) in Table 2 of this subpart.	Data from the parameter monitoring system or THC CEMS and the applicable performance test method(s).

TABLE 5 TO SUBPART DDDD.—PERFORMANCE TESTING AND INITIAL COMPLIANCE DEMONSTRATIONS FOR THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS

For each . . .	For the following compliance options and operating requirements . . .	You have demonstrated initial compliance if . . .
(1) Process unit listed in Table 1A of this subpart.	Meet the production-based compliance options listed in Table 1A of this subpart.	The average total HAP emissions measured using the methods in Table 4 of this subpart over the 3-hour initial performance test are no greater than the compliance option in Table 1A of this subpart; AND you have a record of the operating requirement(s) listed in Table 2 of this subpart for the process unit over the performance test during which emissions did not exceed the compliance option value.
(2) Process unit listed in Table 1B of this subpart.	Reduce emissions of total HAP, measured as THC, by 90 percent.	Total HAP emissions, measured using the methods in Table 4 of this subpart over the 3-hour performance test, are reduced by at least 90 percent, as calculated using the procedures in § 63.2262; AND you have a record of the operating requirement(s) listed in Table 2 of this subpart for the process unit over the performance test during which emissions were reduced by at least 90 percent.
(3) Process unit listed in Table 1B of this subpart.	Limit emissions of total HAP, measured as THC, to 20 ppmvd.	The average total HAP emissions, measured using the methods in Table 4 of this subpart over the 3-hour initial performance test, do not exceed 20 ppmvd; AND you have a record of the operating requirement(s) listed in Table 2 of this subpart for the process unit over the performance test during which emissions did not exceed 20 ppmvd.
(4) Process unit listed in Table 1B of this subpart.	Reduce methanol or formaldehyde emissions by 90 percent.	The methanol or formaldehyde emissions measured using the methods in Table 4 of this subpart over the 3-hour initial performance test, are reduced by at least 90 percent, as calculated using the procedures in § 63.2262; AND you have a record of the operating requirement(s) listed in Table 2 of this subpart for the process unit over the performance test during which emissions were reduced by at least 90 percent.
(5) Process unit listed in Table 1B of this subpart.	Limit methanol or formaldehyde emissions to less than or equal to 1 ppmvd (if uncontrolled emissions are greater than or equal to 10 ppmvd).	The average methanol or formaldehyde emissions, measured using the methods in Table 4 of this subpart over the 3-hour initial performance test, do not exceed 1 ppmvd; AND you have a record of the operating requirement(s) listed in Table 2 of this subpart for the process unit over the performance test during which emissions did not exceed 1 ppmvd. If the process unit is a reconstituted wood product press or a reconstituted wood product board cooler, your capture device either meets the EPA Method 204 criteria for a PTE or achieves a capture efficiency of greater than or equal to 95 percent.
(6) Reconstituted wood product press at a new or existing affected source, or reconstituted wood product board cooler at a new affected source.	Compliance options in Tables 1A and 1B of this subpart or the emissions averaging compliance option in § 63.2240(c).	You submit the results of capture efficiency verification using the methods in Table 4 of this subpart with your Notification of Compliance Status.

TABLE 5 TO SUBPART DDDD.—PERFORMANCE TESTING AND INITIAL COMPLIANCE DEMONSTRATIONS FOR THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS—Continued

For each . . .	For the following compliance options and operating requirements . . .	You have demonstrated initial compliance if . . .
(7) Process unit listed in Table 1B of this subpart controlled by routing exhaust to a combustion unit with heat input capacity greater than or equal to 44 megawatts.	Compliance options in Table 1B of this subpart or the emissions averaging compliance option in § 63.2240(c).	You submit with your Notification of Compliance Status documentation showing that your combustion unit has a heat input capacity greater than or equal to 44 megawatts and that the process exhausts controlled enter into the flame zone.

TABLE 6 TO SUBPART DDDD.—INITIAL COMPLIANCE DEMONSTRATIONS FOR WORK PRACTICE REQUIREMENTS

For each. . .	For the following work practice requirements. . .	You have demonstrated initial compliance if. . .
(1) Dry rotary dryer	Process furnish with an inlet moisture content less than or equal to 30 percent (by weight, dry basis) AND operate with an inlet dryer temperature of less than or equal to 600°F.	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer meets the criteria of a ''dry rotary dryer'' AND you have a record of the inlet moisture content and inlet dryer temperature (as required in § 63.2263).
(2) Hardwood veneer dryer	Process less than 30 volume percent softwood species.	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer meets the criteria of a ''hardwood veneer dryer'' AND you have a record of the percentage of softwoods processed in the dryer (as required in § 63.2264).
(3) Softwood veneer dryer	Minimize fugitive emissions from the dryer doors and the green end.	You meet the work practice requirement AND you submit with the Notification of Compliance Status a copy of your plan for minimizing fugitive emissions from the veneer dryer heated zones (as required in § 63.2265).
(4) Veneer redryers	Process veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis).	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer operates only as a redryer AND you have a record of the veneer inlet moisture content of the veneer processed in the redryer (as required in § 63.2266).

TABLE 7 TO SUBPART DDDD.—CONTINUOUS COMPLIANCE WITH THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS

For . . .	For the following compliance options and operating requirements . . .	You must demonstrate continuous compliance by . . .
(1) Each process unit listed in Tables 1A and 1B of this subpart or used in calculation of emissions averaging credits under § 63.2240(c).	Compliance options in Tables 1A and 1B of this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 of this subpart based on monitoring of operating parameters.	Collecting and recording the operating parameter monitoring system data listed in Table 2 of this subpart for the process unit according to § 63.2268(a)–(e); AND reducing the operating parameter monitoring system data to the specified average in units of the applicable requirement according to calculations in § 63.2268(a); AND maintaining the average operating parameter at or above the maximum, at or below the minimum, or within the range (whichever applies) established according to § 63.2262.
(2) Each process unit listed in Tables 1A and 1B of this subpart or used in calculation of emissions averaging credits under § 63.2240(c).	Compliance options in Tables 1A and 1B of this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 of this subpart based on THC CEMS data.	Collecting and recording the THC monitoring data listed in Table 2 of this subpart for the process unit according to § 63.2268(g); AND reducing the CEMS data to 3-hour block averages according to calculations in § 63.2268(g); AND maintaining the 3-hour block average THC concentration in the exhaust gases less than or equal to the THC concentration established according to § 63.2262.

TABLE 8 TO SUBPART DDDD.—CONTINUOUS COMPLIANCE WITH THE WORK PRACTICE REQUIREMENTS

For . . .	For the following work practice requirements . . .	You must demonstrate continuous compliance by . . .
(1) Dry rotary dryer	Process furnish with an inlet moisture content less than or equal to 30 percent (by weight, dry basis) AND operate with an inlet dryer temperature of less than or equal to 600 °F.	Maintaining the inlet furnish moisture content at less than or equal to 30 percent (by weight, dry basis) AND maintaining the inlet dryer temperature at less than or equal to 600 °F; AND keeping records of the inlet furnish moisture content and inlet dryer temperature.
(2) Hardwood veneer dryer	Process less than 30 volume percent softwood species.	Maintaining the volume percent softwood species processed below 30 percent AND keeping records of the volume percent softwood species processed.
(3) Softwood veneer dryer	Minimize fugitive emissions from the dryer doors and the green end.	Following (and documenting that you are following) your plan for minimizing fugitive emissions.
(4) Veneer redryers	Process veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis).	Maintaining the inlet moisture content of the veneer processed at or below 25 percent AND keeping records of the inlet moisture content of the veneer processed.

TABLE 9 TO SUBPART DDDD.—REQUIREMENTS FOR REPORTS

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
(1) Compliance report	The information in § 63.2281(c) through (g)	Semiannually according to the requirements in § 63.2281(b).
(2) Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP.	(i) Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	(ii) The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

TABLE 10 TO SUBPART DDDD.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.1	Applicability	Initial applicability determination; Applicability after standard established; Permit requirements; Extensions, notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities	Prohibited Activities; Compliance date; Circumvention, severability.	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	GP apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved]		

TABLE 10 TO SUBPART DDDD.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved]		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (e.g., 3 years).	Yes.
§ 63.6(d)	[Reserved]		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for SSM and SSMP; Content of SSMP	Yes.
§ 63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)(1)–(9)	Opacity/Visible Emission (VE) Standards.	Requirements for opacity and visible emission standards.	NA.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category from requirement to comply with rule.	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for Conducting Initial Performance Testing and Other Compliance Demonstrations; Must conduct 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If have to reschedule performance test, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§ 63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes.

TABLE 10 TO SUBPART DDDD.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least one hour each; compliance is based on arithmetic mean of three runs; specifies conditions when data from an additional test run can be used.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status; keep data for 5 years.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in Appendix B of Part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved]		
§ 63.8(a)(4)	Monitoring with Flares	Requirements for flares in § 63.11 apply	NA
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Follow the SSM plan for routine repairs; keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
§ 63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM Yes when action is not described in SSM plan.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements; review of source O&M procedures, records; manufacturer's instructions, recommendations; inspection.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission of parameter measurements; must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts; COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes.

TABLE 10 TO SUBPART DDDD.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.8(c)(5)	COMS Minimum Procedures	COMS minimum procedures	NA.
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high level calibration check requirements; out-of- control periods.	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.; must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions.	Yes.
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports..	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative Relative Accuracy Test	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least 4 equally spaced data points; data that can't be used in average.	Yes.
§ 63.9(a)	Notification Requirements	Applicability and State Delegation	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	Submit notification 120 days after effective date; notification of intent to construct/reconstruct; notification of commencement of construct/reconstruct; notification of startup; contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed BACT/LAER.	Yes
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	Yes.
§ 63.9(h)(1)–(6)	Notification of Compliance Status	Contents; due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than 1 source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; keep all records readily available; keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(iv)	Records related to Startup, Shutdown, and Malfunction.	Occurrence of each of operation (process equipment); occurrence of each malfunction of air pollution equipment; maintenance on air pollution control equipment; actions during startup, shutdown, and malfunction.	Yes.
§ 63.10(b)(2)(vi) and (x)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control	Yes.

TABLE 10 TO SUBPART DDDD.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD
§ 63.10(b)(2)(vii)–(ix)	Records	Measurements to demonstrate compliance with compliance options and operating requirements; performance test, performance evaluation, and visible emission observation results; measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§ 63.10(b) (3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1)–(6),(9)–(15)	Records	Additional Records for CMS	Yes.
§ 63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS.	No.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	NA.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEM Reports on a unit; written copy of performance evaluation; 3 copies of COMS performance evaluation.	Yes.
§ 63.10(e)(3)	Reports	Excess Emission Reports	No.
§ 63.10(e)(4)	Reporting COMS data	Must submit COMS data with performance test data	NA.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11	Flares	Requirements for flares	NA.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are send.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes.

