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Washington, DC
(3 blocks north of Union Station Metro)

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV00–905–2 FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirements for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule relaxes the minimum size requirements for red seedless grapefruit grown in Florida and for red seedless grapefruit imported into the United States from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, recommended this change for Florida red seedless grapefruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This change allows handlers and importers to ship size 56 red seedless grapefruit, and is expected to maximize grapefruit shipments to fresh market channels.

EFFECTIVE DATE: November 13, 2000.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This rule also is issued under section 8e of the Act, which provides that whenever certain specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

This final 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.

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 the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1. The current minimum size requirement for domestic shipments is size 56 (at least 3$^{5}/_{16}$ inches in diameter) through November 12, 2000, and size 48 (3$^{9}/_{16}$ inches in diameter), thereafter. The current minimum size for export shipments is size 56 throughout the year.

This final rule relaxes the minimum size requirement for domestic shipments from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter). Absent this change, the minimum size reverts to size 48 (3$^{9}/_{16}$ inches in diameter) on November 13, 2000. This change allows handlers and importers to continue to ship size 56 red seedless grapefruit, and it is expected to maximize grapefruit shipments to fresh market channels. The Committee met on May 26, 2000, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR part 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export

shipments in Table II of paragraph (b). This rule adjusts Table I to establish a minimum size of 56 (3 5/16 inches diameter). Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR part 944.106). This rule also adjusts § 944.106 to establish a minimum size of 56. Export requirements for Florida red seedless grapefruit are not changed by this rule.

In the past, the Committee recommended relaxing the minimum size for red seedless grapefruit to size 56 in one year intervals. Rather than continuing to make this recommendation each year, the Committee recommended relaxing the minimum size for red seedless grapefruit from size 48 (3 9/16 inches in diameter) to size 56 (3 5/16 inches in diameter) on a continuous basis. In making this recommendation, the Committee recognized that the reasoning behind past recommendations to relax the minimum size to size 56 would most probably continue to exist at least into the foreseeable future.

As in the past, the Committee considered supply and demand in making its recommendation. Since the 1994–95 season, the production of red seedless grapefruit has been somewhere between 28.1 and 31.4 million 1 3/5 bushel boxes each year. Future production is expected to be near or below this range.

The Committee expects fresh market demand to continue to be sufficient to permit the shipment of size 56 red seedless grapefruit. The Committee believes that domestic markets have been developed for size 56 fruit and that the industry should continue to supply those markets. This size relaxation enables Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule is expected to have a beneficial impact on producers and handlers because it permits Florida grapefruit handlers to make available the sizes of fruit needed to meet consumer needs. Matching the sizes with consumer needs is consistent with current and anticipated demand, and maximizes shipments to fresh market channels.

For the grapefruit industry, it is important to maximize shipments to the fresh market. This is especially true for red seedless grapefruit because the returns for processing are negligible. On-tree returns for processed red seedless grapefruit averaged $.17 per 1 3/5 bushel box from 1994 through 1999. In many cases, this is below the cost of production. Comparatively, the average on-tree return is $3.32 for fresh shipments during the same period.

For the years 1994 through 1999, fresh domestic shipments of red seedless grapefruit averaged 16.7 million 4/5 bushel cartons per season. Of these shipments, approximately 2.9 percent were size 56. The average f.o.b. price for size 56 red seedless grapefruit was $5.22 during the 1998–99 season. Combining this price with the average volume of size 56 calculates an approximate market value of $2.5 million for size 56 red seedless grapefruit.

During the first 11 weeks of the season, beginning with the third week in September, the Committee has been using a volume regulation to limit the volume of small red seedless grapefruit that can enter the fresh market. The Committee has used this regulation for the past three seasons, and has recommended using it again for the current season. The Committee believes the percentage size regulation has been helpful in reducing the negative effects of having size 56 red seedless grapefruit available on the domestic market, and that no other restrictions on size 56 are needed.

Therefore, based on available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments, which will remain at size 56. The largest market for size 56 red seedless grapefruit is for export. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation also applies to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule will relax the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). This rule relaxes the minimum size requirement for imported red seedless grapefruit to 3 5/16 inches in diameter (size 56), to reflect the relaxation being made under the order for red seedless grapefruit grown in Florida.

Handlers in Florida shipped approximately 33,650,000 4/5 bushel cartons of grapefruit to the fresh market during the 1999–2000 season. Of these cartons, about 18,463,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 16,172,000 cartons. Imports totaled about 456,470 cartons in 1999. Imports account for less than five percent of domestic grapefruit shipments.

During the period January 1, 1999, through December 31, 1999, imports of grapefruit totaled 19,400,000 pounds (approximately 456,470 cartons). Recent yearly data indicate that imports from May through November are typically negligible. Future imports should not vary significantly from the 19,400,000 pounds figure. The Bahamas were the principal source of imported grapefruit, accounting for 93 percent of the total. Israel, Mexico and Turkey supplied remaining imports. Most imported grapefruit enters the United States from November through May.

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 75 grapefruit handlers who are subject to regulation under the order, and approximately 11,000 growers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the industry and Committee data for the 1999–2000 season, the average annual f.o.b. price for fresh Florida red seedless grapefruit was around $7.52 per 4/5 bushel carton, and total fresh shipments for the 1999–2000 season are estimated at 25.6 million cartons of red seedless grapefruit. Approximately 25 percent of all

handlers handled 70 percent of Florida grapefruit shipments. In addition, many of those handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 69 percent of grapefruit handlers could be considered small businesses under SBA's definition. The majority of handlers, importers, and growers may be classified as small entities.

During the period January 1, 1999, through December 31, 1999, imports of grapefruit totaled 19,400,000 pounds (approximately 456,470 cartons). Recent yearly data indicate that imports from May through November are typically negligible. Future imports should not vary significantly from the 19,400,000 pounds. The Bahamas were the principal source of imported grapefruit, accounting for 93 percent of the total. Israel, Mexico, and Turkey supplied remaining imports. Most imported grapefruit enters the United States from November through May.

This rule relaxes the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter). Absent this rule, the minimum size requirement for domestic shipments will revert to size 48 on November 13, 2000. The Committee believes that domestic markets have been developed for size 56 red seedless grapefruit and that the industry should continue to supply those markets. This change allows handlers and importers to continue to ship size 56 red seedless grapefruit, and it is expected to maximize shipments to fresh market channels. The Committee unanimously recommended this action. Section 905.306 specifies the minimum grade and size requirements for different varieties of fresh Florida grapefruit. Authority for this action is provided in § 905.52 of the order.

This action provides for the continued shipment of size 56 red seedless grapefruit. This change is not expected to increase costs associated with the order requirements, or the grapefruit import regulation. This rule is expected to have a positive impact on affected entities. This rule benefits producers and handlers by making available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand, and provides for the maximization of shipments to fresh market channels. The opportunities and benefits of this rule are expected to be equally available to all grapefruit handlers, growers, and importers regardless of their size of operation.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, a similar change is also applicable to imported grapefruit. Therefore, this rule also relaxes the minimum size for imported red seedless grapefruit to size 56. This regulation benefits importers to the same extent that it benefits Florida grapefruit producers and handlers because it continues to allow shipments of size 56 red seedless grapefruit into U.S. markets.

The Committee considered one alternative to this action. The Committee discussed relaxing the minimum size to size 56 for one year, as in the past, rather than on a continuous basis. Members said that, rather than discussing the issue each year and recommending a change, they preferred to make the change effective on a continuous basis. They also stated that should they ever want to increase the minimum size, they could meet and recommend the change to the Secretary. Therefore, the option of relaxing the minimum size for one year was rejected.

This final rule relaxes size requirements under the marketing order for Florida citrus. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers and importers. 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.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Further, no public comments were received concerning the proposal which addressed the initial regulatory flexibility analysis.

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 26, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on October 2, 2000 (65 FR 58672). Copies of the rule were mailed or sent via facsimile to all Committee members and red seedless grapefruit handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 15-day comment period ending October 17, 2000, was provided to allow interested persons to respond to the proposal. No comments were received during the comment period in response to the proposal. Accordingly, no changes will be made to the rule as proposed.

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.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) so handlers and importers can continue to ship size 56 red seedless grapefruit after November 12, 2000. Further, handlers are aware of this relaxation, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR part 905 and 944 are amended as follows:

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

2. In § 905.306, the table in paragraph (a) is amended by removing both lines for the entry for ''Seedless, red'' and adding in their place the following:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	*
Grapefruit			
* * *	* * *	* * *	*
Seedless, red	On and after 11/13/00	U.S. No. 1	35/16
* * *	* * *	* * *	*

PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.106, the table in paragraph (a) is amended by removing both lines for the entry for ''Seedless, red'' and adding in their place the following:

§ 944.106 Grapefruit import regulation.

(a) * * *

Grapefruit classification	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	*
Seedless, red	On and after 11/13/00	U.S. No. 1	35/16
* * *	* * *	* * *	*

Dated: October 31, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–28333 Filed 11–6–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–51–AD; Amendment 39–11960; AD 2000–20–51]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2000–20–51, which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (RHC) Model R22 helicopters by individual letters. This AD requires checking the yoke half assembly (yoke) for any crack and replacing a cracked yoke assembly before further flight. This AD also requires replacing certain yokes with airworthy yokes before further flight after January 1, 2001. This AD is prompted by the discovery of cracks in the yoke. The actions specified by this AD are intended to detect crack formation and growth, which could result in separation of the yokes from the main rotor drive shaft and subsequent loss of control of the helicopter.

DATES: Effective November 22, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–20–51, issued on October 4, 2000, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 8, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–51–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

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

SUPPLEMENTARY INFORMATION: On October 4, 2000, the FAA issued Emergency AD 2000–20–51, for RHC Model R22 helicopters, which requires checking the yoke for any crack and replacing a cracked yoke assembly before further flight. The Emergency AD also requires replacing certain yokes with airworthy yokes before further flight after January 1, 2001. That action was prompted by the discovery of cracks in the yokes. The cracked yokes were still in service and functioned for an unknown duration. Several lots of the yokes were machined from 2024-T3 aluminum billet, which has poor stress corrosion properties in the transverse grain directions. Clamping the yokes in place causes a preload tension in areas that have exposed transverse grain. When these areas are exposed to a corrosive environment, such as salty air, stress corrosion causes crack formation and growth. This condition, if not

corrected, could result in separation of the yokes from the main rotor drive shaft and subsequent loss of control of the helicopter.

The FAA has reviewed RHC R22 Service Bulletin SB–88A, dated September 13, 2000, which describes procedures for determining the lot number for yokes, P/N A203–5, and replacing any affected yoke with yoke, P/N A203–7.

Since the unsafe condition described is likely to exist or develop on other RHC Model R22 helicopters of the same type design, the FAA issued Emergency AD 2000–20–51 to detect crack formation and growth, which could result in separation of the yokes from the main rotor drive shaft and subsequent loss of control of the helicopter. The AD requires the following:

• Before further flight and thereafter before the first flight of each day, check the identified area of each yoke for a crack. The visual check required by the AD may be performed by an owner/operator (pilot) but must be entered into the aircraft records showing compliance with paragraph (a) of the AD in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). The AD allows a pilot to perform this check because it involves only a visual check for a crack in the yoke and can be performed equally well by a pilot or a mechanic.

• If a yoke has a crack, before further flight, replace the yokes with airworthy yokes, P/N A203–7. Both yokes must be replaced with yoke, P/N A203–7.

• Before further flight after January 1, 2001, determine the lot identifier for each yoke, P/N A203–5, and replace any affected yokes, P/N A203–5, with yokes, P/N A203–7.

Determining that the installed yokes are not in the lots affected by this AD or replacing both yokes, P/N A203–5, with yokes, P/N A203–7, is terminating action for the requirements of this AD. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, checking the yoke for any crack and replacing any cracked yoke are required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 4, 2000 to all known U.S. owners and operators of RHC Model R22 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. However, one minor editorial correction is made in this AD. The note concerning existing alternative methods of compliance was incorrectly numbered in the emergency AD. This AD corrects that Note number as NOTE 3. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 1305 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.3 work hour per helicopter to check both yokes and 0.5 work hour to replace both yokes. The average labor rate is $60 per work hour. Required parts will cost approximately $150 per helicopter (two yokes). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $258,390, assuming each helicopter is inspected once and both yokes are replaced on all helicopters.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–51–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2000–20–51 Robinson Helicopter Company: Amendment 39–11960. Docket No. 2000–SW–51–AD.

Applicability: Model R22 helicopters, with a yoke half assembly (yoke), Part number(P/

N) A203–5, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a yoke, separation of a yoke from the main rotor drive shaft, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight and thereafter before the first flight of each day, check each yoke for a crack. See Figure A.

(b) If a yoke is cracked, before further flight, replace the yokes with airworthy yokes, P/N A203–7. Both yokes must be replaced with yokes, P/N A203–7.