Appendix A to Subpart DDDD—Alternative Procedure To Determine Capture Efficiency From A Hot Press Enclosure in the Plywood and Composite Wood Products Industry Using Sulfur Hexafluoride Tracer Gas

1.0 Scope and Application

This procedure has been developed specifically for the proposed rule for the plywood and composite wood products industry and is used to determine the capture efficiency of a partial hot press enclosure in that industry. This procedure is applicable for the determination of capture efficiency for press enclosures that are not considered to be permanent total enclosures (PTEs) as defined in EPA Method 204 and is proposed as an alternative to the construction of temporary total enclosures (TTEs). Sulfur hexafluoride (SF_6) is used as a tracer gas (other tracer gases may be used if approved by the Administrator). This gas is not indigenous to the ambient atmosphere and is nonreactive.

This procedure uses infrared spectrometry (IR) as the analytical technique. When the infrared spectrometer used is a Fourier-Transform Infrared spectrometer (FTIR), an alternate instrument calibration procedure may be used; the alternate calibration procedure is the calibration transfer standard (CTS) procedure of EPA Method 320. Other analytical techniques which are capable of

equivalent Method Performance (Section 13.0) also may be used. Specifically, gas chromatography with electron capture detection (GC/ECD) is an applicable technique for analysis of SF_6.

2.0 Summary of Method

A constant mass flow rate of SF_6 tracer gas is released through manifolds at multiple locations within the enclosure to mimic the release of HAP during the press process. This test method requires a minimum of three SF_6 injection points (two at the press unloader and one at the press) and provides details about considerations for locating the injection points. An infrared spectrometer (or GC/ECD) is used to measure the concentration of SF_6 at the inlet duct to the control device (outlet duct from enclosure). Simultaneously, EPA Method 2 is used to measure the flow rate at the inlet duct to the control device. The concentration and flow rate measurements are used to calculate the mass emission rate of SF_6 at the control device inlet. Through calculation of the mass of SF_6 released through the manifolds and the mass of SF_6 measured at the inlet to the control device, the capture efficiency of the enclosure is calculated.

In addition, optional samples of the ambient air may be taken at locations around the perimeter of the enclosure to quantify the ambient concentration of SF_6 and to identify those areas of the enclosure that may be performing less efficiently; these samples would be taken using disposable syringes and would be analyzed using a GC/ECD.

Finally, in addition to the requirements specified in this procedure, the data quality objectives (DQO) or lower confidence limit (LCL) criteria specified in Appendix A to 40 CFR part 63, subpart KK, Data Quality Objective and Lower Confidence Limit Approaches for Alternative Capture Efficiency Protocols and Test Methods, must also be satisfied. A minimum of three test runs are required for this procedure; however, additional test runs may be required based on the results of the DQO or LCL analysis.

3.0 Definitions

3.1 Capture efficiency (CE). The weight per unit time of SF_6entering the control device divided by the weight per unit time of SF_6 released through manifolds at multiple locations within the enclosure.

3.2 Control device (CD). The equipment used to reduce, by destruction or removal, press exhaust air pollutants prior to discharge to the ambient air.

3.3 Control/destruction efficiency (DE). The VOC or HAP removal efficiency of the control device.

3.4 Data Quality Objective (DQO) Approach. A statistical procedure to determine the precision of the data from a test series and to qualify the data in the determination of capture efficiency for compliance purposes. If the results of the DQO analysis of the initial three test runs do not satisfy the DQO criterion, the LCL approach can be used or additional test runs must be conducted. If additional test runs are conducted, then the DQO or LCL analysis is conducted using the data from both the initial test runs and all additional test runs.

3.5 Lower Confidence Limit (LCL) Approach. An alternative statistical procedure that can be used to qualify data in the determination of capture efficiency for compliance purposes. If the results of the LCL approach produce a CE that is too low for demonstrating compliance, then additional test runs must be conducted until the LCL or DQO is met. As with the DQO, data from all valid test runs must be used in the calculation.

3.6 Minimum Measurement Level (MML). The minimum tracer gas concentration expected to be measured during the test series. This value is selected by the tester based on the capabilities of the IR spectrometer (or GC/ECD) and the other known or measured parameters of the hot press enclosure to be tested. The selected MML must be above the low-level calibration standard and preferably below the mid-level calibration standard.

3.7 Method 204. The U.S. EPA Method 204, ''Criteria For and Verification of a Permanent or Temporary Total Enclosure'' (40 CFR part 51, Appendix M). If the permanent total enclosure (PTE) criteria in Method 204 are satisfied, the PTE around a hot press is assumed to be 100 percent capture efficient.

3.8 Method 205. The U.S. EPA Method 205, ''Verification of Gas dilution Systems for Field Instrument Calibrations'' (40 CFR part 51, Appendix M).

3.9 Method 320. The U.S. EPA Method 320, ''Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transform Infrared (FTIR) Spectroscopy'' (40 CFR part 63, Appendix A).

3.10 Overall capture and control efficiency (CCE). The collection and control/destruction efficiency of both the PPE and CD combined. The CCE is calculated as the product of the CE and DE.

3.11 Partial press enclosure (PPE). The physical barrier that ''partially'' encloses the press equipment, captures a significant amount of the associated emissions, and transports those emissions to the CD.

3.12 Test series. A minimum of three test runs or, when more than three runs are conducted, all of the test runs conducted.

4.0 Interferences

There are no known interferences.

5.0 Safety

Sulfur hexafluoride is a colorless, odorless, nonflammable liquefied gas. It is stable and nonreactive and, because it is noncorrosive, most structural materials are compatible with it. The Occupational Safety and Health Administration PEL–TWA and TLV–TWA concentrations are 1,000 parts per million. Sulfur hexafluoride is an asphyxiant. Exposure to an oxygen deficient atmosphere (less than 19.5 percent oxygen) may cause dizziness, drowsiness, nausea, vomiting, excess salivation, diminished mental alertness, loss of consciousness and death. Exposure to atmospheres containing less than 12 percent oxygen will bring about unconsciousness without warning and so quickly that the individuals cannot help themselves. Contact with liquid or cold vapor may cause frostbite. Avoid breathing sulfur hexafluoride gas. Self contained breathing apparatus may be required by rescue workers. Sulfur hexafluoride is not listed as a carcinogen or a potential carcinogen.

6.0 Equipment and Supplies

This method requires equipment and supplies for: (a) The injection of tracer gas into the enclosure, (b) the measurement of the tracer gas concentration in the exhaust gas entering the control device, and (c) the measurement of the volumetric flow rate of the exhaust gas entering the control device. In addition, the requisite equipment needed for EPA Methods 1—4 will be required. Equipment and supplies for optional ambient air sampling are discussed in Section 8.6.

6.1 Tracer Gas Injection.

6.1.1 Manifolds. This method requires the use of tracer gas supply cylinder(s) along with the appropriate flow control elements. Figure 1 shows a schematic drawing of the injection system showing potential locations for the tracer gas manifolds. Figure 2 shows a schematic drawing of the recommended configuration of the injection manifold. Three tracer gas discharge manifolds are required at a minimum.

6.1.2 Flow Control Meter. Flow control and measurement meter for measuring the quantity of tracer gas injected. A mass flow, volumetric flow, or critical orifice control meter can be used for this method. The meter must be accurate to within ± 5 percent at the flow rate used. This means that the flow meter must be calibrated against a primary standard for flow measurement at the appropriate flow rate.

6.2 Measurement of Tracer Gas Concentration.

6.2.1 Sampling Probes. Use Pyrex or stainless steel sampling probes of sufficient length to reach the traverse points calculated according to EPA Method 1.

6.2.2 Sampling Line. Use a heated Teflon sampling line to transport the sample to the analytical instrument.

6.2.3 Sampling Pump. Use a sampling pump capable of extracting sufficient sample from the duct and transporting to the analytical instrument.

6.2.4 Sample Conditioning System. Use a particulate filter sufficient to protect the sampling pump and analytical instrument. At the discretion of the tester and depending on the equipment used and the moisture content of the exhaust gas, it may be necessary to further condition the sample by removing moisture using a condenser.

6.2.5 Analytical Instrument. Use one of the following analytical instruments.

6.2.1.1 Spectrometer. Use an infrared spectrometer designed to measuring SF6 tracer gas and capable of meeting or exceeding the specifications of this procedure. An FTIR meeting the specifications of Method 320 may be used.

6.2.1.2 GC/ECD. Use a GC/ECD designed to measure SF6 tracer gas and capable of meeting or exceeding the specifications of this procedure.

6.2.6 Recorder. At a minimum, use a recorder with linear strip chart. An automated data acquisition system (DAS) is recommended.

6.3 Exhaust Gas Flow Rate Measurement. Use equipment specified for EPA Methods 2,

3, and 4 for measuring flow rate of exhaust gas at the inlet to the control device.

7.0 Reagents and Standards

7.1 Tracer Gas. Use SF6 as the tracer gas. The manufacturer of the SF6 tracer gas should provide a recommended shelf life for the tracer gas cylinder over which the concentration does not change more than ± 2 percent from the certified value. A gas mixture of SF6 diluted with nitrogen should be used; based on experience and calculations, pure SF6 gas is not necessary to conduct tracer gas testing. Select a concentration and flow rate that is appropriate for the analytical instrument's detection limit, the minimum measurement level (MML), and the exhaust gas flow rate from the enclosure (see section 8.1.1). You may use a tracer gas other than SF6 with the prior approval of the Administrator. If you use an approved tracer gas other than SF6, all references to SF6 in this protocol instead refer to the approved tracer gas.

7.2 Calibration Gases. The SF_6 calibration gases required will be dependent on the selected MML and the appropriate span selected for the test. Commercial cylinder gases certified by the manufacturer to be accurate to within 1 percent of the certified label value are preferable, although cylinder gases certified by the manufacturer to 2 percent accuracy are allowed. Additionally, the manufacturer of the SF6 calibration gases should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ± 2 percent from the certified value. Another option allowed by this method is for the tester to obtain high concentration certified cylinder gases and then use a dilution system meeting the requirements of EPA Method 205, 40 CFR part 51, Appendix M, to make multi-level calibration gas standards. Low-level, mid-level, and high-level calibration gases will be required. The MML must be above the low-level standard, the high-level standard must be no more than four times the low-level standard, and the mid-level standard must be approximately halfway between the high- and low-level standards. See section 12.1 for an example calculation of this procedure.

Note: If using an FTIR as the analytical instrument, the tester has the option of following the CTS procedures of Method 320; the calibration standards (and procedures) specified in Method 320 may be used in lieu of the calibration standards and procedures in this protocol.

7.2.1 Zero Gas. High purity nitrogen.

7.2.2 Low-Level Calibration Gas. An SF6 calibration gas in nitrogen with a concentration equivalent to 20 to 30 percent of the applicable span value.

7.2.3 Mid-Level Calibration Gas. An SF6 calibration gas in nitrogen with a concentration equivalent to 45 to 55 percent of the applicable span value.

7.2.4 High-Level Calibration Gas. An SF6 calibration gas in nitrogen with a concentration equivalent to 80 to 90 percent of the applicable span value.

8.0 Sample Collection, Preservation, Storage, and Transport

8.1 Test Design

8.1.1 Determination of Minimum Tracer Gas Flow Rate.

8.1.1.1 Determine (via design calculations or measurements) the approximate flow rate of the exhaust gas through the enclosure (acfm).

8.1.1.2 Calculate the minimum tracer gas injection rate necessary to assure a detectable SF6 concentration at the exhaust gas measurement point (see section 12.1 for calculation).

8.1.1.3 Select a flow meter for the injection system with an operating range appropriate for the injection rate selected.

8.1.2 Determination of the Approximate Time to Reach Equilibrium.

8.1.2.1 Determine the volume of the enclosure.

8.1.2.2 Calculate the air changes per minute of the enclosure by dividing the approximate exhaust flow rate (8.1.1.1 above) by the enclosed volume (8.1.2.1 above).

8.1.2.3 Calculate the time at which the tracer concentration in the enclosure will achieve approximate equilibrium. Divide 3 by the air changes per minute (8.1.2.2 above) to establish this time. This is the approximate length of time for the system to come to equilibrium. Concentration equilibrium occurs when the tracer concentration in the enclosure stops changing as a function of time for a constant tracer release rate. Because the press is continuously cycling, equilibrium may be exhibited by a repeating, but stable, cyclic pattern rather than a single constant concentration value. Assure sufficient tracer gas is available to allow the system to come to equilibrium, and to sample for a minimum of 20 minutes and repeat the procedure for a minimum of 3 test runs. Additional test runs may be required based on the results of the DQO and LCL analyses described in 40 CFR part 63, subpart KK, Appendix A.

8.1.3 Location of Injection Points. This method requires a minimum of three tracer gas injection points. The injection points should be located within leak prone, VOC/HAP-producing areas around the press, or horizontally within 12 inches of the defined equipment. One potential configuration of the injection points is depicted in Figure 1. The effect of wind, exfiltration through the building envelope, and air flowing through open building doors should be considered when locating tracer gas injection points within the PPE. The injection points should also be located at a vertical elevation equal to the VOC/HAP generating zones. The injection points should not be located beneath obstructions that would prevent a natural dispersion of the gas. Document the selected injection points in a drawing(s).

8.1.4 Location of Flow Measurement and Tracer Sampling. Accurate CD inlet gas flow rate measurements are critical to the success of this procedure. Select a measurement location meeting the criteria of EPA Method 1 (40 CFR part 60, Appendix A), Sampling and Velocity Traverses for Stationary Sources. Also, when selecting the measurement location, consider whether stratification of the tracer gas is likely at the location (e.g., do not select a location immediately after a point of air in-leakage to the duct).

8.2 Tracer Gas Release. Release the tracer gas at a calculated flow rate (see section 12.1 for calculation) through a minimum of three injection manifolds located as described above in 8.1.3. The tracer gas delivery lines must be routed into the enclosure and attached to the manifolds without violating the integrity of the enclosure.

8.3 Pretest Measurements.

8.3.1 Location of Sampling Point(s). If stratification is not suspected at the measurement location, select a single sample point located at the centroid of the CD inlet duct or at a point no closer to the CD inlet duct walls than 1 meter. If stratification is suspected, establish a ''measurement line'' that passes through the centroidal area and in the direction of any expected stratification. Locate three traverse points at 16.7, 50.0 and 83.3 percent of the measurement line and sample from each of these three points during each run, or follow the procedure in section 8.3.2 to verify whether stratification does or does not exist.

8.3.2 Stratification Verification. The presence or absence of stratification can be verified by using the following procedure. While the facility is operating normally, initiate tracer gas release into the PPE. For rectangular ducts, locate at least nine sample points in the cross section such that the sample points are the centroids of similarly-shaped, equal area divisions of the cross section. Measure the tracer gas concentration at each point. Calculate the mean value for all sample points. For circular ducts, conduct a 12-point traverse (*i.e.,* six points on each of the two perpendicular diameters) locating the sample points as described in 40 CFR part 60, Appendix A, Method 1. Perform the measurements and calculations as described above. Determine if the mean pollutant concentration is more than 10 percent different from any single point. If so, the cross section is considered to be stratified, and the tester may not use a single sample point location, but must use the three traverse points at 16.7, 50.0, and 83.3 percent of the entire measurement line. Other traverse points may be selected, provided that they can be shown to the satisfaction of the Administrator to provide a representative sample over the stack or duct cross section.

8.4 CD Inlet Gas Flow Rate Measurements. The procedures of EPA Methods 1–4 (40 CFR part 60, Appendix A) are used to determine the CD inlet gas flow rate. Molecular weight (Method (3) and moisture (Method (4) determinations are only required once for each test series. However, if the test series is not completed within 24 hours, then the molecular weight and moisture measurements should be repeated daily. As a minimum, velocity measurements are conducted according to the procedures of Methods 1 and 2 before and after each test run, as close to the start and end of the run as practicable. A velocity measurement between two runs satisfies both the criterion of ''after'' the run just completed and ''before'' the run to be initiated. Accurate exhaust gas flow rate measurements are critical to the success of this procedure. If significant temporal variations of flow rate are anticipated during the test run under normal process operating conditions, take

appropriate steps to accurately measure the flow rate during the test. Examples of steps that might be taken include: (1) Conducting additional velocity traverses during the test run; or (2) continuously monitoring a single point of average velocity during the run and using these data, in conjunction with the pre- and post-test traverses, to calculate an average velocity for the test run.

8.5 Tracer Gas Measurement Procedure.

8.5.1 Calibration Error Test. Immediately prior to the emission test (within 2 hours of the start of the test), introduce zero gas and high-level calibration gas at the calibration valve assembly. Zero and calibrate the analyzer according to the manufacturer's procedures using, respectively, nitrogen and the calibration gases. Calculate the predicted response for the low-level and mid-level gases based on a linear response line between the zero and high-level response. Then introduce the low-level and mid-level calibration gases successively to the measurement system. Record the analyzer responses for the low-level and mid-level calibration gases and determine the differences between the measurement system responses and the predicted responses using the equation in section 12.3. These differences must be less than 5 percent of the respective calibration gas value. If not, the measurement system must be replaced or repaired prior to testing. No adjustments to the measurement system shall be conducted after the calibration and before the drift determination (section 8.5.4). If adjustments are necessary before the completion of the test series, perform the drift checks prior to the required adjustments and repeat the calibration following the adjustments. If multiple electronic ranges are to be used, each additional range must be checked with a mid-level calibration gas to verify the multiplication factor.

Note: If using an FTIR for the analytical instrument, you may choose to follow the pretest preparation, evaluation, and calibration procedures of Method 320 (section 8.0) (40 CFR part 63, Appendix A) in lieu of the above procedure.

8.5.2 Response Time Test. Conduct this test once prior to each test series. Introduce zero gas into the measurement system at the calibration valve assembly. When the system output has stabilized, switch quickly to the high-level calibration gas. Record the time from the concentration change to the measurement system response equivalent to 95 percent of the step change. Repeat the test three times and average the results.

8.5.3 SF_6 Measurement. Sampling of the enclosure exhaust gas at the inlet to the CD should begin at the onset of tracer gas release. If necessary, adjust the tracer gas injection rate such that the measured tracer gas concentration at the CD inlet is within the spectrometer's calibration range (*i.e.*, between the MML and the span value). Once the tracer gas concentration reaches equilibrium, the SF_6 concentration should be measured using the infrared spectrometer continuously for at least 20 minutes per run. Continuously record (*i.e.*, record at least once per minute) the concentration. Conduct at least three test runs. On the recording chart, in the data acquisition system, or in a log book, make a note of periods of process interruption or cyclic operation such as the cycles of the hot press operation. Table 1 summarizes the physical measurements required for the press enclosure testing.

Note: If a GC/ECD is used as the analytical instrument, a continuous record (at least once per minute) likely will not be possible; make a minimum of five injections during each test run. Also, the minimum test run duration criterion of 20 minutes applies.

8.5.4 Drift Determination. Immediately following the completion of the test run, reintroduce the zero and mid-level calibration gases, one at a time, to the measurement system at the calibration valve assembly. (Make no adjustments to the measurement system until both the zero and calibration drift checks are made.) Record the analyzer responses for the zero and mid-level calibration gases and determine the difference between the instrument responses for each gas prior to and after the emission test run using the equation in section 12.4. If the drift values exceed the specified limits (section 13), invalidate the test results preceding the check and repeat the test following corrections to the measurement system. Alternatively, recalibrate the test measurement system as in section 8.5.1 and report the results using both sets of calibration data (*i.e.*, data determined prior to the test period and data determined following the test period).

Note: If using an FTIR for the analytical instrument, you may choose to follow the post-test calibration procedures of Method 320 (section 8.11.2) in lieu of the above procedures.

8.6 Ambient Air Sampling (Optional). Sampling the ambient air surrounding the enclosure is optional. However, taking these samples during the capture efficiency testing will identify those areas of the enclosure that may be performing less efficiently.

8.6.1 Location of Ambient Samples Outside the Enclosure (Optional). In selecting the sampling locations for collecting samples of the ambient air surrounding the enclosure, consider potential leak points, the direction of the release, and laminar flow characteristics in the area surrounding the enclosure. Samples should be collected from all sides of the enclosure, downstream in the prevailing room air flow, and in the operating personnel occupancy areas.

8.6.2 Collection of Ambient Samples (Optional). During the tracer gas release, collect ambient samples from the area surrounding the enclosure perimeter at predetermined location using disposable syringes or some other type of containers that are non-absorbent, inert and that have low permeability (*i.e.*, polyvinyl fluoride film or polyester film sample bags or polyethylene, polypropylene, nylon or glass bottles). The use of disposable syringes allows samples to be injected directly into a gas chromatograph. Concentration measurements taken around the perimeter of the enclosure provide evidence of capture performance and will assist in the identification of those areas of the enclosure that are performing less efficiently.

8.6.3 Analysis and Storage of Ambient Samples (Optional). Analyze the ambient samples using an analytical instrument calibrated and operated according to the procedures of this appendix or ASTM E 260 and ASTM E 697. Samples may be analyzed immediately after a sample is taken, or they may be stored for future analysis. Experience has shown no degradation of concentration in polypropylene syringes when stored for several months as long as the needle or syringe is plugged. Polypropylene syringes should be discarded after one use to eliminate the possibility of cross contamination of samples.