(c) Before further flight after January 1, 2001,

(1) Determine the Lot identifier of each yoke.

(2) If the Lot identifier is from 24 through 43, if it is a letter code, or if it is illegible, replace yokes, P/N A203–5, with airworthy yokes, P/N A203–7. Yoke, P/N A203–7, cannot be installed with yoke, P/N A203–5.

Note 2: Robinson Helicopter Company R22 Service Bulletin SB–88A, dated September 13, 2000, pertains to the subject of this AD.

(d) The visual check required by paragraph (a) may be performed by an owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with paragraph (a) in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

BILLING CODE 4910–13–P

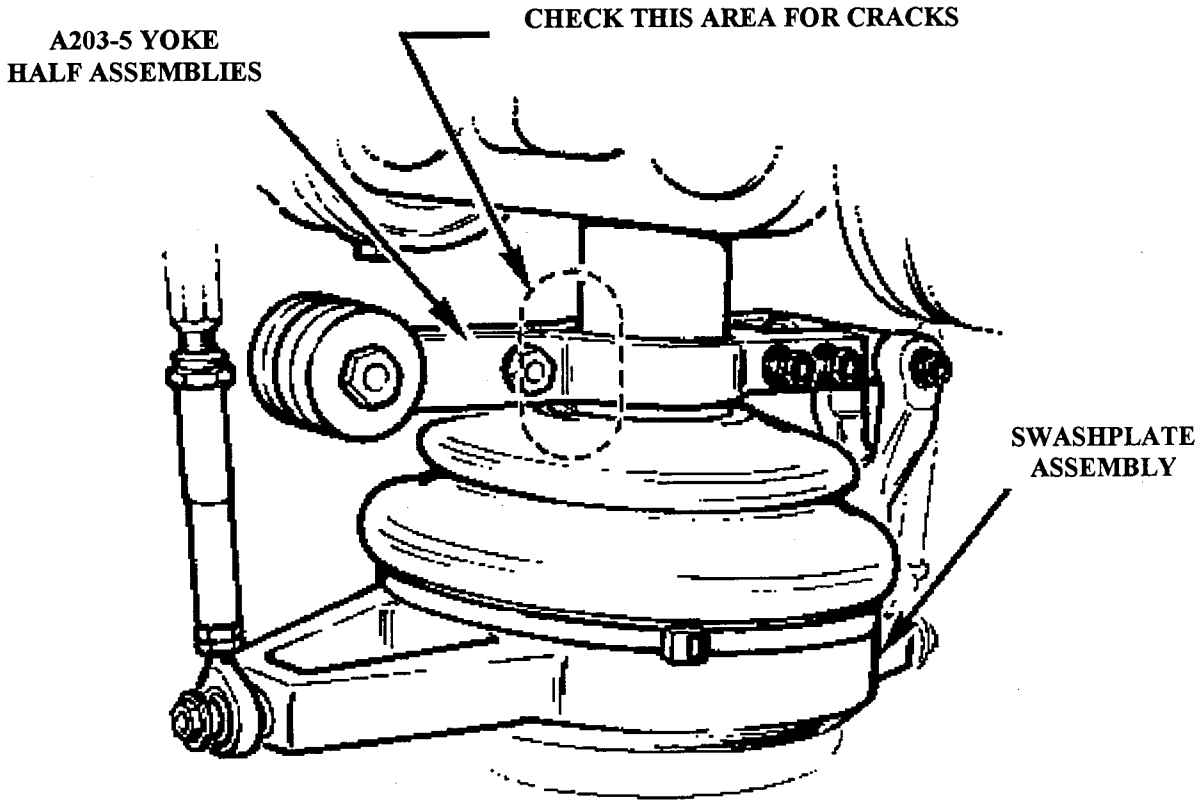


Figure A

BILLING CODE 4910–13–C

(e) Determining that the installed yokes, P/N A203–5, are not in the lots affected by this AD, or replacing yokes, P/N A203–5, with yokes, P/N A203–7, is terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(g) Special flight permits will not be issued.

(h) This amendment becomes effective on November 22, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–20–51, issued October 4, 2000, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on October 27, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–28236 Filed 11–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–136–AD; Amendment 39–11962; AD 2000–22–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200B, –200C, –200F, and –300 Series Airplanes Delivered In or Modified Into the Stretched Upper Deck Configuration

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –200B, –200C, –200F, and –300 series airplanes delivered in or modified into the stretched upper deck configuration. This action requires a one-time inspection to detect chafing between certain engine thrust control cables and certain cable penetration holes, and follow-on actions, if necessary. This action is necessary to prevent chafing and failure of engine thrust control cables, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 22, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of April 24, 2000 (65 FR 14838, March 20, 2000).

Comments for inclusion in the Rules Docket must be received on or before January 8, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–136–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dionne Krebs, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2250; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On March 10, 2000, the FAA issued AD 2000–05–30, amendment 39–11640 (65 FR 14838, March 20, 2000), applicable to certain Boeing Model 747 series airplanes, to require repetitive inspections to detect discrepancies of the cables, fittings, and pulleys of the engine thrust control cable installation; replacement, if necessary; and, for certain airplanes, certain preventative actions on the engine thrust control cable installation. That action was prompted by reports of failure of engine thrust control cables. The requirements of that AD are intended to prevent such failures, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

Paragraph (g) of AD 2000–05–30 requires, for certain Model 747–100B series airplanes with a stretched upper deck (SUD), a detailed visual inspection and measurement of the clearance between certain engine thrust control cables and the cable penetration holes, and follow-on corrective actions, if necessary. Since the issuance of AD 2000–05–30, the FAA has determined that certain other Model 747 series airplanes delivered with or modified to have a SUD are subject to the same unsafe condition as the Model 747–100B SUD airplanes identified in paragraph (g) of the existing AD. Therefore, the FAA finds that further rulemaking is necessary to prevent chafing and failure of engine thrust control cables, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane, on all affected airplanes.

Explanation of Relevant Service Information

The FAA has previously reviewed and approved Boeing Service Bulletin 747–53–2327, Revision 2, dated September 24, 1998. That service bulletin describes procedures for repetitive inspections of certain upper deck floor beams to detect cracking, and repair of any cracks found or reinforcement of those floor beams. The service bulletin also describes procedures for a detailed inspection and measurement of the clearance between the engine thrust control cables and the cable penetration holes in that area, and modification of the holes or replacement of the plate, if necessary.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent chafing and failure of engine thrust control cables, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This AD and Relevant Service Bulletin

Operators should note that, although Boeing Service Bulletin 747–53–2327 describes procedures for inspection of certain upper deck floor beams, and repair of any cracks found or reinforcement of those floor beams, as applicable, this AD requires only the detailed visual inspection and measurement of the clearance between the engine thrust control cables and the cable penetration holes in that area. The inspection, repair, and reinforcement of certain upper deck floor beams are mandated by AD 92–24–07, amendment 39–8412 (57 FR 53436, November 10, 1992). The detailed visual inspection and measurement of the clearance between the engine thrust control cables and the cable penetration holes was incorporated into the service bulletin after AD 92–24–07 was issued. Therefore, the FAA is requiring that part of the service bulletin in this AD. In addition, for airplanes on which insufficient clearance is measured, this AD adds an additional inspection of the

cable for wear in that area using procedures referenced in Appendix 1 (including Figure 1) of this AD and would require replacement of the cable, if necessary.

Operators also should note that the effectivity listing of Boeing Service Bulletin 747–53–2327, Revision 2, includes Boeing Model 747–400 series airplanes. However, the actions required by this AD are not applicable to Model 747–400 series airplanes, so those airplanes are not included in the applicability of this AD.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–136–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–22–15 Boeing: Amendment 39–11962. Docket 2000–NM–136–AD.

Applicability: Model 747–100, –200B, –200C, –200F, and –300 series airplanes; certificated in any category; equipped with Pratt & Whitney Model JT9D–3 or –7 series engines, General Electric Model CF6–45 or –50 series engines, or Rolls-Royce Model RB211–524B, C, or D series engines; delivered in or modified into the stretched upper deck (SUD) configuration; and having angle assemblies with Boeing part numbers 015U0454–63 and 015U0454–64 installed at body station 970.

Note 1: Model 747–100 SUD series airplanes on which paragraph (g) of AD 2000–05–30 has been accomplished are not required to comply with this AD.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and failure of engine thrust control cables, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane, accomplish the following:

Inspection/Modification/Replacement

(a) Within 18 months after the effective date of this AD, perform a detailed visual inspection and measure the clearance between the engine thrust control cables and the cable penetration holes, in accordance with the Cable Chafing Inspection of the Accomplishment Instructions of Boeing Service Bulletin 747–53–2327, Revision 2, dated September 24, 1998. If insufficient clearance exists, as specified in the service bulletin, prior to further flight, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the cable penetration holes or replace the plate, as applicable, in accordance with Figure 7 of the service bulletin.

(2) Perform a detailed visual inspection of the engine thrust control cables in the area of the plate to detect wear and broken wires in accordance with Appendix 1 (including Figure 1) of this AD. If any wear is within the criteria contained in Appendix 1 (including Figure 1) of this AD, no further action is required by this paragraph. If any wear outside the criteria contained in Appendix 1 (including Figure 1) of this AD is found, prior to further flight, replace the cable with a new cable, in accordance with the procedures described in the Boeing 747 Maintenance Manual.

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

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(d) Except as provided by paragraph (a)(2) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–53–2327, Revision 2, dated September 24, 1998. This incorporation by reference was approved previously by the Director of the **Federal Register** as of April 24, 2000 (65 FR 14838, March 20, 2000). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on November 22, 2000.

APPENDIX 1—THRUST CONTROL CABLE INSPECTION PROCEDURE

1. Detailed Visual Inspection To Detect Wear

A. Perform a detailed visual inspection of the engine thrust control cables in the area of the plate to detect wear.

B. Replace the cable assembly if any of the following criteria are met:

(1) One cable strand had worn wires where one wire cross section is decreased by more than 40 percent (see Figure 1).

(2) A kink is found.

(3) Corrosion is found.

2. Inspection To Detect Broken Wires

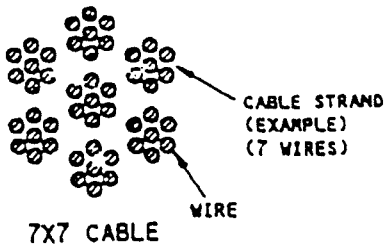
A. To check for broken wires, rub a cloth along the length of the cable. The cloth catches on broken wires.

B. Replace the cable assembly if any of the following criteria are met.

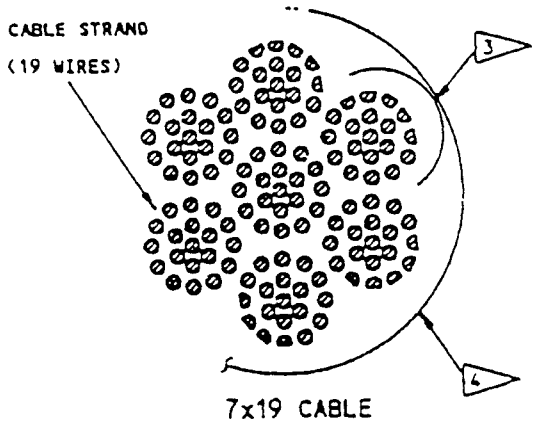
(1) Replace the 7x7 cable assembly if there are two or more broken wires in 12 continuous inches of cable or there are three or more broken wires anywhere in the total cable assembly.

(2) Replace the 7x19 cable assembly if there are four or more broken wires in 12 continuous inches of cable or there are six or more broken wires anywhere in the total cable assembly.

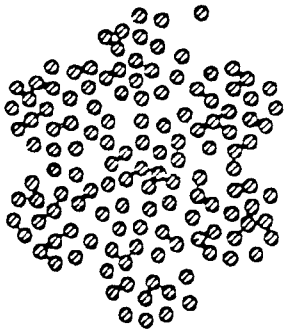
BILLING CODE 4910–13–P



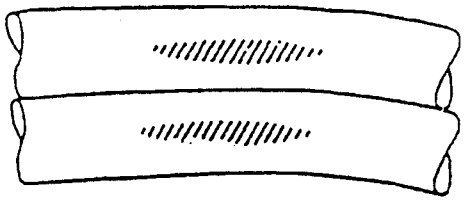
7X7 CABLE



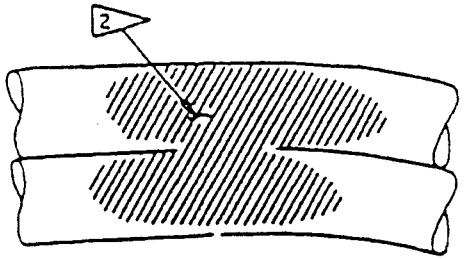
7x19 CABLE



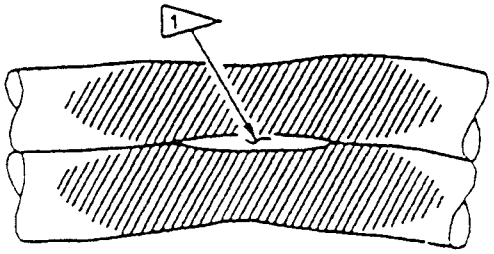
EXAMPLE OF INTERNAL WEAR



EACH OUTER WIRE WORN
LESS THAN 40%
(WORN AREAS NOT BLENDED)



EACH OUTER WIRE WORN 40–50%
(WORN AREAS ARE BLENDED)



EACH WIRE IS WORN MORE THAN 50%

1 VISIBLE SPACE BETWEEN WIRES.

2 WEAR CONDITION RESULTING IN BLENDED SURFACES BETWEEN WIRES.

3 THE OUTER WIRE WEAR AREA ON CABLE STRAND. A VISIBLE SPACE BETWEEN WIRES 1 OR A FULLY BLENDED SURFACE 2 SURFACE OVER APPROXIMATELY SIX WIRES INDICATES 50 PERCENT WIRE WEAR.

4 CABLE WEAR MAY OCCUR ON ONE SIDE ONLY OR ON FULL CIRCUMFERENCE. CABLE WEAR CAN EXTEND ALONG THE CABLE FOR A DISTANCE EQUAL TO USUAL CABLE TRAVEL.

FIGURE 1

Issued in Renton, Washington, on October 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28233 Filed 11–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–01–AD; Amendment 39–11966; AD 2000–15–21 R1]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Inc.—Manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD) that applies to Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters, manufactured by Bell Helicopter Textron Inc. (BHTI) for the Armed Forces of the United States, and requires removing and replacing certain main rotor mast (mast) assemblies. This amendment corrects a part number that was published incorrectly in the existing AD. This amendment is prompted by the discovery of that error. The actions specified by this AD are intended to prevent fatigue failure of the mast and subsequent loss of control of the helicopter.

EFFECTIVE DATE: November 22, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: AD 2000–15–21, Amendment 39–11854, applicable to Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters, which were manufactured by BHTI for the Armed Forces of the United States, was published in the **Federal Register** on August 9, 2000 (65 FR 48605). That AD requires removing and replacing certain mast assemblies.

After that AD was issued, the FAA discovered that the mast assembly part numbers listed in the applicability section are 205–011–450–001 and –005; the correct mast assembly part numbers are 204–011–450–001 and –005.

The FAA has determined that this revision will neither increase the economic burden on any operator nor increase the scope of the AD, therefore, no additional comments were solicited and this AD is being issued with the same requirements previously imposed but with the correct part number.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11854 (65 FR 48605, August 9, 2000), and by adding a new airworthiness directive to read as follows:

2000–15–21 R1 Firefly Aviation Helicopter Services (Previously Erickson Air Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Tamarack Helicopters, Inc. (Previously Ranger Helicopter Services, Inc.); Robinson Air Crane, Inc.; Williams Helicopter Corporation (Previously Scott Paper Co.); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Arrow Falcon (Previously Utah State University); Western International Aviation, Inc.; and U.S. Helicopter, Inc.: Amendment 39–11966. Docket No. 2000–SW–01–AD. Revises AD 2000–15–21, Amendment 39–11854.

Applicability: Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters, manufactured by Bell Helicopter Textron Inc. (BHTI) for the Armed Forces of the United States, with a main rotor mast (mast) assembly, part number (P/N) 204–011–450–001 or –005, installed, certificated in any category.

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

Compliance: Required within 25 hours time-in-service, unless accomplished previously.

To prevent fatigue failure of the mast and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove any mast assembly, P/N 204–011–450–001 or –005, from service. Replace it with an airworthy mast assembly. Neither mast assembly, P/N 204–011–450–001 nor 204–011–450–005, is eligible for installation on any affected helicopter.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on November 22, 2000.

Issued in Fort Worth, Texas, on October 30, 2000.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–28437 Filed 11–7–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–204–AD; Amendment 39–11956; AD 2000–22–10]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes, that currently requires various inspections to detect discrepancies of the elevator servo tab and spring tab hinge fittings of the horizontal stabilizer, and follow-on corrective actions, if necessary. This amendment clarifies certain fiberscopic inspection and replacement procedures, and corrective actions; revises the applicability of the existing AD; and adds an inspection procedure for the servo tab center hinge fittings to detect the presence of washers for both attaching fasteners, and follow-on corrective actions, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. The actions specified in this AD are intended to prevent the linkage of the elevator servo tab or spring tab hinge fittings from separating from the horizontal stabilizer, which could result in loss of control of the airplane.

DATES: Effective November 22, 2000.

The incorporation by reference of Embraer Service Bulletin 145–55–0024, dated May 25, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of November 22, 2000.

Comments for inclusion in the Rules Docket must be received on or before December 7, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–204–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–204–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Viswa Padmanabhan, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6049; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On February 15, 2000, the FAA issued AD 2000–04–09, amendment 39–11591 (65 FR 9217, February 24, 1000), applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes, to require various inspections to detect discrepancies of the elevator servo tab and spring tab hinge fittings of the horizontal stabilizer, and follow-on corrective actions, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions required by that AD are intended to prevent the linkage of the elevator servo tab or spring tab hinge fittings from separating from the horizontal stabilizer, which could result in loss of control of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, has received new information regarding the corrective action necessary to address this unsafe condition. As a result, the DAC has issued the following Brazilian airworthiness directives:

• 1999–09–01R2, dated May 1, 2000, supersedes Brazilian airworthiness directive 1999–09–01R1, dated October 25, 1999. This new revision was issued to specify repetitive inspection intervals and final rework of certain components. Part III of this revision specifies that, for certain Model EMB–135 and EMB–145 series airplanes, certain modifications of the elevator mass balance assembly and control column nose-up spring modifications, in accordance with Embraer Service Bulletin (S.B.) 145–27–0034, must be completed before accomplishment of the rework specified in Part III of S.B. 145–55–0022, Change 01, dated January 25, 2000.

• 2000–05–01, dated May 25, 2000, corrects any possible misinterpretation of the replacement procedures included in Brazilian airworthiness directive 1999–09–01R2, and in alert S.B. 145–55–A022 and S.B. 145–55–0022.

Reports indicated that loose hinge fittings were found, which was attributed to the incorrect application of the attachment fasteners to the tab upper skin. It is considered that the loss of fitting rigidity could cause damage to the other fasteners in the tab spar. Reports also indicated that some of the fasteners (which attach the spring-tab actuating arm to the tab upper skin and the servo-tab actuating linkage hinge to the tab lower skin) were not replaced with fasteners having a washer, because the collar conformation of those fasteners was found to be correct. In addition, maintenance records revealed that such fasteners may not have been replaced on certain airplanes. As a result of these findings, the DAC issued the previously referenced Brazilian airworthiness directives to clarify that all attachment fasteners must be installed with a washer, and that the fasteners must be replaced independently of the installation condition (even if the collar conformation is found to be ''correct'').

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section

21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Relevant Service Information

Embraer has issued the following service information:

• Service Bulletin 145–55–0022, Change 02, dated May 4, 2000, adds a fiberscopic inspection in Part II of the Accomplishment Instructions to detect the presence of a washer; and installation of a washer, if necessary. Part III of this service bulletin revises certain rework procedures (including rework and installation of the elevator servo and spring tabs; and reidentification, static balancing, and installation of the elevator). This rework procedure also specifies that, for certain airplanes, the modification specified by Embraer S.B. 145–27–0034 must be accomplished before Part III of S.B. 145–55–0022, Change 02, is accomplished. Accomplishment of the actions specified in Part III of S.B. 145–55–0022, Change 02, eliminates the need for the repetitive inspections.

• Service Bulletin 145–55–0024, dated May 25, 2000, adds a fiberscopic inspection of the attachment of the servo tab center hinge fitting to the tab skin in Part II of the Accomplishment Instructions of this service bulletin. This inspection specifies detecting the presence of washers under the collar bases of both attaching fasteners, in the inner side of the tab skin; and corrective actions, if necessary. Procedures include additional action to clarify certain replacement procedures that were specified in alert S.B. 145–55–A022, Change 01, dated October 7, 1999, and Change 02, dated October 8, 1999. Such action specifies that any discrepant fastener must be replaced with a new fastener having a washer, and that the action if required to be accomplished independently of the installation condition. In addition, S.B. 145–55–0024 specifies that operators report any discrepancy found during inspections of elevator spring tab and servo tab hinge fittings that are specified in Part I of the Accomplishment Instructions of the service bulletin.

• Service Bulletin 145–27–0034, Change 01, dated August 5, 1998, revises procedures for replacing the elevator mass-balance weight assembly and nose-up spring. Procedures also revise static balancing and weight and balance, add new mass-balance weight and its attachment bolt, and delete the instruction for checking the backlash.

The DAC mandated compliance with the preceding service bulletins, and issued previously referenced Brazilian airworthiness directive 1999–09–01R2 in order to assure the continued airworthiness of these airplanes in Brazil.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 2000–04–09 to continue to require various inspections to detect discrepancies of the elevator servo tab and spring tab hinge fittings of the horizontal stabilizer, and follow-on corrective actions, if necessary. This amendment clarifies certain fiberscopic inspection and replacement procedures, and corrective actions; revises the applicability of the existing AD; and adds an inspection procedure for the servo tab center hinge fittings to detect the presence of washers for both attaching fasteners, and follow-on corrective actions. This amendment also provides for optional terminating action for the repetitive inspections. In addition, this amendment requires that operators report to the manufacturer any discrepancy found during any detailed visual inspection accomplished in accordance with S.B. 145–55–0024, dated May 25, 2000. This AD requires accomplishment of actions specified in the service bulletin described previously, except as discussed below.

Differences Between This AD, Brazilian Airworthiness Directives, and Related Service Information

Operators should note that, although the previously referenced Brazilian airworthiness directives and Embraer service information specify that certain rework actions are required, this AD provides those actions as optional. The FAA has determined that such action may be required in subsequent rulemaking action to provide sufficient time for public comment.

Explanation of Changes to the Applicability of AD 2000–04–09

The applicability of AD 2000–04–09 included all of the serial numbers for Model EMB–135 and EMB–145 series airplanes, as listed in alert S.B. 145–55–A022, Change 02, dated October 8, 1999. However, this AD revises the applicability of this AD to those airplanes listed in S.B. 145–55–0022, Change 02, dated May 4, 2000, or S.B. 145–55–0024, dated May 25, 2000, and those airplanes on which the elevator servo tabs and spring tabs have been replaced in accordance with alert S.B. 145–55–A022, Change 02, dated October 8, 1999, or S.B. 145–55–0022, Change 01, dated January 25, 2000.

Interim Action

This AD is considered to be interim action. The FAA is currently considering requiring the rework of all elevator servo and spring tabs, which will constitute terminating action for the repetitive inspections required by this AD action. However, such action will be proposed in a separate rulemaking action since the compliance time for the rework is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–204–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11591 (65 FR 9217, February 24, 2000), and by adding a new airworthiness directive (AD), amendment 39–11956, to read as follows:

2000–22–10 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–11956. Docket 2000–NM–204–AD. Supersedes AD 2000–04–09, Amendment 39–11591.

Applicability: Model EMB–135 and EMB–145 series airplanes, certificated in any category, as listed in Embraer Service Bulletin 145–55–0022, Change 02, dated May 4, 2000, or Embraer Service Bulletin 145–55–0024, dated May 25, 2000; and those airplanes on which the elevator servo tabs and spring tabs have been replaced in accordance with Embraer Alert Service Bulletin 145–55–A022, Change 02, dated October 8, 1999, or Embraer Service Bulletin 145–55–0022, dated October 20, 1999.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent disconnection of the elevator spring tab or servo tab hinge from their attachments, which could result in loss of elevator control and reduced controllability of the airplane, accomplish the following:

Detailed Visual Inspection

(a) Within 20 flight hours after the effective date of this AD, perform a detailed visual inspection of the hinge fittings of the left and right elevator spring tabs and servo tabs to detect any discrepancy (including incorrect attachment of the hinge fittings; signs of scratches on painted surfaces of the tab spar; detachment of hinge fitting from the tab; and relative movement and gap between hinge fittings and tab spars, and between the spring tab spar or skin) in accordance with Part I of the Accomplishment Instructions of Embraer Service Bulletin (S.B.) 145–55–0024, dated May 25, 2000.

Note 2: Inspections accomplished prior to the effective date of this amendment, in accordance with Part I of the Accomplishment Instructions of S.B. 145–55–0022, dated October 20, 1999, or Change 01, dated January 25, 2000, or alert S.B. 145–55–A022, Change 02, dated October 8, 1999, are considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(1) If no discrepancy is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 100 flight hours until accomplishment of either paragraph (b) or (c) of this AD.