9.0 Quality Control

9.1 Sampling, System Leak Check. A sampling system leak check should be conducted prior to and after each test run to ensure the integrity of the sampling system.

9.2 Zero and Calibration Drift Tests

Section	Quality control measure	Effect
8.5.4	Zero and calibration drift tests	Ensures that bias introduced by drift in the measurement system output during the run is no greater than 3 percent of span.

10.0 Calibration and Standardization

10.1 Control Device Inlet Air Flow Rate Measurement Equipment. Follow the equipment calibration requirements specified in Methods 2, 3, and 4 for measuring the velocity, molecular weight, and moisture of the control device inlet air.

10.2 Tracer Gas Injection Rate. A dry gas volume flow meter, mass flow meter, or orifice can be used to measure the tracer gas injection flow rate. The selected flow measurement device must have an accuracy of greater than ± 5 percent at the field operating range. Prior to the test, verify the calibration of the selected flow measurement device using either a wet test meter, spirometer, or liquid displacement meter as the calibration device. Select a minimum of two flow rates to bracket the expected field

operating range of the flow meter. Conduct three calibration runs at each of the two selected flow rates. For each run, note the exact quantity of gas as determined by the calibration standard and the gas volume indicated by the flow meter. For each flow rate, calculate the average percent difference of the indicated flow compared to the calibration standard.

10.3 Spectrometer. Follow the calibration requirements specified by the equipment manufacturer for infrared spectrometer measurements and conduct the pretest calibration error test specified in section 8.5.1. Note: if using an FTIR analytical instrument see Method 320, section 10.

10.4 Gas Chromatograph. Follow the pre-test calibration requirements specified in section 8.5.1.

10.4 Gas Chromatograph for Ambient Sampling (Optional). For the optional ambient sampling, follow the calibration requirements specified in section 8.5.1 or ASTM E 260 and E 697 and by the equipment manufacturer for gas chromatograph measurements.

11.0 Analytical Procedures

The sample collection and analysis are concurrent for this method (see section 8.0).

12.0 Calculations and Data Analysis

12.1 Estimate MML and Span. The MML is the minimum measurement level. The selection of this level is at the discretion of the tester. However, the MML must be higher than the low-level calibration standard and the tester must be able to measure at this level with a precision of ≤10 percent. As an example, select the MML as 10 times the instrument's published detection limit. The detection limit of one instrument is 0.01 parts per million by volume (ppm_v). Therefore, the MML would be 0.10 ppm_v. Select the low-level calibration standard as 0.08 ppm_v. The high-level standard would be four times the low-level standard or 0.32 ppm_v. A reasonable mid-level standard would then be 0.20 ppm_v (halfway between the low-level standard and the high-level standard). Finally, the span value would be approximately 0.40 ppm_v (the high-level value is 80 percent of the span). In this example, the following MML, calibration standards, and span values would apply:

MML = 0.10 ppm_v
Low-level standard = 0.08 ppm_v
Mid-level standard = 0.20 ppm_v
High-level standard = 0.32 ppm_v
Span value = 0.40 ppm_v

12.2 Estimate Tracer Gas Injection Rate for the Given Span. To estimate the minimum and maximum tracer gas injection rate, assume a worst case capture efficiency of 80 percent, and calculate the tracer gas flow rate based on known or measured parameters. To estimate the minimum tracer gas injection rate, assume that the MML concentration (10 times the IR detection limit in this example) is desired at the measurement location. The following equation can be used to estimate the minimum tracer gas injection rate:

$$((Q_{T-MIN} \times 0.8)/Q_E) \times (C_T \div 100) \times 10^6 = MML$$

$$Q_{T-MIN} = 1.25 \times MML \times (Q_E / C_T) \times 10^{-4}$$

Where:

Q_{T-MIN} = minimum volumetric flow rate of tracer gas injected, scfm
Q_E = volumetric flow rate of exhaust gas, scfm
C_T = Tracer gas (SF_6) concentration in gas blend, percent by volume
MML = minimum measured level, ppm_v = 10 × IR_{DL} (for this example)
IR_{DL}= IR detection limit, ppm_v

Standard conditions: 20 °C, 760 mm Hg.

To estimate the maximum tracer gas injection rate, assume that the span value is desired at the measurement location. The following equation can be used to estimate the maximum tracer gas injection rate:

$$((Q_{T-MAX} \times 0.8)/Q_E) \times (C_T \div 100) \times 10^6 = \text{span value}$$

$$Q_{T-MAX} = 1.25 \times \text{span value} \times (Q_E / C_T) \times 10^{-4}$$

Where:

Q_{T-MAX} = maximum volumetric flow rate of tracer gas injected, scfm
Span value = Instrument span value, ppm_v

The following example illustrates this calculation procedure:

Find the range of volumetric flow rate of tracer gas to be injected when the following parameters are known:

Q_E = 60,000 scfm (typical exhaust gas flow rate from a press enclosure)
C_T = 2 percent SF_6 in nitrogen
IR_{DL}= 0.01 ppm_v (per manufacturer's specifications)
MML = 10 × IR_{DL} = 0.10 ppm_v
Span value = 0.40 ppm_v
Q_T = ?

Minimum tracer gas volumetric flow rate:

$$Q_{T-MIN} = 1.25 \times MML \times (Q_E / C_T) \times 10^{-4}$$

$$Q_{T-MIN} = 1.25 \times 0.10 \times (60{,}000/2) \times 10^{-4} = 0.375 \text{ scfm}$$

Maximum tracer gas volumetric flow rate:

$$Q_{T-MAX} = 1.25 \times \text{span value} \times (Q_E / C_T) \times 10^{-4}$$

$$Q_{T-MAX} = 1.25 \times 0.40 \times (60{,}000/2) \times 10^{-4} = 1.5 \text{ scfm}$$

In this example, the estimated total volumetric flow rate of the two percent SF_6 tracer gas injected through the manifolds in the partial enclosure lies between 0.375 and 1.5 scfm.

12.3 Calibration Error. Calculate the calibration error for the low-level and mid-level calibration gases using the following equation:

$$Err = | C_{std} - C_{meas} | \div C_{std} \times 100$$

Where:

Err = Calibration error, percent
C_{std} = Low-level or mid-level calibration gas value, ppm_v
C_{meas} = Measured response to low-level or mid-level concentration gas, ppm_v

12.4 Calibration Drift. Calculate the calibration drift for the zero and low-level calibration gases using the following equation:

$$D = | C_{initial} - C_{final} | \div C_{span} \times 100$$

Where:

D = Calibration drift, percent
$C_{initial}$ = Low-level or mid-level calibration gas value measured before test run, ppm_v
C_{final} = Low-level or mid-level calibration gas value measured after test run, ppm_v
C_{span} = Span value, ppm_v

12.5 Calculate Capture Efficiency. The equation to calculate press enclosure capture efficiency is provided below:

$$CE = (SF_{6-CD} \div SF_{6-INJ}) \times 100$$

Where:

CE = capture efficiency
SF_{6-CD} = mass of SF_6 measured at the inlet to the CD
SF_{6-INJ} = mass of SF_6 injected from the tracer source into the PPE

Calculate the CE for each of the initial three test runs. Then, follow the procedures outlined in section 12.6 to calculate the Overall Capture Efficiency.

12.6 Calculate Overall Capture Efficiency. After calculating the capture efficiency for each of the initial three test runs, follow the procedures in 40 CFR part 63, subpart KK, Appendix A to determine if the results of the testing can be used in determining compliance with the requirements of the proposed rule. There are two methods that can be used: the DQO and LCL methods. The DQO method is described in section 3 of 40 CFR part 63, subpart KK, Appendix A and provides a measure of the precision of the capture efficiency testing conducted. Section 3 of 40 CFR part 63, subpart KK, Appendix A provides an example calculation using results from a facility. If the DQO criteria are met using the first set of three test runs, then the facility can use the average capture efficiency of these test results to determine the capture efficiency of the partial hot press enclosure. If the DQO criteria are not met then the facility can conduct another set of three runs and run the DQO analysis again using the results from the six runs *OR* the facility can elect to use the LCL approach.

The LCL method is described in section 4 of 40 CFR part 63, subpart KK, Appendix A and provides sources that may be performing much better than their regulatory requirement a screening option by which they can demonstrate compliance. The LCL approach compares the 80 percent lower confidence limit for the mean measured CE value to the applicable regulatory requirement. If the LCL capture efficiency is higher than the applicable limit, then the facility is in initial compliance and would use the LCL capture efficiency as the capture efficiency to determine compliance. If the LCL capture efficiency is lower than the applicable limit, then the facility must perform additional test runs and re-run the DQO or LCL analysis.

13.0 Method Performance

13.1 Measurement System Performance Specifications.

13.1.1 Zero Drift. Less than ± 3 percent of the span value.

13.1.2 Calibration Drift. Less than ± 3 percent of the span value.

13.1.3 Calibration Error. Less than ± 5 percent of the calibration gas value.

13.2 Flow Measurement Specifications. The mass flow, volumetric flow, or critical orifice control meter used should have an accuracy of greater than ± 5 percent at the flow rate used.

13.3 Calibration and Tracer Gas Specifications. The manufacturer of the

calibration and tracer gases should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ± 2 percent from the certified value.

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 References

1. 40 CFR part 60, Appendix A, EPA Method 1—Sample and velocity traverses for stationary sources.

2. 40 CFR part 60, Appendix A, EPA Method 2—Determination of stack gas velocity and volumetric flow rate.

3. 40 CFR part 60, Appendix A, EPA Method 3—Gas analysis for the determination of dry molecular weight.

4. 40 CFR part 60, Appendix A, EPA Method 4—Determination of moisture content in stack gases.

5. SEMI F15–93 Test Method for Enclosures Using Sulfur Hexafluoride Tracer Gas and Gas Chromotography.

6. Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Directors, Revised Capture Efficiency Guidance for Control of Volatile Organic Compound Emissions, February 7, 1995. (That memorandum contains an attached technical document from Candace Sorrell, Emission Monitoring and Analysis Division, ''Guidelines for Determining Capture Efficiency,'' January 9, 1994).

7. Technical Systems Audit of Testing at Plant ''C,'' EPA–454/R–00–26, May 2000.

8. Material Safety Data Sheet for SF_6. Air Products and Chemicals, Inc. Website: *www3.airproducts.com.* October 2001.

17.0 Tables, Diagrams, Flowcharts, and Validation Data

TABLE 1.—SUMMARY OF CRITICAL PHYSICAL MEASUREMENTS FOR THE PRESS ENCLOSURE TESTING

Measurement	Measurement instrumentation	Measurement frequency	Measurement site
Tracer gas injection rate	Mass flow meter, volumetric flow meter or critical orifice.	Continuous	Injection manifolds (cylinder gas).
Tracer gas concentration at control device inlet.	Infrared Spectrometer or GC/ECD	Continuous (at least one reading per minute) for a minimum of 20 minutes.	Inlet duct to the control device (outlet duct of enclosure).
Volumetric air flow rate	EPA Methods 1, 2, 3, 4 (40 CFR part 60, Appendix A). • Velocity sensor (Manometer/ Pito t tube). • Thermocouple ..... • Midget Impinger sampler ..... • Orsat or Fyrite	Each test run for velocity (minimum); Daily for moisture and molecular weight.	Inlet duct to the control device (outlet duct of enclosure).

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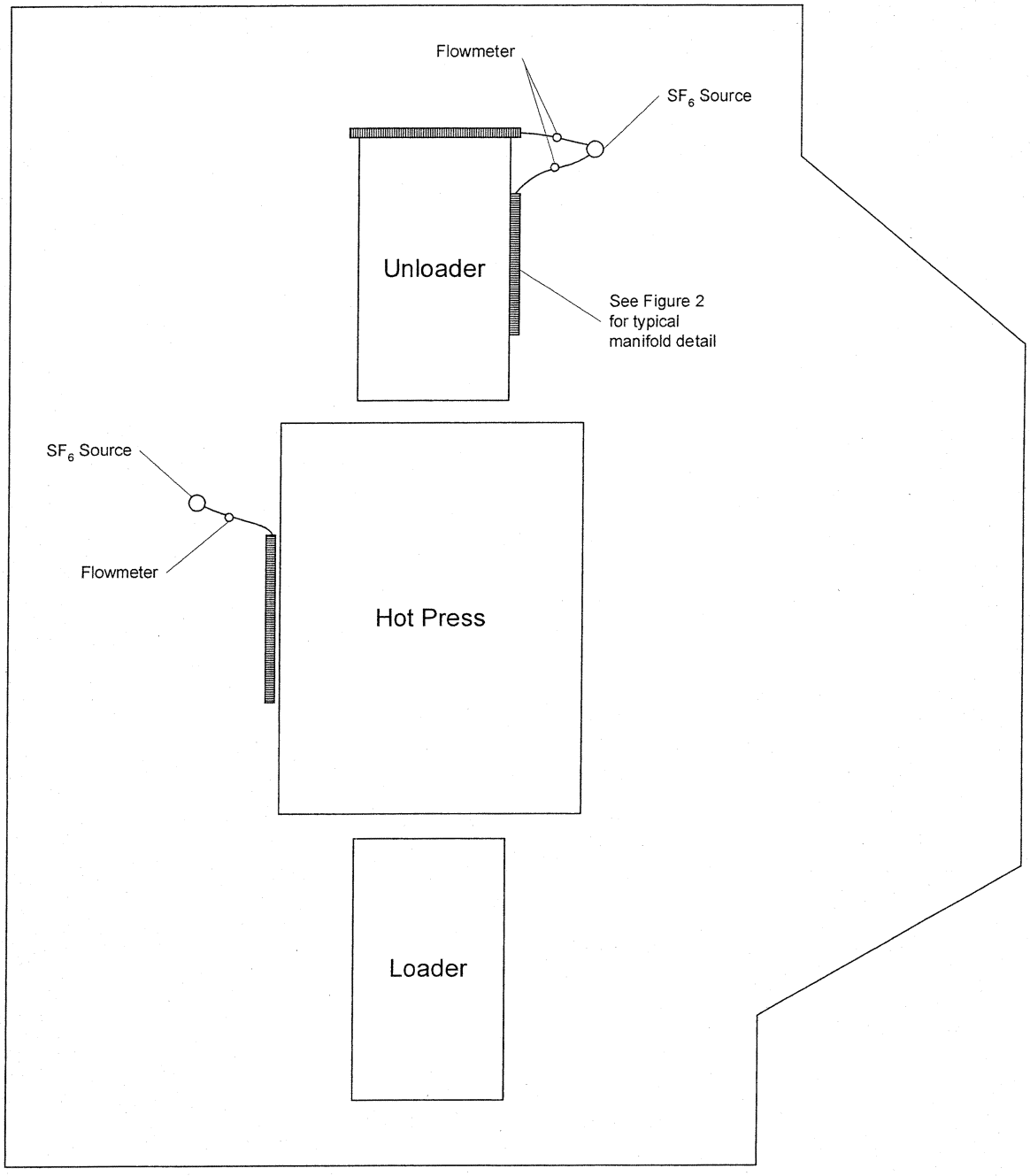

Figure 1. Plan view schematic of hot press and enclosure showing SF_6 manifold locations.

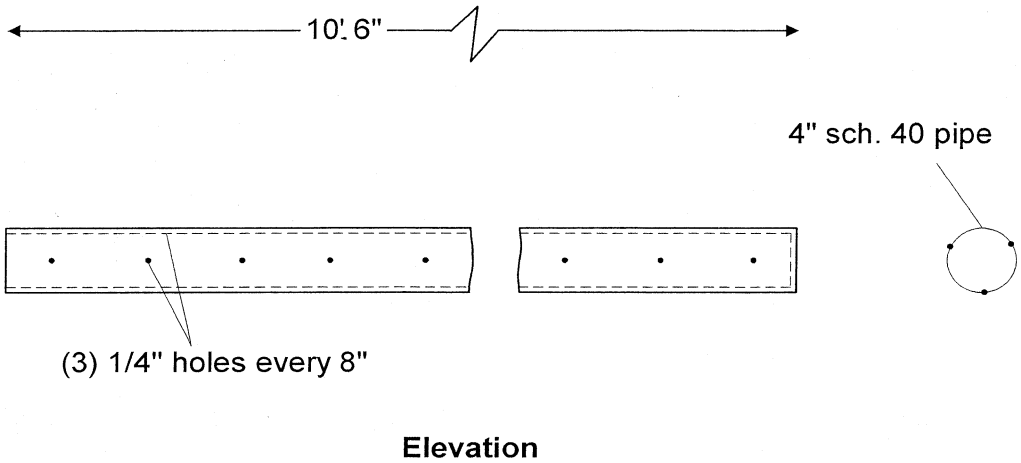

Figure 2. Schematic detail for manifold system for SF_6 injection.

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Federal Register

Thursday,
January 9, 2003

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107

Hazardous Materials: Temporary Reduction of Registration Fees; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. RSPA–00–8439 (HM–208D)]

RIN 2137–AD53

Hazardous Materials: Temporary Reduction of Registration Fees

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

ACTION: Final rule.

SUMMARY: RSPA is reducing the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials, in order to eliminate the unexpended balance in the Hazardous Materials Emergency Preparedness Grants Fund. RSPA is also revising its regulations to provide that a not-for-profit organization will pay the same registration fee as a small business.

EFFECTIVE DATE: March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1992, the Research and Special Programs Administration (RSPA) has conducted a National registration program for persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce, under the mandate in 49 U.S.C. 5108. The purposes of the registration program are to (1) gather information about the transportation of hazardous material and (2) fund the Hazardous Materials Emergency Preparedness (HMEP) grants program that supports hazardous material emergency response planning and training activities by States, local governments, and Indian tribes and related activities. *See* 49 U.S.C. 5108(b), 5116. The law gives RSPA discretion to require additional persons to register, beyond those offerors and transporters of the categories and quantities of hazardous materials listed in 49 U.S.C. 5108(a)(1), and to set the annual registration fee between $250 and $5,000. *See* 49 U.S.C. 5108(a)(2), 5108(g)(2)(A).

Until 2000, only those persons who offered or transported the categories and quantities of hazardous materials set forth in § 5108(a)(1) were required to register, and the annual registration fee was set at the minimum level of $250 (plus a processing fee of $50). In each year through the July 1, 1999–June 30, 2000 registration year, the total registration fees collected by RSPA amounted to less than one-half of the total $14.3 million intended by Congress for training and planning grants and grant-related activities.

In a final rule published in the **Federal Register** (65 FR 7297) on February 14, 2000, RSPA expanded the base of registrants and adopted a two-tiered fee schedule under which the registration fee was set at $275 for a person meeting the Small Business Administration (SBA) criteria for a small business, and $1,975 for other persons (plus a $25 processing fee in all cases). A greater-than-anticipated number of persons has paid the higher registration fee applicable to a larger business. As a result, RSPA has collected more than $21 million in each registration year since 2000. These collections have created a surplus (unexpended balance) in the HMEP Fund because the current annual grants program obligations are limited to the $14.3 million designated by Congress. Section 5108(g)(2)(B) of 49 U.S.C. requires RSPA to adjust the amount being collected ''to reflect any unexpended balance'' in the HMEP Fund. Therefore, on December 7, 2000, we published a notice of proposed rulemaking (NPRM) in this docket proposing to temporarily lower the registration fee for all registrants for six registration years to $250 (plus a $25 processing fee) for small businesses and $475 (plus a $25 processing fee) for all other persons. 65 FR 76890. In addition, we proposed to specify that a not-for-profit organization (regardless of its size) pay the same fee as a small business; to reflect SBA's replacement of the Standard Industrial Classification (SIC) code system with the North American Industry Classification System (NAICS), and to allow payment by credit cards not previously authorized.

On September 16, 2002, RSPA published a final rule under Docket HM–208E (67 FR 58343) adopting the NAICS codes, allowing payment methods not previously authorized, and permitting registration via the Internet. However, we have delayed taking final action on the fee-related proposals in the December 7, 2000 NPRM because our budget requests to Congress for FY 2002 and FY 2003 proposed to fund a portion of RSPA's hazardous materials safety program from the excess registration fees (above the $14.3 million specified to be used for training and planning grants and grant-related activities). *See* the status documents we published in the **Federal Register** on May 2, 2001 (66 FR 22080), and March 14, 2002 (67 FR 11456). Since these proposals were not adopted by Congress in the FY 2002 DOT appropriations and the FY 2003 DOT appropriations bill is pending, we are now taking final action on the fee-related proposals in the December 7, 2000 NPRM.

II. Discussion of Comments and Regulatory Changes

A. General

RSPA received approximately 20 written comments to the December 7, 2000 NPRM. The commenters included representatives of organizations and individuals engaged in all modes of transportation of hazardous materials, agricultural retailers, petroleum marketers and distributors, chemical manufacturers, and industry associations representing a broad spectrum of businesses that transport or offer for transport hazardous materials.

B. Reduction of Registration Fees

Commenters supported reduction of the registration fees. However, some commenters opposed certain aspects of RSPA's proposal. Some commenters stated that RSPA should return to a single flat fee system or eliminate the requirement that a person must register if it offers or transports a quantity of hazardous materials required to be placarded.

For example, the American Trucking Associations (ATA) stated that it supports ''the efforts of RSPA to adjust and refund registration fees in order to comply with statutory limits set forth in the HMTL,'' but it ''still disagree[s] with the need for a two-tiered registration fee.'' National Tank Truck Carriers (NTTC) also ''continues to believe that RSPA should reinstate a ''single fee'' system (as opposed to the proposed two-tiered structure).''