(2) If any discrepancy is detected, prior to further flight, accomplish the action specified by either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace any discrepant elevator tab with a new tab in accordance with the service bulletin, and repeat the detailed visual inspection thereafter at intervals not to exceed 100 flight hours until accomplishment of either the actions required by paragraph (b) or the optional terminating action specified by paragraph (c) of this AD.

Note 3: The inspection and fastener replacement actions required by paragraph (b) of this AD do not constitute terminating action for the requirements of this AD, but only extend the inspection intervals from 100 to 400 flight hours.

(ii) Perform the optional terminating action specified by paragraph (c) of this AD.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

Inspection and Fastener Replacement

(b) Within 400 flight hours after the effective date of this AD, perform a one-time detailed visual inspection, using a fiberscope, of the servo tab center hinge fitting to the tab skin to detect any discrepancy (including the absence of washers under the collar bases of both attaching fasteners, and incorrect fastener connection) in accordance with Part II of the Accomplishment Instructions of S.B. 145–55–0024, dated May 25, 2000.

(1) If no discrepancy is detected, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 400 flight hours until accomplishment of the optional terminating action specified by paragraph (c) of this AD.

(2) If any discrepancy is detected, prior to further flight, replace, one at a time, each affected fastener with a new fastener having a washer, in accordance with the service bulletin. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 400 flight hours until accomplishment of the optional terminating action specified by paragraph (c) of this AD.

Note 5: Replacement of the attaching fasteners one at a time will avoid the loss of the servo tab or spring tab hinge fittings position.

Optional Terminating Action

(c) Rework (including installation of the elevator servo and spring tabs; and reidentification, static balancing, and installation of the elevator) of all elevator servo and spring tabs in accordance with Part III of the Accomplishment Instructions of S.B. 145–055–0022, Change 02, dated May 4, 2000, constitutes terminating action for the repetitive inspections required by this AD. Model EMB–135 and EMB–145 series airplanes having serial numbers 145004 through 145043, must accomplish the modifications specified by S.B. 145–27–0034, Change 01, dated August 5, 1998, prior to the rework specified by this paragraph.

Note 6: Modifications of certain airplanes specified in paragraph (c) of this AD, accomplished before the effective date of this amendment, in accordance with S.B. 145–27–0034, dated April 3, 1998, are considered acceptable for compliance with the modification requirement in paragraph (c) of this AD.

Reporting Requirement

(d) Submit a report of inspection findings for any discrepancy detected during any inspection required by paragraph (a) of this AD to Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil; at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which any inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing any detailed visual inspection required by paragraph (a) of this AD.

(2) For airplanes on which any inspection has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–04–09, amendment 39–11591, are approved as alternative methods of compliance with this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

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

Incorporation by Reference

(g) The inspections shall be done in accordance with Embraer Service Bulletin 145–55–0024, dated May 25, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 8: The subject of this AD is addressed in Brazilian airworthiness directives 1999–09–01R2, dated May 1, 2000, and 2000–05–01, dated May 25, 2000.

Effective Date of This AD

(h) This amendment becomes effective on November 22, 2000.

Issued in Renton, Washington, on October 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28087 Filed 11–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–121–AD; Amendment 39–11958; AD 2000–22–12]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires replacement of the existing wire between certain circuit breakers with an improved wire. The actions specified by this AD are intended to prevent overheating of the wire between certain circuit breakers, which could result in smoke emissions in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective December 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carla Worthey, Program Manager, Program Management & Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6062; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes, was published in the **Federal Register** on

July 31, 2000 (65 FR 46671). That action proposed to require replacement of the existing wire between certain circuit breakers with an improved wire.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 240 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required action, and that the average labor rate is $60 per work hour. Required parts will cost approximately $8 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $30,720, or $128 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–22–12 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–11958. Docket 2000–NM–121–AD.

Applicability: Model EMB–120 series airplanes, serial numbers 120003, 120004, 120006 through 120308 inclusive, 120310, 120312 through 120314 inclusive, 120316 through 120323 inclusive, and 120325 through 120330 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the wire between certain circuit breakers, which could result in smoke emissions in the cockpit, accomplish the following:

Wire Replacement

(a) At the next scheduled maintenance inspection (''A''-check), but no later than 400 flight hours after the effective date of this AD: Replace the existing wire between circuit breakers 0304 and 0358 with a wire coded W200–1063–12, in accordance with EMBRAER Service Bulletin 120–30–0028, dated August 25, 1997.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Atlanta ACO.

Special Flight Permits

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

Incorporation by Reference

(d) The replacement shall be done in accordance with EMBRAER Service Bulletin 120–30–0028, dated August 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 97–11–01, dated November 25, 1997.

Effective Date

(e) This amendment becomes effective on December 12, 2000.

Issued in Renton, Washington, on October 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28088 Filed 11–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–1–AD–1; Amendment 39–11959; AD 2000–22–13]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 430 helicopters that requires calibration of the fuel quantity indicating system. This amendment is prompted by an operator report of an inaccurate fuel quantity indicating system. The actions specified by this AD are intended to prevent an inaccurate fuel quantity indicating system reading, engine flameout due to fuel starvation, and a subsequent forced landing.

DATES: Effective December 12, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 12, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD for BHTC Model 430 helicopters was published in the **Federal Register** on August 9, 2000 (65 FR 48643). That action proposed to require calibration of the fuel quantity indicating system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 50 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,000.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2000–22–13 Bell Helicopter Textron Canada: Amendment 39–11959. Docket No. 2000-SW–11-AD.

Applicability: Model 430 helicopters, serial numbers 49001 through 49059, certificated in any category.

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

Compliance: Required at the next scheduled fuel system calibration or at the next annual inspection, whichever occurs first, unless accomplished previously.

To prevent an inaccurate fuel quantity indicating system reading, engine flameout due to fuel starvation, and a subsequent forced landing, accomplish the following:

(a) Calibrate the fuel quantity indicating system in accordance with steps 1 through 21 of the Accomplishment Instructions, Bell Helicopter Textron Alert Service Bulletin No. 430–99–13, dated December 13, 1999 (ASB).

(b) Insert BHT–430-MM–10, Chapter 95, Revision 2, dated December 10, 1999, into the Maintenance Manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

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

(e) Calibrate the fuel quantity indicating system in accordance with steps 1 through 21 of the Accomplishment Instructions, Bell Helicopter Textron Alert Service Bulletin No. 430–99–13, dated December 13, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 12, 2000.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2000–04, dated February 8, 2000.

Issued in Fort Worth, Texas, on October 27, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–28235 Filed 11–6–00; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB54

Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers; Amendment to the Capital Charge on Unsecured Receivables Due From Foreign Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission. (''Commission'') is amending its net capital rule to expand the exemption from the five percent capital charge that a futures commission merchant (''FCM'') or introducing broker is required to take against unsecured foreign broker receivables in computing its adjusted net capital.[1]

EFFECTIVE DATE: December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581; telephone (202) 418–5495; electronic mail *tsmith@cftc.gov;* or Henry J. Matecki, Financial Audit and Review Branch, Division of Trading and Markets, Commodity Futures Trading Commission, 300 South Riverside Plaza, Suite 1600 North, Chicago, IL 60606; telephone (312) 353–6642; electronic mail *hmatecki@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Rule Amendments

On August 28, 2000, the Commission published for comment proposed amendments to Rule 1.17(c)(5)(xiii) (''proposing release'').[2] The comment period expired on September 27, 2000. No comments were received. Accordingly, the Commission is adopting the amendments as proposed.

Commission Rule 1.17(c)(5)(xiii) requires an FCM or IBI, in computing its adjusted net capital, to take a five percent capital charge on any unsecured receivables resulting from commodity futures and option transactions executed on foreign boards of trade and which are due from foreign brokers that are not registered with the Commission as FCMs or with the Securities and Exchange Commission (''SEC'') as securities brokers or dealers.[3] As more fully set forth in the proposing release, Rule 1.17(c)(5)(xiii) currently permits an FCM or IBI to exclude from the five percent capital charge that portion of the unsecured receivable that represents amounts required to be on deposit to maintain futures and option positions transacted on foreign boards of trade. Deposits in excess of required margin or performance bond are subject to the capital charge. In addition, to be exempt from the capital charge, the receivable must be due from a foreign broker that has received confirmation of ''comparability relief'' in accordance with a Commission order issued under Rule 30.10 and the margin deposits must be held by the foreign broker itself, another foreign broker that has received confirmation of Rule 30.10 ''comparability relief,'' or at a depository that qualifies as a depository pursuant to Rule 30.7 and which is located within the same jurisdiction as either foreign broker.[4]

The amendments being adopted herein increase the maximum amount eligible for exclusion from the five percent capital charge to the greater of: 150 percent of the amount immediately required to support futures and option transactions in an account; or 100 percent of the maximum amount required to support futures and option transactions at any time during the preceding six-month period. The amendments are intended to provide FCMs and IBIs with greater flexibility with respect to their cash and risk management while also reducing costs associated with frequent transfers of excess margin funds out of foreign brokers in order to avoid the five percent capital charge.

The amendments also eliminate the requirement that an FCM or IBI be responsible for monitoring the ultimate destination of margin funds deposited with a Rule 30.10 foreign broker in order for such funds to qualify for the exemption from the capital charge. As set forth in the proposing release, by granting Rule 30.10 ''comparability relief'' to a foreign broker, the Commission has made a determination that the foreign broker is subject to a regulatory structure that is comparable to the structure imposed on entities that operate on U.S. futures exchanges. Of particular relevance is that the Commission, as part of the Rule 30.10 petition process, assesses the extent to which a foreign broker is subject to a regulatory program that imposes bona fide minimum financial requirements on its regulatees or members and that provides for the protection of customers by the segregation of funds and bankruptcy rules.[5] The Commission's determination that these standards and protections exist and are enforced supports an easing of the capital charge.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in adopting rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities.[6] The Commission previously has determined

[1] An introducing broker (''IB'') is required to maintain minimum adjusted net capital of $30,000, unless the IB has entered into a guarantee agreement with an FCM in the form prescribed in the Commission's rules. The industry has commonly distinguished between such IBs as Guaranteed IBs and Independent IBs (''IBIs''), the latter being subject to the $30,000 minimum capital requirement. The rule changes being adopted herein affect those IBs identified as IBIs.

[2] 65 FR 52051 (August 28, 2000).

[3] Commission regulations cited herein may be found at 17 CFR Ch. I (2000).

[4] Under Rule 30.10 and Appendix A thereto, the Commission may exempt a foreign firm from compliance with certain Commission rules provided that a comparable regulatory system exists in the firm's home country and that certain safeguards are in place to protect U.S. customers, including an information-sharing arrangement between the Commission and the firm's home country regulator or self-regulatory organization (''SRO''). Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission issues an order granting general relief subject to certain conditions. Foreign firms seeking confirmation of this relief must make certain representations set forth in the Rule 30.10 order issued to the regulator or SRO from the firm's home country. Appendix C to Part 30 lists those foreign regulators and SROs that have been issued a Rule 30.10 order by the Commission.

Rule 30.7(c) sets forth acceptable depositories for funds deposited by U.S. customers with foreign brokers for futures and option trading on foreign boards of trade.

[5] The specific elements examined in evaluating whether a particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Rule 30.10 are set forth in Appendix A to Part 30.

[6] 47 FR 18618–18621 (April 30, 1982).

that registered FCMs are not small entities for the purposes of the RFA.[7] With respect to IBIs, the Commission stated that it is appropriate to evaluate within the context of a particular rule whether some or all introducing broker should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[8] The amendments to Rule 1.17(c)(5)(xiii) expanding the amount of funds that may be excluded from the foreign brokers receivable capital charge do not impose additional requirements on an IBI. Therefore, the Chairman, on behalf of the Commission, certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (Supp. I 1995), imposes certain requirements on federal agencies (including the Commission) to review rules and rule amendments to evaluate the information collection burden that they impose on the public. The Commission believes that the amendments to Rule 1.17(c)(5)(xiii) will impose a minimal information collection burden on the public, namely those FCMs and IBIs who wish to take advantage of the exemption will be required to maintain a record of the margins required to be on deposit with a foreign broker over the preceding six month period. However, this burden is believed to be minimal when compared to the capital savings to be generated by the exclusion of increased amounts from the capital charge.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4(b), 4f, 4g, and 8a(5) thereof, 7 U.S.C. 6(b), 6d, 6g, and 12a(5), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority. 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k,6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.17 is amended by revising paragraph (c)(5)(xiii) to read as follows:

§1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(5) * * *

(xiii) Five percent of all unsecured receivables includable under paragraph (c)(2)(ii)(D) of this section used by the applicant or registrant in computing ''net capital'' and which are not due from:

(A) A registered futures commission merchant;

(B) A broker or dealer that is registered as such with the Securities and Exchange Commission; or

(C) A foreign broker that has been granted comparability relief pursuant to §30.10 of this chapter, *Provided, however,* that the amount of the unsecured receivable not subject to the five percent capital charge is no greater than 150 percent of the current amount required to maintain futures and option positions in accounts with the foreign broker, or 100 percent of such greater amount required to maintain futures and option positions in the accounts at any time during the previous six-month period, and *Provided, that,* in the case of customer funds, such account is treated in accordance with the special requirements of the applicable Commission order issued under §30.10 of this chapter.