The Petroleum Marketers Association of America (PMAA) stated that RSPA ''should revise the registration criteria by temporarily eliminating the requirement that all persons who offer for transportation or transport hazardous materials required to be placarded be registered. However, if the agency will not eliminate this particular group of registrants from the fee requirement, PMAA believes that

temporarily reducing the registration fee for all persons required to register is the best solution in eliminating the unexpended balance.''

The Fertilizer Institute (TFI) suggested that ''RSPA consider capping the registration fee at $700 for other than small businesses, while leaving small business entities, minus the farm sector, at the current $250.'' TFI also urged RSPA to eliminate the registration requirement for a person who offers or transports hazardous materials that require placarding. TFI suggested that if RSPA insisted that all placarded loads require registration, then agricultural retailers and farm cooperatives should be specifically exempted from the registration requirement.

The Petroleum Transportation & Storage Association (PTSA) suggested that RSPA eliminate the administrative fee for all registrants and the registration fee for small cargo tanks under 3,500 gallons. PTSA urged RSPA ''to use the unexpended funds to eliminate the annual registration fee for these ultra small shippers.''

The National Propane Gas Association (NPGA) opposed the proposed reduction in the registration fees as being a ''disproportionate fee reduction for large businesses over small companies'' and adding additional confusion for companies trying to learn and comply with the registration requirements.

The International Sanitary Supply Association (ISSA) recommended that RSPA: (1) Eliminate the surplus over a four-year instead of a six-year period; (2) reduce the fees for small businesses to $150, and (3) reduce the fees for other than small businesses to $1,180.

On July 1, 2002, fifteen industry associations filed a lawsuit in the United States District Court for the District of Columbia asking for an order prohibiting RSPA from collecting any additional registration fees until RSPA adjusts the amount being collected to eliminate the unexpended surplus in the registration fee account. Counsel for plaintiffs in that lawsuit stated that 49 U.S.C. 5108(g)(2)(A) gives DOT the authority to go below the statutory minimum when it is trying to reduce any unexpended balance.

In the final rule (Docket No. HM–208C) we concluded that the registration program should: (1) Be simple, straightforward, and easily implemented and enforced; (2) employ an equity factor that reflects the differences between the risk imposed on the public by the business activities of large and small businesses; (3) ensure the adequacy of funding for the HMEP grants program; and (4) be consistent with the law. *See* 65 FR 7303. We found that the most appropriate way to meet these objectives was to expand the category of persons required to register to include all persons who offer for transportation or transport hazardous materials that require placarding (with a limited exception for farmers) and to adopt a two-tiered fee schedule under which persons meeting the SBA criteria for defining a small business would pay a lower fee than larger businesses.

For all the reasons discussed in the February 14, 2000 final rule, we still believe that the findings and conclusions discussed in that rule are justified and, as far as possible, should be followed in adjusting the registration fees to reduce the unexpended surplus in the HMEP grants fund. Therefore, we disagree with suggestions that we except from registration persons added in the 2000 final rule. The present system, using the placarding requirement as a primary determinant, is risk-based and facilitates enforcement—especially by State and local enforcement personnel.

The recommendation that the processing fee be eliminated and replaced by an increase in the grants fee for registrants that do not meet the SBA standards for a small business did not take into consideration that the costs of processing the registration statement are not expenses authorized to be paid from the grants account. The costs of administering the registration program are provided in the Department's annual budget authorizations from General Treasury funds—unlike the grants program expenses, which are statutorily authorized to be paid from the grants account. Although the separate statutory authority for the processing fee is permissive, it is the Department's understanding that this permissive authority reflects Congressional intent that the registration program costs be covered by collection of that fee.

When the NPRM was published in December 2000, we estimated that the unexpended balance in the grants fund was approximately $8.5 million (65 FR 76890, December 7, 2000). Since that time, two further collection cycles have occurred. The number of registrations received during a fiscal year (including registrations for prior years and fees paid in previous years for the current registration year) has remained constant at approximately 41,000, as has the percentage of registrants that have paid the larger business fee (approximately 15 percent). We currently estimate that, as of October 1, 2002, the unexpended balance in the grants fund was approximately $25 million.

Because of this increase in the unexpended balance, RSPA believes that it is necessary to adopt reductions in the registration fees that are even greater than originally proposed. Therefore, we are temporarily (for three years) reducing the registration fee for small businesses and non-profit organizations (regardless of their size) to $125 (plus a $25 processing fee) and for all other registrants to $275 (plus a $25 processing fee). RSPA is able to set the fee level for small businesses below the usual statutory minimum of $250 because the minimum (49 U.S.C. 5108(g)(2)(A)) is subject to the requirement (49 U.S.C. 5108(g)(2)(B)) that the Secretary adjust the amount being collected to reflect any unexpended balance.

Under this temporary fee system, we estimate that we will collect approximately $6.0 million each fiscal year, thus decreasing the grants fund balance by approximately $8.3 million a year. This estimate depends on the number of persons registering for the current and prior years remaining constant and the authorization for the HMEP grants program remaining constant at $14.3 million per year. At this rate of reduction, it will take about three years to deplete the surplus. Therefore, RSPA is temporarily reducing the registration fee for three years.

In the NPRM, we stated that we were not making a ''permanent'' change in registration fees because of uncertainty about the final registration numbers. We also stated that, within three years of the end of the proposed temporary six-year reduction in the registration fees, RSPA would reevaluate the registration fees. Because we have had three years under the new registration criteria and in order to ensure that no unnecessary surplus is created, we are now revising registration fee levels for the years after the period of temporary reduction.

Applying the objectives stated in Docket HM–208C, RSPA has determined that, beginning in registration year 2006–2007, small businesses and non-profit organizations (regardless of their size) should pay a registration fee of $250 (plus a $25 processing fee) and all other persons required to register should pay a registration fee of $975 (plus a $25 processing fee). Under this fee structure, we estimate that we will collect approximately $14.5 million per year.

We recognize that, depending on many factors that may vary over the years (including registrations received for prior years and unexpended grant obligations), it may take more or less than three years to deplete the current surplus. We also recognize that the fee structure that would go into effect with the 2006–2007 registration year may

need to be revised to avoid accumulating an unexpended balance. Consequently, RSPA will reevaluate the account balance and the fee levels, during the 2005–2006 registration year.

C. Not-for-Profit Organizations

We received comments in favor of and against the proposal to establish the registration fee for not-for-profit organizations at the same level as for small businesses. For example, ATA and PMAA supported the proposal to designate all not-for-profit organizations as small businesses. However, PMAA added that:

> The definition for a not-for-profit organization should be limited to 26 U.S.C. 501(c)(3) [because] many ''large businesses,'' including electric multistate cooperatives, are classified as not-for-profit organizations. To reduce their fee to the same level as the fee for small business would be unfair, since these particular organizations compete with many small businesses.

In contrast, IME and NPGA opposed this proposal. IME stated that ''RSPA compounds the error of a fee based on business size by suggesting that an organization's educational, religious, charitable and other similar purposes should also be factored into the determination of what is the appropriate contribution any registrant should make to the HMEPG.''

NPGA stated, ''DOT should limit its definition of non-profit organization solely to charitable organizations,'' and that, ''this provision will have the effect of providing a competitive advantage in the energy marketplace to rural electric cooperatives (RECs), many of which sell propane and therefore operate contrary to the purposes for which they were originally chartered.''

The SBA criteria for small business size standards apply to business entities organized for profit. 13 CFR 121.105(a). Therefore, non-profit organizations do not technically qualify as small businesses. After the February 14, 2000 final rule was adopted, RSPA applied SBA size criteria for appropriate SIC codes to non-profit organizations. However, nearly all of the not-for-profit organizations that are currently registered, which are mostly educational institutions and hospitals, exceed the SBA size standards for a small business.

To some extent, this may result from the SBA's focus on the characteristics of for-profit businesses in establishing the size standard for an industry group. In those infrequent instances where not-for-profit organizations constitute a significant portion of an industry group, the SBA may deliberately exclude the characteristics of not-for-profit organizations when considering the appropriate size standard. Because not-for-profit organizations generally are operated for educational, religious, charitable and other similar purposes, RSPA remains interested in helping them minimize their costs of operation and believes that, in so doing, we are following a precedent established by law in the exemption of such organizations from taxation.

We considered the comments recommending narrower criteria for not-for-profit organizations than proposed and concluded that our proposal remains the most straightforward resolution for dealing with entities that do not conform to SBA's criteria for a small business. To accept the PMAA's recommendation to limit the definition of not-for-profit organizations to those included in 26 U.S.C. 501(c)(3) or the NPGA's recommendation to limit the definition solely to ''charitable organizations'' would exclude organizations that the law exempts from taxation because of their non-profit status. We recognize that by providing a new fee category for not-for-profit organizations, some relatively large organizations may pay a reduced fee in the future, but RSPA considers the adoption of the proposed broader definition of not-for-profit organizations as defined by U.S. law to be more easily applied than any attempt to distinguish between types of non-profit organizations. Even though it seems unlikely that many registering organizations would be affected by the limitation of the definition to 26 U.S.C. 501(c)(3), we decided to retain the broader group included in 26 U.S.C. 501(a) and to adopt the proposal to establish a fee for all not-for-profit organizations at the same level as that for small businesses.

III. Refunds

In response to requests from industry, in the February 14, 2000 final rule (Docket No. HM–208C) RSPA amended the HMR to allow a person to register for up to three years in one registration statement. 49 CFR 107.612(c), 65 FR at 7309–10. Approximately 4,550 advance registrations for the 2003–2004 and 2004–2005 registration years have been received. Refunds will be provided for registrations paid in advance for those years at the higher fee levels in effect at the time of payment.

A letter will be sent approximately 45 days after the publication of this final rule to each registrant that, on that date, is due a refund for fees paid in advance for the 2003–2004 and 2004–2005 registration years. The letter will specify the amount of the refund and will be accompanied by a Form W–9, Request for Taxpayer Identification Number and Certification. The form must be submitted to RSPA before a refund can be made. Registrants that have submitted registrations including payment for the 2003–2004 and 2004–2005 registration years that do not receive a letter within this time frame should contact the registration office at 202–366–4109. Refunds will be made by checks issued by the U.S. Treasury after the Form W–9 is submitted. Persons who later pay in advance for the 2003–2004 and 2004–2005 registration years at the higher fee levels being reduced by this rule will be similarly contacted for the purpose of providing refunds for the overpayment.

Of the approximately 4,550 registrants due refunds, 4,250 small businesses will receive refunds of $150 (3,050) or $300 (1,200), and 300 others will receive refunds of $1,700 (200) or $3,400 (100).

IV. Rulemaking Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was subject to formal review by the Office of Management and Budget. This rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). RSPA has prepared a regulatory evaluation that is available for review in the public docket.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). The registration requirements do not impair the ability of States, local governments, or Indian tribes to impose their own fees or registration or permit requirements on persons who offer or transport hazardous materials in commerce. RSPA encourages States, local governments, and Indian tribes to adopt and enforce requirements in the HMR and the Federal registration requirement, in order to enhance compliance with a nationally uniform set of regulations on the transportation of hazardous materials.

The consultation and funding requirements of Executive Order 13132 do not apply because this rule does not adopt any regulation that:

(1) 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;

(2) Imposes substantial direct compliance costs on State and local governments; or

(3) Preempts State law.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this 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

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities.

In the February 14, 2000 final rule in Docket No. HM–208C, RSPA certified that that final rule did affect a significant number of small entities, but that the economic impact on these small entities will not be significant. 65 FR 7308–09. This final rule affects the same small entities that Docket HM–208C did and, therefore, this final rule affects a significant number of small entities. 65 FR 7307–09. Although this final rule is providing a $150 reduction in the combined annual fee that small businesses must pay, that reduction does not constitute a significant economic impact on a substantial number of small entities. Therefore, RSPA certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

F. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), reporting and recordkeeping requirements pertaining to the registration rule are specifically excepted from the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347) requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this rule. The temporary reduction of registration fees will continue to fund the HMEP grants program at the level recommended by Congress, eliminate the surplus in a reasonable amount of time, and continue the balance of equity established under Docket HM–208C. In addition, this course of action will continue to fund the HMEP grants program on a basis that is equitable, straightforward, enforceable, and sound and will eliminate the surplus in the most expedient manner possible. It will also permanently set the registration fees for the years after the surplus is eliminated and will stop creation of any unnecessary surplus. Reduction in the registration fees or elimination of the current surplus in the registration fees fund has no potential for environmental damage or contamination.

H. 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 may be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

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

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

2. In § 107.612, the introductory text of paragraph (b) is revised and new paragraphs (c) and (d) are added to read as follows:

§ 107.612 Amount of fee.

* * * * *

(b) *Registration years 2000–2001, 2001–2002 and 2002–2003.* For the registration years 2000–2001, 2001–2002, and 2002–2003, each person subject to the requirements of this subpart must pay an annual fee as follows:

* * * * *

(c) *Registration years 2003–2004, 2004–2005 and 2005–2006.* For registration years 2003–2004, 2004–2005, and 2005–2006, each person subject to the requirements of this subpart must pay an annual registration fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person's primary commercial activity, must pay an annual registration fee of $125 and the processing fee required by paragraph (c)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual registration fee of $125 and the processing fee required by paragraph (c)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (c)(1) or (c)(2) of this section must pay an annual registration fee of $275 and the processing fee required by paragraph (c)(4) of this section.

(4) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

(d) *Registration years 2006–2007 and following.* For each registration year beginning with 2006–2007, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person's primary commercial activity, must pay an annual registration fee of $250 and the processing fee required by paragraph (d)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual registration fee of $250 and the processing fee required by paragraph (d)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (d)(1) or (d)(2) of this section must pay an annual registration fee of $975 and the processing fee required by paragraph (d)(4) of this section.

(4) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

3. In § 107.616, paragraph (d)(2) is revised to read as follows:

§ 107.616 Payment procedures.

* * * * *

(d) * * *

(2) Pay a registration and processing fee as follows:

(i) For registration year 2002–2003, pay a registration fee of $275, a processing fee of $25, and an expedited handling fee of $50. The total fee is $350. Persons who do not meet the criteria for a small business, as specified in § 107.612(b)(1), must enclose an additional registration fee payment of $1,700 with the expedited follow-up material, for a total of $2,050 (registration fee—$1,975; processing fee—$25; expedited handling fee—$50);

(ii) For registration years 2003–2004, 2004–2005, and 2005–2006, pay a registration fee of $125, a processing fee of $25, and an expedited handling fee of $50. The total fee is $200. Persons who do not meet the criteria for a small business or are not a not-for-profit organization, as specified in § 107.612(c), must enclose an additional registration fee payment of $150 with the expedited follow-up material, for a total of $350 (registration fee—$275; processing fee—$25; expedited handling fee—$50); and

(iii) For registration years beginning with 2006–2007, pay a registration fee of $250, a processing fee of $25, and an expedited handling fee of $50. The total fee is $325. Persons who do not meet the criteria for a small business or are not a not-for-profit organization, as specified in § 107.612(d), must enclose an additional registration fee payment of $725 with the expedited follow-up material, for a total of $1,050 (registration fee—$975; processing fee—$25; expedited handling fee—$50); and

* * * * *

Issued in Washington, DC, on January 6, 2003, under authority delegated in 49 CFR Part 1.

Ellen G. Engleman,

Administrator.

[FR Doc. 03–436 Filed 1–8–03; 8:45 am]

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Federal Register

Thursday,
January 9, 2003

Part V

Environmental Protection Agency

40 CFR Part 112

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–7437–3]

RIN 2050–AC62

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency (EPA or we) is extending for a period of sixty days the dates for a facility to amend its Spill Prevention, Control, and Countermeasure (SPCC) Plan and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). We are taking this action to avoid the flood of individual extension requests it has become apparent we will otherwise receive from regulated facilities, and to allow for adequate consideration of comments we expect to receive on a proposed one-year extension of the dates published elsewhere in this issue of the **Federal Register**.

DATES: This interim final rule is effective on January 9, 2003.

ADDRESSES: The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B–102, Washington, DC 20460. The docket number for the final rule is OPA–2002–001. The docket is contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202–566–0276. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you $0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rule, contact Hugo Paul Fleischman at 703–603–8769 (fleischman.hugo@epa.gov); or Mark W. Howard at 703–603–8715 (howard.markw@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, Mail Code 5203G.

SUPPLEMENTARY INFORMATION: The contents of this preamble are as follows:

I. General Information
II. Entities Affected by This Rule
III. Statutory Authority
IV. Background
V. Today's Action
VI. Statutory and Executive Order Reviews

I. General Information

Introduction. By this interim final rule, the Environmental Protection Agency is extending by sixty days the dates in 40 CFR 112.3(a) and (b) for a facility to amend its Spill Prevention, Control, and Countermeasure (SPCC) Plan and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). During the period of this sixty-day extension, it will not be necessary for a facility owner or operator to file an extension request pursuant to § 112.3(f). Furthermore, for facilities that have already applied for an extension pursuant to § 112.3(f), today's interim final rule should render such requests moot.

A. How Can I Get Copies of the Background Materials Supporting Today's Interim Final Rule or Other Related Information?

1. EPA has established an official public docket for this interim final rule under Docket ID No. OPA–2002–001. The official public docket consists of the documents specifically referenced in this interim final rule and other information related to this interim final rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave., NW., EPA West Building, Room B–102, Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0276. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

II. Entities Affected by This Rule

Industry category	NAICS code
Crop and Animal Production	111–112
Crude Petroleum and Natural Gas Extraction	211111
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116
Electric Power Generation, Transmission, and Distribution	2211
Heavy Construction	234
Petroleum and Coal Products Manufacturing	324
Other Manufacturing	31–33

Industry category	NAICS code
Petroleum Bulk Stations and Terminals	42271
Automotive Rental and Leasing	5321
Heating Oil Dealers	454311
Transportation (including Pipelines), Warehousing, and Marinas	482–486/488112–48819/4883/48849/492–493/71393
Elementary and Secondary Schools, Colleges	6111–6113
Hospitals/Nursing and Residential Care Facilities	622–623

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

III. Statutory Authority

33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351

IV. Background

On July 17, 2002, at 67 FR 47042, EPA published final amendments to the Spill Prevention, Control, and Countermeasure (SPCC) rule. The rule was effective August 16, 2002. The rule included dates in § 112.3(a) and (b), by which a facility would have time to amend its SPCC Plan and implement its amended Plan (note that for facilities becoming operational after August 16, 2002, the rule contains dates for the preparation and implementation of a Plan in compliance with the amended rule). In light of new information, we have decided to extend those dates for a period of sixty days.

V. Today's Action

EPA is extending for a period of sixty days the dates in § 112.3(a) and (b). Since the promulgation of the SPCC rule in July 2002, EPA has received numerous complaints that the deadlines in the rule do not allow enough time for the regulated community to undertake the actions necessary to update (or prepare) their Plans in accordance with the amendments. Among the reasons given are that there is a shortage of Professional Engineers (PEs) in some areas, the need for the PE or his agent to make visits at sometimes remote facilities, and the need for the PE to certify that Plans meet requirements for which they have not yet had adequate training. It has also become apparent that unless the Agency issues this interim final rule, we will receive an overwhelming number of requests for individual extensions under 40 CFR 112.3(f). Thus, the Agency believes that the present compliance dates are too short, and it would be an inefficient use of scarce Agency resources to address this problem by processing a great number of individual extension requests. Because the first deadline in the rule is February 17, 2003, the Agency believes that immediate, near-term relief is needed, and is therefore extending the current deadlines by sixty days.

We are issuing this interim final rule in conjunction with a concurrent proposal (published elsewhere in this issue of the **Federal Register**) to extend by one year the dates in § 112.3(a) and (b). We believe a sixty-day extension is needed as quickly as possible to avoid potential confusion for facility owners and unnecessary administrative burdens on the Agency. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). EPA believes that notice- and comment rulemaking before the existing compliance dates in the SPCC rule (*i.e.*, February 17, 2003) is impracticable and contrary to the public interest, inasmuch as there is insufficient time to offer meaningful opportunity for public comment and provide appropriate, considered response by the Agency. Therefore, EPA believes it is necessary to use the interim final rulemaking process to extend by sixty days the compliance dates in § 112.3(a) and (b) while we complete a notice-and-comment rulemaking process that proposes to extend these compliance dates for a period of one year. Moreover, with respect to the effective date of this interim final rule, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—OMB Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, it has been determined that this interim final rule is not a ''significant regulatory action'' because it would only extend for sixty days the compliance dates in § 112.3(a) and (b). It would have no other substantive effect.

B. Paperwork Reduction Act

This interim final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (R.F.A.) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements

under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's interim final rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than $500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This interim final rule will temporarily reduce regulatory burden on all facilities by extending for sixty days the compliance dates in § 112.3(a) and (b). Further, the interim final rule will reduce costs for both existing and new facilities.

After considering the economic impacts of today's interim final rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

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

EPA has determined that this interim final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's interim final rule would reduce burden and costs on all facilities.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the rule would be to reduce burden and costs for regulated facilities, including small governments that are subject to the rule.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' 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 interim final rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), EPA believes that States are free to impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the federal SPCC program and recognizes that some States have more stringent requirements. 56 FR 54612 (October 22, 1991). This interim final rule would not preempt state law or regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today's interim final rule would not significantly or uniquely affect communities of Indian tribal governments. Therefore, we have not consulted with a representative organization of tribal groups.