* * * * *

Issued in Washington, DC, on November 1, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–28492 Filed 11–6–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Enrofloxacin, Silver Sulfadiazine Emulsion

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Bayer Corp., Agriculture Division, Animal Health. The NADA provides for veterinary prescription use of an enrofloxacin/silver sulfadiazine otic emulsion to treat otitis externa in dogs.

DATES: This rule is effective November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201, filed NADA 141–176 that provides for veterinary prescription use of BAYTRIL® (0.5 % enrofloxacin/1.0% silver sulfadiazine) Otic Emulsion for the treatment of otitis externa in dogs. The NADA is approved as of September 29, 2000, and the regulations are amended in 21 CFR part 524 by adding new section 524.802 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning September 29, 2000, because the application contains substantial evidence of effectiveness of the drug involved, or any studies of animal safety, required for approval of the application and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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 524

Animal drugs.

[7] 47 FR 18619–1820.

[8] 48 FR 35248, 35275–78 (August 3, 1983).

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 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.802 is added to read as follows:

§ 524.802 Enrofloxacin, silver sulfadiazine emulsion.

(a) *Specifications*. Each milliliter contains 5 milligrams (mg) enrofloxacin and 10 mg silver sulfadiazine.

(b) *Sponsor*. See No. 000859 in § 510.600(c) of this chapter.

(c) *Conditions of use—Dogs*—(1) *Amount*. 5 to 10 drops for dogs weighing 35 pounds (lb) or less and 10 to 15 drops for dogs weighing more than 35 lb; applied twice daily for up to 14 days.

(2) *Indications for use*. For the treatment of otitis externa in dogs.

(3) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extra-label use of this drug in food-producing animals.

Dated: October 26, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–28520 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Decoquinate and Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved decoquinate and chlortetracycline (CTC) Type A medicated articles to make two-way combination Type B and Type C medicated feeds for calves, beef and nonlactating dairy cattle used for prevention of coccidiosis, treatment of bacterial enteritis, and treatment of bacterial pneumonia.

DATES: This rule is effective November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–147 that provides for use of Deccox® (27.2 grams per pound g/lb) and ChlorMax™ (50, 65, or 70 g/lb CTC) Type A medicated articles to make combination drug Type B and Type C medicated feeds for calves, beef and nonlactating dairy cattle. The combination Type C feeds are for prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, for treatment of bacterial enteritis caused by *Escherichia coli*, and for treatment of bacterial pneumonia caused by *Pasteurella multocida* organisms susceptible to CTC. The NADA is approved as of September 29, 2000, and the regulations are amended in the table in 21 CFR 558.195(d) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.195 is amended in the table in paragraph (d) by adding an entry following the indication for ''Cattle'' at the 13.6 to 27.2 grams per ton decoquinate dose level and before the entry for ''Cattle'' at the 13.6 to 535.7 grams per ton dose level, to read as follows:

§ 558.195 Decoquinate.

* * * * *

(d) * * *

Decoquinate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	* *	* *	*
	Chlortetracycline approximately 400, varying with body weight and feed consumption to provide 10 mg/lb of body weight per day.	Calves, beef and nonlactating dairy cattle: prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, for treatment of bacterial enteritis caused by *Escherichia coli*, and for treatment of bacterial pneumonia caused by *Pasteurella multocida* organisms susceptible to chlortetracycline.	Feed Type C feed to provide 22.7 mg decoquinate and 1 g chlortetracycline/100 lb body weight (0.5 mg/kg)/day for not more than 5 days. Type C feed may be prepared from Type B feed containing 535.8 to 5,440 g/ton decoquinate and 6,700 to 80,000 g/ton chlortetracycline. When consumed, feed 22.7 mg decoquinate/100 lb body weight/day for a total of 28 days to prevent coccidiosis. Withdraw 24 hours prior to slaughter. Do not feed to calves to be processed for veal. Do not feed to animals producing milk for food.	046573
*	*	* *	* *	*

Dated: October 26, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–28524 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Farnam Companies, Inc. The ANADA provides for use of pyrantel tartrate in horse feed for the prevention and control of various species of internal parasites.

DATES: This rule is effective November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Farnam Companies, Inc., 301 West Osborn, Phoenix, AZ 85013–3928, is sponsor of ANADA 200–282 that provides for use of CONTINUEX™ (pyrantel tartrate) Daily Dewormer. The ANADA provides for use of pyrantel tartrate in horse feed for the prevention and control of various species of internal parasites. The ANADA is approved as a generic copy of Pfizer Inc.'s NADA 140–819 for STRONGID® 48. ANADA 200–282 is approved as of September 26, 2000, and the regulations are amended in 21 CFR 558.485 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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 558

Animal drugs, Animal feeds.

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 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.485 is amended by adding paragraph (a)(29) to read as follows:

§ 558.485 Pyrantel tartrate.

(a) * * *

(29) To 017135: 48 grams per pound, paragraph (e)(2) of this section.

* * * * *

Dated: October 26, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–28523 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600 and 606

[Docket No. 97N–0242]

Biological Products: Reporting of Biological Product Deviations in Manufacturing

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation requiring licensed

manufacturers of biological products to report errors and accidents in manufacturing that may affect the safety, purity, or potency of a product. FDA also is amending the current good manufacturing practice (CGMP) regulations for blood and blood components to require establishments involved in the manufacture of blood and blood components, including licensed manufacturers, unlicensed registered establishments and transfusion services, to report biological product deviations in manufacturing. The final rule requires licensed manufacturers, unlicensed registered blood establishments, and transfusion services who had control over the product when a deviation occurred to report to FDA the biological product deviation if the product has been distributed. The final rule also establishes a 45-day reporting period. FDA is issuing the final rule as part of a retrospective review under Executive Order 12866 of significant FDA regulations to improve the effectiveness of FDA's regulatory program.

DATES: This rule is effective May 7, 2000.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 23, 1997 (62 FR 49642), FDA published a proposed rule to amend the requirements for reporting errors and accidents in manufacturing biological products in § 600.14 (21 CFR 600.14). The proposed rule would also have added § 606.171 and expanded the requirement for reporting of errors and accidents in the manufacturing of biological products to include unlicensed registered blood establishments and transfusion services. FDA provided 90 days for comments on the proposed rule.

FDA is extending a reporting requirement to establishments defined in 21 CFR 607.3(c) that manufacture blood and blood components. Such establishments include unlicensed registered blood establishments and transfusion services (hereinafter referred to as ''unlicensed blood establishments''). FDA believes this action is necessary because it has observed an increase in the number of product recalls initiated by unlicensed blood establishments due to biological product deviations in manufacturing that were not reported voluntarily to the agency. FDA is also narrowing the scope of the reporting requirement as discussed in section II of this document to those reports that are necessary to protect the public health, while relieving industry of some reporting burden. FDA also believes the reporting requirement will address concerns, identified by the Office of Inspector General of the Department of Health and Human Services, that: (1) Error and accident reports required under § 600.14 were not being submitted in a timely manner; and (2) unlicensed blood establishments were not obligated to submit such reports.

II. Highlights of the Final Rule

In response to comments received on the proposed rule, FDA has revised several substantive provisions of the proposed rule. FDA has replaced the term ''error and accident''with the term ''biological product deviation.'' In §§ 600.14(b) and 606.171(b), the final rule more clearly describes the types of events, now termed ''biological product deviations,'' that must be reported to FDA. These are events which may affect the safety, purity, or potency of a distributed biological product and which represent either a deviation from CGMP, applicable regulations, applicable standards, or established specifications, or are unforeseen or unexpected.

In an effort to reduce the reporting burden on both industry and the agency, while protecting the public health, FDA has changed the threshold for when a deviation must be reported. As proposed, a licensed manufacturer or unlicensed blood establishment would have reported deviations related to products ''made available for distribution.'' The final rule focuses on deviations involving distributed products only, because such deviations may involve products administered to patients, and therefore present the greatest risk to public health.

FDA defines the terms ''distributed'' and ''control'' to make clear that the reporting requirement applies only to distributed product. The final rule defines ''distributed'' as meaning the biological product has left the control of the licensed manufacturer or unlicensed blood establishment; or the licensed manufacturer has provided Source Plasma or any other blood component for use in the manufacture of a licensed product. ''Control'' is defined as having responsibility for maintaining a product's continued safety, purity, and potency, and compliance with applicable product and establishment standards and CGMP requirements.

If the product never leaves the control of the licensed manufacturer or unlicensed blood establishment, no biological product deviation report (BPDR) should be filed. However, the licensed manufacturer or unlicensed blood establishment who discovers a biological product deviation before the product has left its control must investigate the deviation. Such an obligation exists independent of this rule. For example, under CGMP, a licensed manufacturer must thoroughly investigate unexplained discrepancies and batch failures, including the failure of a product to meet specifications, and must document the discovery, investigation, and followup taken (parts 211 and 820 (21 CFR parts 211 and 820)). Manufacturers of in vitro products licensed under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262) must investigate the cause of nonconformities related to product, processes, and the quality system, and identify the action needed to correct and prevent recurrence of nonconforming product and other quality problems (§ 820.100). The CGMP regulations applicable to licensed and unlicensed blood establishments provide, ''A thorough investigation, including the conclusions and follow-up, of any unexplained discrepancy or the failure of a lot or unit to meet any of its specifications shall be made and recorded'' (§ 606.100(c) (21 CFR 606.100(c))). FDA will monitor internal quality assurance (QA) procedures through routine inspections.

In § 600.14(a)(2)(i), FDA has limited the exception to the reporting requirement for manufacturers of in vitro diagnostic products to manufacturers who only manufacture in vitro diagnostic products that are not licensed under section 351 of the PHS Act. Manufacturers of such products continue to have reporting obligations under 21 CFR part 803. Establishments that manufacture both in vitro diagnostic products licensed under section 351 of the PHS Act and unlicensed medical devices will be required to report under § 600.14 only those events which may affect the safety, purity, or potency of the licensed product.

In § 600.14(a)(2)(iii), FDA is clarifying the reporting requirement for licensed manufacturers of biological products when the manufacturer, as part of its license application, is approved to manufacture Source Plasma or any other blood component for further manufacture of other biological products. When a biological product deviation occurs during the manufacture of the Source Plasma or

any other blood component, the BPDR must be submitted under § 606.171. When a biological product deviation occurs after the manufacture of that Source Plasma or any other blood component and during the manufacture of another biological product, the BPDR is submitted under § 600.14. When a licensed manufacturer provides Source Plasma or any other blood component for use in the manufacture of another licensed biological product, such Source Plasma or any other blood component has been distributed under § 606.3(k).

FDA also is clarifying the reporting responsibilities of licensed manufacturers and unlicensed blood establishments who contract out certain manufacturing steps. A manufacturer who contracts with another person to perform any manufacturing step but who retains control over the product is still responsible for reporting under the rule even if the deviation occurred or was discovered at the contract establishment. Sections 600.14(a)(1) and 606.171(a)(1) make explicit that licensed manufacturers and unlicensed blood establishments must establish, maintain, and follow a procedure for receiving from their contractors the information necessary to fulfill their reporting requirements.

FDA is retaining the proposed 45-day reporting time in the final rule but is clarifying that the 45-day time period runs from the date that the manufacturer, its agent, or another person performing a manufacturing, holding, or distribution step under the manufacturer's control, first discovers information reasonably suggesting a reportable event has occurred. FDA is also adding a requirement in §§ 600.14(d) and 606.171(d) that licensed manufacturers and unlicensed blood establishments use Form FDA–3486 to report biological product deviations. This form is available in paper form and also on the Internet. Sections 600.14(e) and 606.171(e) indicate where and how the BPDR form should be submitted.

Finally, FDA has written the final rule using plain language in accordance with the presidential memorandum on plain language in government writing, dated June 1, 1998. FDA has adopted the plain language approach to make its written communications with the public more accessible and understandable. As a result, FDA is expanding § 600.14 and 606.171 in the final rule to address the following: (1) Who must report, (2) What must be reported, (3) When must the report be submitted, (4) How must the report be submitted, and (5) Where must the report be sent?

III. Comments on the Proposed Rule and FDA Responses

FDA received 98 comments on the proposed rule. The comments were submitted by manufacturers, blood establishments, trade associations, professional associations, Department of Defense, and individuals. In addition, the Office of Management and Budget (OMB) forwarded to FDA a number of comments it received on the proposed rule. Thirty-two comments supported FDA's goal of creating a standardized reporting system to identify biological product deviations in manufacturing and recognized the importance to blood safety of requiring prompt reporting of biological product deviations in the manufacture of blood and blood components. Fifteen comments objected to the proposed rule. Several comments, mostly those from transfusion services and pharmaceutical entities, objected to a mandatory reporting requirement being applied to them. Several expressed concerns that the reporting burden would be overwhelming.

In general, the comments expressed specific concerns about the scope and content of the proposed rule and requested clarification of certain definitions. FDA summarizes and responds to each of the received comments in the following sections.

A. General Comments

(Comment 1) Twenty-one comments questioned the public health benefit of the proposed rule and asked FDA to further define its public health and safety objective. Many of the comments suggested that the reporting system overlapped existing QA programs and was, therefore, unnecessary.

The objectives of the biological product deviation reporting requirement are to: (1) Enable FDA to respond when public health may be at risk, (2) expedite reporting of biological product deviations in manufacturing, (3) provide FDA with uniform data to track trends that may indicate broader threats to the public health, (4) create a uniform reporting requirement that can be enforced against noncomplying entities, and (5) help ensure licensed manufacturers and unlicensed blood establishments are taking appropriate actions to investigate and correct biological product deviations.

The reporting system will enable the agency to evaluate and monitor blood establishments in response to detected deviations, and regularly alert field staff and blood establishments with trend analysis of the types of deviations reported. Under the existing rule, there were two impediments to the success of the reporting process: (1) Error and accident reports were not being submitted in a timely manner by establishments, and (2) there was no assurance that unlicensed blood establishments were submitting reports.

The reporting system is not intended to overlap QA programs. Instead, it provides FDA with information that an individual establishment's QA program may not detect. For example, if an event occurs once a year in every establishment, it may not appear significant to any single establishment. The reporting system will allow FDA to recognize the significance of that event in a timely fashion and to take appropriate action to protect the public health. Reporting of biological product deviations will enable FDA to identify areas in which further regulation or guidance is needed to assist licensed manufacturers and unlicensed blood establishments in decreasing the occurrence of these events.

(Comment 2) Fifty comments wanted to know how FDA will use or analyze the information and what procedure FDA will use to respond to reports received under the rule. Two comments stated that the reports should not be used as a basis for issuing a Form FDA–483.

A BPDR alone will not be a basis for issuing a Form FDA–483. Form FDA–483 is a list a list of observations noted during an FDA inspection and issued to the firm at the conclusion of the inspection. The firm is expected to respond to the observations and make the necessary corrections. First, this information will aid FDA, licensed manufacturers, and unlicensed blood establishments in appropriately targeting QA efforts to improve product quality and reduce manufacturing problems. In addition to reviewing reports upon receipt at FDA, FDA will review all reports during routine inspections and examine all manufacturing deviations, not merely reportable deviations, to ensure that the establishment has followed all established standard operating procedures (SOP's) related to investigation, followup, and reporting of deviations. Secondly, the BPDR's will inform FDA about specific problems licensed manufacturers and unlicensed blood establishments encounter in the manufacture of biological products. FDA intends to provide this data to industry, in accordance with its responsibility to safeguard trade secrets and confidential commercial information. FDA already provides this kind of data in fiscal quarter summaries, available to the public by mail, facsimile, and Internet. Thirdly, these

reports will identify areas needing future guidance from the agency. FDA will issue such guidance in accordance with its good guidance practices (GGP's).

A BPDR alone will not be a basis for issuing a Form FDA–483. However, a documented failure to follow CGMP or other regulatory compliance problem connected to a deviation may become an observation on a Form FDA–483. For example, an investigator may include an observation under one of the following conditions: (1) The deviation reoccurs because of inadequate corrective action, (2) investigation of the deviation is inadequate, or (3) the deviation represents an underlying systemic problem in the operation. Significant CGMP deficiencies related to a BPDR may also become the subject of a Form FDA–483 observation. Of course, an investigator may include the failure to file a BPDR as an observation on a Form FDA–483.

(Comment 3) Several comments expressed concern that FDA would not have the resources to handle the reports submitted under the proposed rule.

After reviewing the comments to the proposed rule, FDA has worked actively to reduce the burden of reporting on licensed manufacturers, unlicensed blood establishments, and the agency under the final rule. FDA has refocused the final rule to require reports only for distributed products. FDA is also developing a standardized format for reporting, which will not only streamline the process for the reporter, but also allow FDA to process the reports more efficiently. FDA believes that the reporting requirement under the final rule will not present an undue burden on licensed manufacturers, unlicensed blood establishments, or the agency.

(Comment 4) Three comments asked how FDA would enforce the proposed rule.

In 1983, through a memorandum of understanding (MOU), the Healthcare Financing Administration (HCFA) and FDA coordinated all federally authorized inspections of unlicensed blood establishments in order to minimize duplication of effort and to reduce the burden on affected facilities. HCFA and FDA will use their usual enforcement tools available under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) and the PHS Act (42 U.S.C. 201 *et seq.*). The agencies will review compliance with the reporting requirements during inspections. If upon inspection of a licensed manufacturer or unlicensed blood establishment, the inspecting agency discovers the establishment is not complying with the biological product deviation reporting requirement, or the requirements for investigation and followup, the inspecting agency may take further enforcement action, as warranted.

(Comment 5) One comment questioned whether biological product deviation reports would be subject to the Freedom of Information Act (FOIA) and, accordingly, available to the media or public and whether reporting could cause disclosure of confidential information.

BPDR's would be subject to disclosure under the provisions of the FOIA and the implementing regulations in 21 CFR part 20. FDA will appropriately purge all nondisclosable information prior to the release of the reports.

(Comment 6) Seven comments requested that FDA obtain additional data and hold a public meeting before implementing a final rule. One comment suggested proceeding with a demonstration project first.

In addition to following the normal rulemaking process, FDA has discussed the rule in various public forums. FDA believes interested parties have been given ample opportunity to express their views on the proposed rule. A ''demonstration program'' is unnecessary because this is not a new program, but a revision and updating of an existing program with which most licensed manufacturers have experience. However, FDA may engage in further public discussion to provide guidance to industry concerning what constitutes a reportable deviation within the parameters of the final rule.

(Comment 7) Three comments requested that FDA develop guidance for the proposed rule.

FDA agrees that guidance to industry would be helpful. FDA has developed draft guidance regarding those events it would expect to be reported under this rule. The draft guidance recognizes that licensed manufacturers and unlicensed blood establishments may shoulder a wide range of responsibilities in manufacturing. A manufacturer of licensed biological products would be in control of the product for more steps in manufacturing than a small hospital transfusion service. Accordingly, the draft guidance describes specific guidance for each type of licensed manufacturer and unlicensed blood establishment. The notice of availability for the draft guidances specific for licensed manufacturers of products other than blood and blood components, and licensed and unlicensed blood establishments will issue in the **Federal Register** in the near future.

(Comment 8) FDA received several comments from industry that extending the reporting requirement to unlicensed entities in proposed § 606.171 imposed an unnecessary burden on these entities.

FDA indicated in proposing this regulation that one of its primary objectives was to make the biological product deviation reporting requirement applicable to all blood establishments, whether licensed manufacturers, unlicensed registered blood establishments, or transfusion services. In the proposed rule, FDA stated that reports from the full spectrum of establishments engaged in manufacturing and distribution of blood and blood components were necessary to effectively evaluate and monitor the blood industry. FDA continues to believe that a mandatory reporting requirement is necessary for all establishments involved in blood and blood product manufacturing and is establishing the biological deviation reporting requirement as part of the CGMP regulations, which these establishments must follow.

B. Scope

(Comment 9) One comment recommended FDA adopt a single mechanism for reporting all errors and accidents, adverse events, etc., for all blood products, medical devices and all drugs, and eliminate all other reporting programs, voluntary or mandatory.

FDA recognizes that the reporting programs for biological products, human drugs, and medical devices have varying requirements. What is reported, and how it is reported, are different under the different systems. These differences are intentional. For example, the adverse event reporting (AER) and medical device reporting systems focus on patient impact. The starting point for reporting, therefore, is often patient reaction to a product. In contrast, biological product deviation reporting focuses on the manufacturing process as it may affect the safety, purity, and potency of the product. FDA anticipates that information submitted in BPDR's will improve product quality and may help reduce the incidence of adverse patient outcomes without undue burden on licensed manufacturers and unlicensed blood establishments.

(Comment 10) Five comments stated that the proposed rule should apply only to blood and blood products and should not extend to biotechnology products. These comments argued that the need to revise error and accident regulations for biotechnology products is not clear because there does not exist a pattern of recalls for these products. The comments stated that the recall

guidelines in part 7 (21 CFR part 7) and the AER system (21 CFR 600.80) are adequate to ensure the safety and quality of biotechnology products.

The regulatory scheme for biotechnology products has always included recall guidelines (part 7), AER, and error and accident reporting (§ 600.14). These three programs, each designed to serve different objectives, have worked together to ensure the safety and quality of biotechnology products. Adverse experience reporting focuses on patient outcomes. Consequently, the type and specificity of the information reported as adverse experiences differs substantially from that required in biological product deviation reports. Under the recall provisions of part 7, manufacturers notify FDA when they voluntarily remove products from the marketplace that are in violation of the laws administered by FDA. The biological product deviation regulations are designed to gather information about the events that give rise to defective or potentially defective products and provide FDA with an essential tool to monitor potential risks to public health and to facilitate a response when necessary.

Section 600.14, in its current form, requires error and accident reporting by all licensed biological product manufacturers, including manufacturers of biotechnology products. This rule would not impose new requirements on such manufacturers. In fact, by limiting reporting to biological product deviations involving distributed products, the new rule would decrease the preexisting burden on such manufacturers. FDA believes the revised reporting requirement is necessary to ensure that all manufacturers understand their reporting requirements, to expedite biological product deviation reporting, and to enable FDA to monitor accurately the safety of biological products.

(Comment 11) Ten comments requested that transfusion centers not be regulated to the same extent as blood collection centers and the pharmaceutical industry under the proposed rule. Of these, five comments proposed that the reporting guidelines themselves be specific to each type of establishment. Six comments called for definitions or examples specific to transfusion service practice and two comments called for separate data collection forms.

FDA believes that in order to achieve an accurate overview of the industry, it is most useful to impose the same reporting requirement on all blood establishments, including transfusion centers. However, FDA recognizes that different regulated entities may need specific guidance on how the biological deviation reporting requirement will apply to them. FDA is issuing guidance to support the final rule that will include examples specific to blood and source plasma collection centers, pharmaceutical and biological device manufacturers, and transfusion services. FDA also developed a biological product deviation reporting form. FDA believes one form for all the entities covered under the rule will facilitate processing of the reports and will aid reporters in providing the necessary information. The agency will provide separate instructions on completing and submitting the biological product deviation reporting form.

(Comment 12) Eight comments asked how the biological product deviation reporting requirement will affect the new drug application (NDA) Field Alert Report regulations under 21 CFR 314.81(b)(1) and several comments recommended harmonizing these regulations.

The BPDR's will have little, if any affect on the NDA Field Alert regulations. The NDA Field Alert regulations are applicable only to those products that are approved for marketing under the provisions of part 314 (21 CFR part 314), and not to drug products subject to licensing under the PHS Act. FDA has harmonized a number of regulations for certain biotechnology products where products regulated as biological products subject to licensure are similar to products subject to regulation as new drugs. See § 601.2(c) (21 CFR 601.2(c)) for a list of such biotechnology products and § 314.70(g), 601.2(c)(1) and (c)(2), and 601.12 (21 CFR 601.12) for examples of harmonization.

For these biotechnology products, a total of 13 error and accident reports were submitted under § 600.14 in the fiscal year (FY) 1999. Because FDA believes this is a very small burden to industry, FDA has determined that reports for such biotechnology products should continue to be submitted consistent with the requirements for other biological products under § 600.14 of the final rule. This will allow the Center for Biologics Evaluation and Research (CBER) to keep all reports in a single data base and will facilitate the overall assessment of its biological product deviation reporting program. If the level of reporting or the needs of the agency change, FDA will reconsider whether to harmonize its reporting requirements for biotechnology products.

(Comment 13) Twenty-two comments recommended developing a tiered system of reporting based on the severity of the deviation in which serious errors or accidents would be reported and all other errors and accidents would be handled through internal QA programs.

FDA considers any biological product deviation that may affect the safety, purity, and potency of a product to be ''serious.'' However, deviations that are discovered before distribution pose less of a threat to the public health because no patient would receive the product, and because the licensed manufacturer or unlicensed blood establishment's QA procedures worked to prevent the distribution of product subject to that biological product deviation. Accordingly, FDA has established an approach to reporting biological product deviations that limits reporting to events that involve distributed products and that may affect the safety, purity, or potency of the product.

(Comment 14) Eighteen comments recommended adopting an alternative reporting system such as the medical event reporting system for transfusion medicine (MERS–TM).

MERS–TM, a voluntary reporting system, was designed as a standard method for collection and analysis of event reports for blood establishments to implement as part of their QA system. The MERS–TM is designed to capture all manufacturing errors and accidents, including those ''near miss'' events that may be discovered by the blood establishment prior to distribution of the product. While FDA believes that the MERS–TM system is useful in reporting ''near miss'' events on a voluntary basis, FDA is limiting the requirement for reporting to biological product deviations affecting distributed products.