G. Executive Order 13045—Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This interim final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This interim final rule does not involve technical standards. Therefore, NTTA is inapplicable.

J. Congressional Review Act

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

List of Subjects in 40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 3, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40 CFR, chapter I, part 112 of the Code of Federal Regulations, is amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Section 112.3 is amended by revising paragraphs (a) and (b) to read as follows:

PART 112—OIL POLLUTION PREVENTION

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

§ 112.3 Requirement to prepare and implement a spill prevention, control, and countermeasure plan.

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, on or before April 17, 2003, and must implement the amended Plan as soon as possible, but not later than October 18, 2003. If your onshore or offshore facility becomes operational after August 16, 2002, through October 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare a Plan on or before October 18, 2003, and fully implement it as soon as possible, but not later than October 18, 2003.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after October 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *

[FR Doc. 03–390 Filed 1–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–7437–4]

RIN 2050–AC62

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or we) is proposing to extend, by one year, the dates for a facility to amend its Spill Prevention, Control, and Countermeasure (SPCC) Plan, and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). We are proposing this extension to prevent the flood of individual extension requests it has become apparent we will otherwise receive.

DATES: Written comments must be received by January 29, 2003.

ADDRESSES: The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B–102, Washington, DC 20460. The docket number for the proposed rule is OPA–2002–001. The docket is contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202–566–0276. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you $0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this proposed rule, contact Hugo Paul Fleischman at 703–603–8769 *(fleischman.hugo@epa.gov);* or Mark W. Howard at 703–603–8715 *(howard.markw@epa.gov),* U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, Mail Code 5203G.

SUPPLEMENTARY INFORMATION: This proposal concerns a one-year extension of the deadlines in 40 CFR 112.3(a) and (b). The contents of this preamble are as follows:

I. General Information
II. Entities Affected by This Rule
III. Statutory Authority
IV. Background
V. Today's Action
VI. Statutory and Executive Order Reviews

I. General Information

Introduction. For the reasons explained in section V of this document, the Environmental Protection Agency (EPA or we) is proposing to extend, for one year, the dates in 40 CFR 112.3(a) and (b) for a facility to amend its Spill Prevention, Control, and Countermeasure (SPCC) Plan and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). During the period of the proposed extension, if it is finalized, it will not be necessary for a facility owner or operator to file an extension request pursuant to § 112.3(f). Furthermore, for facilities that have already applied for an extension pursuant to § 112.3(f), if this extension is finalized, it should render such requests moot.

We will address all public comments in a final rule based on this proposed rule. Any parties interested in commenting should do so at this time.

A. How Can I Get Copies of the Background Materials Supporting Today's Proposed Rule or Other Related Information?

1. EPA has established an official public docket for this proposed rule under Docket ID No. OPA–2002–001. The official public docket consists of the documents specifically referenced in this proposed rule and other information related to this proposed rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave. NW., EPA West Building, Room B–102, Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0276. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where

practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff. For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA will not consider late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the party submitting the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OPA–2002–001. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. *E-mail.* Comments may be sent by electronic mail (e-mail) to *Superfund.Docket@epamail.epa.gov.* Make sure this electronic copy is in an ASCII format that does not use special characters or encryption. Cite the docket Number OPA–2002–001 in your electronic file. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

3. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

4. *By Mail.* Send two (2) copies of your comments to: EPA Docket Center, U.S. Environmental Protection Agency Headquarters (EPA, HQ), Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OPA–2002–001.

5. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, EPA West Building, Room No. B–102, 1301 Constitution Ave., NW., Washington, DC 20004. Attention Docket ID No. OPA–2002–001. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

II. Entities Affected by This Rule

Industry category	NAICS code
Crop and Animal Production	111–112
Crude Petroleum and Natural Gas Extraction	211111
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116
Electric Power Generation, Transmission, and Distribution	2211
Heavy Construction	234
Petroleum and Coal Products Manufacturing	324
Other Manufacturing	31–33
Petroleum Bulk Stations and Terminals	42271
Automotive Rental and Leasing	5321
Heating Oil Dealers	454311
Transportation (including Pipelines), Warehousing, and Marinas	482–486/488112–48819/4883/48849/492–493/71393
Elementary and Secondary Schools, Colleges	6111–6113
Hospitals/Nursing and Residential Care Facilities	622–623

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

III. Statutory Authority

33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351

IV. Background

On July 17, 2002, at 67 FR 47042, EPA published final amendments to the Spill Prevention, Control, and Countermeasure (SPCC) rule. The rule was effective August 16, 2002. The rule included dates in § 112.3(a) and (b), by which a facility would have time to amend its SPCC Plan and implement its amended Plan (note that for facilities becoming operational after August 16, 2002, the rule contains dates for the preparation and implementation of a Plan in compliance with the amended rule). In light of new information, we

are proposing to extend those dates for a period of one year.

V. Today's Action

EPA is proposing to extend by one year the compliance dates in § 112.3(a) and (b). We are proposing this extension to allow affected facilities more time to comply with the rule. Since the promulgation of the amendments, the Agency has received numerous complaints that the deadlines in the rule do not allow enough time for the regulated community to undertake the actions necessary to update (or prepare) their Plans in accordance with the amendments. Among the reasons given are that there is a shortage of Professional Engineers (PEs) in some areas, the need for the PE or his agent to make visits at sometimes remote facilities, and the need for the PE to certify that Plans meet requirements for which they have not yet had adequate training. It has also become apparent that unless the Agency takes this action, we will receive an overwhelming number of requests for individual extensions under 40 CFR 112.3(f).

The Agency believes that the present compliance dates are too short, and it would therefore be an inefficient use of scarce Agency resources to address this problem by processing a great number of individual extension requests.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—OMB Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' because it would only extend for one year the compliance dates in § 112.3(a) and (b). It would have no other substantive effect.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than $500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule will temporarily reduce regulatory burden on all facilities by extending for one year the compliance dates in § 112.3(a) and (b). Further, the rule will reduce costs for both existing and new facilities.

After considering the economic impacts of today's rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

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

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year.

Today's rule would reduce burden and costs on all facilities.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the rule would be to reduce burden and costs for regulated facilities, including small governments that are subject to the rule.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' 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 rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), EPA believes that States are free to impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the federal SPCC program and recognizes that some States have more stringent requirements. 56 FR 54612 (Oct. 22, 1991). This rule would not preempt state law or regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today's rule would not significantly or uniquely affect communities of Indian tribal governments. Therefore, we have not consulted with a representative organization of tribal groups.

G. Executive Order 13045—Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, NTTA is inapplicable.

List of Subjects in 40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 3, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40 CFR, chapter I, part 112 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Section 112.3 is amended by revising paragraphs (a) and (b) to read as follows:

PART 112—OIL POLLUTION PREVENTION

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

§ 112.3 Requirement to prepare and implement a spill prevention, control, and countermeasure plan.

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, on or before February 17, 2004, and must implement the amended Plan as soon as possible, but not later than August 18, 2004. If your onshore or offshore facility becomes operational after August 16, 2002, through August 18, 2004, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare a Plan on or before August 18, 2004, and fully implement it as soon as possible, but not later than August 18, 2004.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after August 18, 2004, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *

[FR Doc. 03–391 Filed 1–8–03; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
January 9, 2003

Part VI

General Services Administration

48 CFR Part 505

General Services Administration Acquisition Regulation; FedBizOpps Notice on Charging for E-mail Notification Service; Proposed Rule

GENERAL SERVICES ADMINISTRATION

48 CFR Part 505

[GSAR Case No. 2002–G501]

RIN 3090–AH67

General Services Administration Acquisition Regulation; FedBizOpps Notice on Charging for E-mail Notification Service

AGENCY: Office of Acquisition Policy, General ServicesAdministration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to charge subscribers to the value-added e-mail notification service of Federal Business Opportunities (FedBizOpps.gov) a modest annual fee beginning October 1, 2003. The charge will be only for the members of the public who elect to register for options 2 or 3 of the FedBizOpps Vendor Notification Service, specifically to (1) receive all notices from selected organizations and product service classifications, or (2) register to receive all procurement notices on the site.

DATES: Interested parties should submit comments in writing on or before February 10, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to—General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

E-mail comments submitted over the Internet should be addressed to—*gsarcase.2002-g501@gsa.gov.*

Please cite GSAR case 2002-G501 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–0650, or by e-mail at Edward.Loeb@gsa.gov. Please cite GSAR case 2002–G501.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Business Opportunities (FedBizOpps) is the Governmentwide point of entry where Government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. Use of FedBizOpps is discussed in part 5 of the Federal Acquisition Regulation. The General Services Administration (GSA) manages the Federal Business Opportunities *(FedBizOpps.gov)* site and currently provides, at no charge, an added-value e-mail notification service to the public on FedBizOpps activities. To help GSA recover some of the costs associated with providing these value-added services, GSA is planning to charge subscribers to this e-mail service (listed on the site as Vendor Notification Service) a modest annual fee beginning October 1, 2003. The charge will be only for the members of the public who elect to register for options 2 or 3 of the FedBizOpps Vendor Notification Service, specifically to (1) receive all notices from selected organizations and product service classifications, or (2) register to receive all procurement notices on the site. The anticipated fee for FY 2003 is $30. The public, however, will continue to be able to register to receive all notices related to a specific solicitation at no charge. Beyond e-mail notifications, the public will still be able to access, free of charge, all postings on FedBizOpps and download on a daily basis all synopses (a File Transfer Protocol datafeed file).

The subscription cost will be adjusted annually based upon subscriptions from the prior year so that the charges to the public represent a fair share of the costs of the FedBizOpps operations.

FedBizOpps predecessor, the GPO Commerce Business Daily (CBDNet), charged VANs and other subscribers a fee of $11,500 per year for their daily electronic (datafeed) file of synopses and $316 per year for their publication. FedBizOpps eliminated these charges. GPOs CBDNet did not provide value-added email notification services to vendors.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because GSA is just charging a nominal fee for requested value added services. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Part in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAM do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 505

Government procurement.

Dated: December 31, 2002.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

Therefore, GSA proposes amending 48 CFR part 505 as set forth below:

PART 505—PUBLICIZING CONTRACT ACTIONS

1. The authority citation for 48 CFR part 505 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Amend part 505 by adding section 505.102 to read as follows:

505.102 Availability of solicitations.

The General Services Administration (GSA), as the manager of the Federal Business Opportunities (FedbizOpps.gov) site, will charge a nominal fee to recover costs of operations for value-added services, specifically for an e-mail notification service to the public for FedBizOpps activities, to—

(a) Receive all notices from selected organizations and product service classifications; or

(b) Register to receive all procurement notices.

[FR Doc. 03–378 Filed 1–8–03; 8:45 am]

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