C. Definitions

(Comment 15) Forty-five comments requested clarification of the definition of the terms ''errors and accidents'' in proposed §§ 600.3(hh) and 606.3(k). Several of these comments suggested alternative language.

FDA is clarifying the regulations by eliminating the terms ''error and accident.'' The classification of events as an ''error'' or ''accident'' is immaterial to the purposes underlying the rule and appears to have caused confusion. Consequently, FDA has revised the rule to focus the reporting requirement on events that represent a deviation from CGMP, applicable regulations, applicable standards or established specifications, or represent unexpected or unforeseeable events,

which may affect the safety, purity, or potency of a distributed product. Such events are reportable regardless of whether or not they are considered ''errors'' or ''accidents.'' In the final rule, FDA has termed such events ''biological product deviations'' and described what constitutes a biological product deviation in §§ 600.14(b) and 606.171(b).

(Comment 16) Three comments suggested that the reporting requirement in proposed §§ 600.3(hh)(1) and 606.3(k)(1) should be limited to deviations from CGMP and that extending it to ''applicable standards'' or ''established specifications'' was beyond the FDA's jurisdiction.

FDA disagrees with the suggestion that such matters are beyond FDA's jurisdiction. As set out in §§ 600.14(b) and 606.171(b), licensed manufacturers and unlicensed blood establishments must submit a BPDR only if the deviation ''may affect the safety, purity, or potency'' of a product, and if other reporting criteria are met. Events affecting the safety, purity, and potency of biological products fall squarely within FDA's jurisdiction. Moreover, the PHS Act requires FDA to consider ''standards designed to assure that the biological product continues to be safe, pure, and potent'' (42 U.S.C. 262(a)(2)(B)(i)(II)).

(Comment 17) Thirty-two comments requested clarification of the definition of ''made available for distribution'' in proposed §§ 600.3(ii) and 606.3(l). Thirty-seven comments requested that the definition be amended to limit the scope of the proposed rule to reporting of deviations which occur after a product has been distributed, and six comments asked that ''made available for distribution'' be defined by each facility based on their established process controls.

FDA agrees with the comments that suggested that the scope be limited to those products that have been distributed and has written the final rule to reflect this. FDA considers all events that may affect the safety, purity, or potency of a biological product to be significant, whether prior to or after distribution. Limiting the reporting requirement to distributed products will reduce the burden of reporting on licensed manufacturers, unlicensed blood establishments, and on FDA, while not sacrificing public safety.

Licensed manufacturers and unlicensed blood establishments remain obligated to document, investigate and followup any event that may affect the safety, purity, or potency of a biological product under CGMP regulations, whether the event is reportable under this rule or not. FDA will continue to monitor both reportable and nonreportable events and corrective actions through inspections.

(Comment 18) One comment stated the term ''made available for distribution'' in proposed §§ 600.3(ii) and 606.3(l) is ambiguous in relation to intermediates since at each intermediate state the product may be released for further processing.

FDA has clarified the final rule by limiting reporting of biological product deviations to distributed products, i.e., they have left the licensed manufacturer or unlicensed blood establishment who controlled the product at the time the deviation occurred; or the licensed manufacturer has provided Source Plasma or any other blood component for use in the manufacture of a licensed product.

D. Who Must Report?

(Comment 19) One comment asked for clarification on how FDA will apply this regulation to cooperative manufacturing arrangements, including shared and contract manufacturers.

Under § 600.14, it is the licensed manufacturer who must report biological product deviations. That is because, up until the time the product is distributed, it is the license holder who is responsible for maintaining the continued safety, purity, and potency of the biological product, for compliance with applicable product and establishment standards, and for compliance with CGMP. If the license holder arranges for another manufacturer to perform a manufacturing step, that manufacturing step is performed under the license holder's control, and the license holder must report biological product deviations that occur during that manufacturing step. In shared manufacturing situations, where two or more manufacturers operate under their own license, each manufacturer would report a biological product deviation that occurred when the product was in its control; i.e., when the first shared manufacturer completes his manufacturing step and sends the product to the second shared manufacturer for additional manufacturing, the product is considered distributed by the first shared manufacturer.

Section 606.171 applies to all blood establishments, including licensed establishments, unlicensed registered blood establishments, and transfusion services. The rule requires the blood establishment that has control over a product when a blood product deviation occurs to report to FDA. If a blood establishment contracts a manufacturing step to another facility, or enters into a shared manufacturing agreement, the establishment responsible for maintaining the continued safety, purity, and potency of the product and for compliance with applicable product and establishment standards, and for compliance with CGMP, must submit a BPDR for any deviation occurring while the biological product is under its control.

(Comment 20) One comment suggested FDA require both the blood bank or transfusion service who receives a defective product from a licensed manufacturer and the licensed manufacturer to report biological product deviations to ensure the effectiveness of the reporting process.

In the final rule, FDA has attempted to eliminate duplicate reporting by regulated entities. The licensed manufacturer or unlicensed blood establishment who had control over the product when the deviation occurred is in the best position to provide the necessary information to FDA. Therefore, under the final rule, the licensed manufacturer or unlicensed blood establishment who had control over the product when the deviation occurred is responsible for reporting. Consignees should report product deficiencies to the licensed manufacturer or unlicensed blood establishment and assist in the investigation of the product's deficiencies, if necessary.

Example 1: An unlicensed blood establishment pools 10 units of cryoprecipitate and affixed an incorrect, extended expiration date. The unlicensed blood establishment issues the pooled cryoprecipitate to a patient. The unlicensed blood establishment would be required to submit a BPDR to FDA because: (1) The product did not meet CGMP; (2) the unlicensed blood establishment had control of the product when the deviation occurred; (3) the deviation may have affected the safety, purity, and potency of the product for the patient; and (4) the product was distributed.

Example 2: An unlicensed blood establishment receives a unit of irradiated red blood cells from a licensed manufacturer and issues the product to a patient requiring irradiated red blood cells. The licensed manufacturer of the blood product subsequently notifies the unlicensed blood establishment that the unit was improperly irradiated. The licensed manufacturer, not the unlicensed blood establishment, is required to submit a BPDR to FDA because: (1) The product did not meet CGMP; (2) the deviation

occurred under the control of the licensed manufacturer; (3) the deviation may affect the safety, purity, and potency of the product; and (4) the licensed manufacturer distributed the product to the unlicensed blood establishment.

E. What Kind of Events Are Reportable?

(Comment 21) Forty-two comments stated that FDA provided insufficient information about what events must be reported in proposed §§ 600.14 and 606.171. Numerous comments also expressed concern regarding the examples of what events to report that FDA provided in the preamble to the proposed rule. Ten comments asked for information on what not to report. Seven comments asked FDA to provide specific examples of events to be reported by hospital-based transfusion services.

In response to these comments, FDA has changed the final rule to limit reportable events to those involving distributed products. As discussed in comment seven of this document, FDA developed guidance that will provide specific examples of reportable events as those events relate to the various regulated entities. FDA considered these comments in developing its guidance.

(Comment 22) Two comments asked whether the proposed rule was limited to manufacturing activities or whether it included nonmanufacturing events such as testing, storage, labeling, and recordkeeping.

FDA disagrees with the interpretation that testing, storage, labeling, and recordkeeping are not manufacturing activities. The term ''manufacture'' is defined in 21 CFR 600.3(u) as ''all steps in propagation or manufacture and preparation'' and includes, for example, filling, testing, labeling, packaging, and storage.

The final rule further states in §§ 600.14(b) and 606.171(b) that any event, and information relevant to the event, associated with manufacturing, to include testing, processing, packing, labeling, or storage, or with the holding, or distribution, must be reported if they meet the other criteria. If a recordkeeping error may have affected the safety, purity, and potency of the product and meets the other criteria in §§ 600.14(b) and 606.171(b), it is reportable under the regulations.

(Comment 23) One comment asked how a licensed manufacturer or unlicensed blood establishment would distinguish between an error and accident that would be reportable from any unexplained discrepancies or in-process or final specification investigations conducted under § 211.192 or other regulation, which would not have to be reported.

The requirements to investigate discrepancies under § 211.192 and to report product deviations under §§ 600.14 and 606.171 are not mutually exclusive. Under § 211.192, manufacturers are required to investigate any unexplained discrepancies or failure to meet in-process or final product specifications. The CGMP regulations applicable to blood establishments provide, ''A thorough investigation, including the conclusions and follow-up, of any unexplained discrepancy or the failure of a lot or unit to meet any of its specifications shall be made and recorded'' (§ 606.100(c)). If during the investigation the criteria described in §§ 600.14(b) and 606.171(b) are met, a BPDR is required.

(Comment 24) One comment asked whether the biological product deviation reporting requirement applied to validation batches submitted in support of a biologics license application (BLA), or to materials submitted under an investigative new drug application (IND).

Under §§ 600.14 and 606.171, biological product deviations related to products under an IND would not be reportable unless the product was licensed for another intended use. However, information related to the deviation may be required to be reported under the IND regulations in 21 CFR part 312. Biological product deviations related to validation batches would not be reportable unless the products were distributed after receipt of a biologics license.

(Comment 25) One comment asked if the submission of a supplement for reprocessing would preclude the submission of a BPDR.

The submission of a supplement for reprocessing would not preclude the submission of a BPDR. If a product has been distributed and a licensed manufacturer or unlicensed blood establishment determines that a biological product deviation has occurred, then the licensed manufacturer or unlicensed blood establishment must submit a BPDR whether or not it subsequently reprocesses the product. If the licensed manufacturer or unlicensed blood establishment discovers a biological product deviation before it distributes the product, and subsequently reprocesses and distributes the affected product, no BPDR would be required as long as the reprocessed product was unaffected by the original deviation.

F. What Type of Information Do Licensed Manufacturers and Unlicensed Blood Establishments Report?

(Comment 26) Two comments requested that FDA delete any reference to ''disposition of the product'' from the information that is to be reported under the rule because this information would not be available within the 45-day time requirement.

FDA believes licensed manufacturers and unlicensed blood establishments will usually know the disposition of the product within the 45-day reporting period. Licensed manufacturers and unlicensed blood establishments should know if the product was shipped to another facility, destroyed, quarantined, designated for reprocessing, disposed of in some other manner, or, in many cases, administered to a patient.

(Comment 27) Seventeen comments recommended that if the product has been subject to recall, then the recall should be the instrument for reporting the disposition of the product.

FDA disagrees. FDA believes information on the disposition of the product and retrieval efforts are important in analyzing the impact of reported deviations on the public and should be submitted in BPDR's. The information required for the BPDR is not as extensive as the recall information voluntarily provided to the district. The information regarding final disposition does not need to be complete by the time the BPDR is submitted. By obtaining as much information as possible on the disposition of a product at the time the report is submitted, FDA will be able to perform appropriate followup action. The draft guidance document will further describe the required information to be reported in the BPDR.

(Comment 28) One comment asked if FDA would require licensed manufacturers and unlicensed blood establishments to consider previous and subsequent lots in investigating any lot that instigated a BPDR.

The regulations in this final rule do not affect the manner in which a biological product deviation is investigated. The obligation to investigate a biological product deviation is part of the CGMP regulations for biological drug products and biological devices, including blood and blood components. The CGMP requirements for blood establishments, whether licensed or unlicensed, require blood establishments to thoroughly investigate discrepancies (§ 606.100(c)) and to maintain and make available to FDA appropriate records of such investigation, conclusions, and

followup (§§ 606.100(c) and 606.160(b)(7)(iii) (21 CFR 606.160(b)(7)(iii))). Licensed manufacturers subject to drug CGMP (§§ 211.192 and 211.198) and medical device manufacturers (see § 820.100) are similarly obligated to investigate, correct, and record findings related to biological product deviations. Under these existing regulations FDA expects the licensed manufacturer or unlicensed blood establishment to determine what impact the deviation may have had on other product lots and take appropriate corrective action. These regulations do not mandate the manner of investigation by a licensed manufacturer or unlicensed blood establishment but require that the investigation be complete.

G. When to Report

(Comment 29) Twenty-three comments stated that 45-calendar days to report a biological product deviation as proposed in §§ 600.14(a) and 606.171 is not enough time since licensed manufacturers and unlicensed blood establishments must analyze and correct the deviation prior to reporting. One comment suggested that fewer than 45 days to report would be better.

In adopting a 45-day time requirement, FDA looked at the history of reporting under the prior regulations and determined that 45 days was a reasonable period given the importance of timely reporting. The agency reviewed the reports submitted during FY 1997 through 1999 and an average of 73 percent of the reports was received within 45 days.

Licensed manufacturers and unlicensed blood establishments should not wait to report biological product deviations until after completing their corrective actions. Rather, licensed manufacturers and unlicensed blood establishments should submit BPDR's as soon as possible but no later than 45 days after the date that the licensed manufacturer or unlicensed blood establishment, its agent, or another person performing a manufacturing, holding, or distribution step under the manufacturer's or establishment's control, first discovers information reasonably suggesting a reportable event has occurred. The reports should include information on the intended followup to be taken if followup is not completed prior to submission of the report. To facilitate timely reporting by licensed manufacturers and unlicensed blood establishments, FDA is providing guidance on how to report as well as a standardized form for reporting.

(Comment 30) Fourteen comments requested clarification as to when the 45-day reporting time limit begins. Several of these comments offered various possible starting dates.

In response to these comments, FDA has clarified the 45-day time requirement in the final rule. The 45 days commence on ''the date (the licensed manufacturer or unlicensed blood establishment, its agent, or another person who performs a manufacturing, holding, or distribution step under the control of the licensed manufacturer or unlicensed establishment) acquire(s) information reasonably suggesting that a reportable event has occurred.'' For example, if a manufacturer contracted with a third party to receive and process its customer complaints, that third party would be the manufacturer's agent for purposes of this rule, and the 45 days would begin to run upon the agent's receipt of information reasonably suggesting a reportable event has occurred.

(Comment 31) Four comments recommended adopting a hierarchy for when to report based on the potential risk of the deviation. For example, one comment suggested errors with substantial risk be reported within 45 days, errors with moderate risk be reported when the internal investigation is complete and errors with minimal risk be reported in an annual report.

FDA has adopted a simpler approach based on the potential public health risk of the event. Biological product deviations involving distributed products must be reported within 45 days. Biological product deviations that are discovered before the product leaves the control of the licensed manufacturer or unlicensed blood establishments are nonreportable, but reviewable during routine inspections, because such events present significantly less public health risk.

H. How to Report

(Comment 32) Forty-seven comments requested a standardized format for reporting biological product deviations and several of these submitted a proposed form. Fourteen comments requested one form for hospital-based transfusion centers and a separate form for blood collection centers and pharmaceutical manufacturers. Seventeen comments requested FDA to develop means for electronic reporting. One comment suggested FDA supply forms to blood suppliers.

FDA recognizes the need for a standardized method for reporting biological product deviations. FDA has developed a form for licensed manufacturers and unlicensed blood establishments to use to report under the final rule and is issuing guidance including instructions for completing the biological product deviation reporting form. FDA also has developed an electronic format for reporting. The agency has taken into consideration the comments and sample forms submitted in devising the biological product deviation reporting form. The agency also is requesting comments to the docket from the public on the report form and the instructions for preparing the report in accordance with the Paperwork Reduction Act of 1995. The agency is making the form available in various ways, including the FDA website at http://www.fda.gov/cber and the CBER FAX information system at 1–888–CBER–FAX.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104094). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze whether a rule may have a significant impact on a substantial number of small entities and, if it does, to analyze regulatory options that would minimize the impact. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year.

The agency has determined that the final rule is a significant action as defined in section 3, paragraph (f)(4) of Executive Order 12866. We have also determined that this rule will not result in aggregate expenditures for State, local, and tribal governments, or the private sector of $100 million in any one year. Based on FDA's analysis using available data, the agency does not anticipate that the rule will result in a significant impact on a substantial number of small entities.

A. Estimated Economic Impact

The rule will have an impact on licensed manufacturers and unlicensed blood establishments as described in table 1 of this document. All of these types of establishments will experience both a one-time cost impact to make changes to their recordkeeping systems and reporting procedures, as well as an annual cost impact associated with the ongoing reporting of product deviations that are encountered. Table 1 below summarizes these two components of cost impact. The rule is estimated to have an aggregate one-time cost impact of $8,131,648 and an annual cost impact of $340,319. These estimates are detailed in the discussion that follows.

TABLE 1.—SUMMARY OF ESTIMATED COST IMPACT OF THE RULE

Industry Affected	Total One-Time Cost	Total Annual Cost
Licensed Manufacturers (Other than Blood and Blood Components)		
111 Manufacturers of biologics	$348,096	($1,803)[1]
Subtotal for manufacturers of biologics	$348,096	($1,803)[1]
Blood Establishments		
Licensed blood establishments	$727,552	($286,395)[1]
2,800 Registered blood establishment	$4,390,400	$95,397
3,400 Transfusion services	$2,665,600	$533,120
Subtotal for blood establishments	$7,783,552	$342,122
Total Cost Impact	$8,131,648	$340,319

[1]Use of parenthesis indicates savings.

Based on the agency's registration data base, there are an estimated 111 licensed biologics manufacturers, 232 licensed blood establishments, and 2,800 unlicensed registered blood establishments. Based on data from the HCFA, there are estimated to be 3,400 transfusion services currently in operation. Such manufacturers and establishments currently conduct some QA activities. The impact of the final rule reflects the change in these ongoing activities that would be required by the rule.

B. One-Time Costs for Affected Establishments

Licensed biologics manufacturers must comply with part 211 or part 820; and licensed and unlicensed blood establishments must comply with parts 211 and 606 (21 CFR part 606), which encompasses a variety of QA activities embodied in CGMP's, to include investigating problems, performing followup, and recordkeeping.

The proposed rule stated that FDA had no precise estimates of the one-time cost for preparation and/or revision of the SOP, staff training, and time spent making the report. The agency expected that such activities would require an average of 2 hours to create an SOP for submitting error and accident reports, and approximately 1 hour to review and update existing SOP's at the establishments that have been reporting. The majority of the comments from industry stated that the estimates were underestimated. However, only a couple of comments, based on their experience, suggested a range of timeframes from 20 hours to a few days to develop and implement a new SOP. FDA has reassessed the time for staff review of the requirements of the rule, establishing or making adjustments to current systems and procedures, and for staff training. These estimates are discussed below.

Licensed biologics manufacturers currently have recordkeeping systems and QA systems in place. These establishments are estimated to incur a one-time cost for staff review of the requirements of the rule, and accompanying modifications to current systems and procedures, and for staff training in the use of modified procedures. FDA estimates that these activities may require a total of 80 hours of staff time. Using an estimated hourly wage rate of $39.20,[1] the total one-time cost for these manufacturers is estimated to be $348,096 ($39.20 × 80 × 111).

For blood establishments, the changes made in response to the rule are expected to vary according to whether the establishment is currently licensed. The 232 licensed blood establishments are currently required to report the product deviations under § 606.14. These facilities are likely to have systems in place for keeping record of product deviations, and will not be expected to have to establish a new reporting system. However, the licensed blood establishments are also likely to handle the majority of product deviation reports, because these facilities account for an estimated 90 percent of the total volume of U.S. blood collections. The licensed blood establishments will need to allocate staff time for a one-time review of the rule and some modifications to their current recordkeeping system and reporting procedures. In addition, these facilities will allocate a few hours of training time to review the reporting changes with staff who will be involved in the reporting of product deviations to FDA. FDA estimates that these activities may require a total of 80 hours of staff time. Using an estimated hourly wage rate of $39.20, the total one-time cost for these manufacturers is estimated to be $727,552 ($39.20 x 80 x 232).

The 2,800 registered blood establishments that are not licensed are estimated to account for about 10 percent of total U.S. blood collections, and currently perform product deviation reporting on a voluntary but less consistent basis. It is anticipated that the registered blood establishments will allocate staff time to establish a recordkeeping system for reportable product deviations involving products. In addition, the registered blood establishments will allocate staff time to modify current SOP's to comply with the biological product deviation reporting required by the rule, and to review the SOP changes with the staff who will be involved in reporting these deviations to FDA. FDA estimates that these activities will require an average of 40 hours of staff time per facility. Using an estimated hourly wage rate of $39.20, the total one-time cost for these establishments is estimated to be $4,390,400 ($39.20 x 40 x 2,800).

[1]This estimated wage rate is based on the rate of $37.98 used in the proposed rule published in 1997, inflation-adjusted to 1999.

Transfusion services currently perform a variety of QA activities, but report product deviations to FDA on a voluntary and very limited basis. Transfusion services currently must comply with 42 CFR 493.1273(a). This regulation requires transfusion services to comply with parts 606 and 640 (21 CFR part 640) provisions, which includes keeping records of errors and accidents, transfusion reaction reports and complaints, with a record of investigation and followup. These establishments are expected to allocate staff time to review the requirements of the rule, modify current SOP's to comply with the biological product deviation reporting requirements, and train appropriate staff in using the modified procedures. This one-time effort is estimated to involve approximately 20 hours of staff time per facility, yielding an estimated cost of $2,665,600 ($39.20 x 20 x 3,400) for transfusion services. Based on the estimates for licensed and unlicensed blood establishments, the total one-time cost for blood and blood component manufacturers is $7,783,552 ($727,552 + $4,390,400 + $2,665,600).

C. Annual Costs for Affected Establishments

In addition to the cost of establishing modified systems and procedures, unlicensed blood establishments will experience some annual costs associated with ongoing reporting of product deviations that fit the criteria specified in the rule. Those costs are estimated below.

Licensed manufacturers and unlicensed blood establishments will be required to report to FDA product deviations when: (1) The event is associated with the manufacturing, to include testing, processing, packing, labeling, and storage, or with the holding or distribution of a licensed biological product, or a licensed or unlicensed blood or blood component; (2) the deviation occurs in the licensed manufacturer or unlicensed blood establishment's facility or in another facility while the product remains in the control of the licensed manufacturer or unlicensed blood establishment; (3) the deviation may affect the safety, purity, or potency of that product, and either represents a deviation from CGMP, applicable regulations, applicable standards, or established specifications; or represents an unexpected or unforeseeable event; and (4) the deviation involves a distributed product.

When a manufacturer becomes aware of a reportable product deviation, the manufacturer investigates the deviation, records the deviation, and performs followup. FDA estimates that the establishment will allocate an additional 2 hours of staff time to prepare and submit a report to FDA. In the comments on the proposed rule, FDA received one comment that suggested the agency's estimate of 30 minutes to file a report was reasonable for the filing task itself, but would not cover the time needed to prepare the report. Other comments stated that their establishments average 4, 6, or 8 hours to prepare a report, but some comments also explained that these hours included investigations, followup, and SOP revision. FDA agrees that 30 minutes would not reflect the anticipated time for preparing, in addition to filing, the report. The reporting to FDA required in this rule does not introduce additional requirements for recordkeeping, investigation, and followup of manufacturing problems and deviations beyond what is required under CGMP requirements. Therefore, the estimated time for complying with this final rule does not include recordkeeping, investigation, and followup of a biological product deviation.

Licensed manufacturers already report a broad range of product deviations to FDA. This range includes all deviations in products made available for distribution, and has not previously been limited to those products actually distributed. Under the existing regulation, a total of 93 biologics manufacturing deviations were reported to FDA in 1999. Since the new rule limits the criteria for reporting, FDA estimates that reporting will be 25 percent reduced, yielding an estimated total of 70 reports (93 x (1090.25)) rather than the current 93 reports. Based on the estimate of 2 hours to complete and file a report, FDA estimates a total savings of $1,803 ((93–70) × 2 × $39.20).

Under the current rule, a total of 14,611 blood and blood component errors and accidents were reported by licensed blood establishments to FDA in FY 1999. These facilities are also estimated to account for approximately 90 percent of all blood and plasma collections, totaling approximately 26 million units, or 23,400,000 (0.90 x 26,000,000) units processed by licensed blood establishments. The current rate of reporting per unit of blood collected and processed is thus 6.24 ((14,611/23,400,000) x 10,000) per 10,000 units. Under the final rule, FDA estimates that reporting for these facilities will be reduced by 25 percent, reducing the total reports to 10,958 ((1090.25) x 14,611) or a rate of 4.68 (10,958/23,400,000 x 10,000) per 10,000 units of collection. This translates to a projected savings of $286,395 ((14,611–10,958) × 2 × $39.20)).

Assuming a deviation reporting rate of 4.68 per 10,000 units for those unlicensed registered blood establishments that account for approximately 10 percent of the total blood collections of 26 million units, the agency estimates that unlicensed registered blood establishments will incur new annual costs of $95,397 (0.10 x 26,000,000 x (4.68/10,000) x 2 x $39.20) to make an estimated 1,217 reports. This translates to an increased annual cost of approximately $34.07 ($95,397/2,800) per unlicensed registered blood establishment.

Transfusion services will be newly required to report product deviations that meet the criteria specified in the rule. The annual cost to transfusion services for this reporting requirement is based on the voluntary annual reporting rate of transfusion services for FY 99, i.e., two reports per transfusion service. This reporting rate is supported by the estimate of BPDR's per hospital per year by bedsize calculated in table 2 of this document. The reporting by the transfusion service is estimated to involve approximately 2 hours of staff time at the transfusion facility. As noted earlier, this rule does not require new investigations of such reports. Records of investigations and followup to address problems with the manufacturing process are already required as part of the CGMP for blood and blood components. FDA therefore estimates the total cost of annual reporting by transfusion services to be $533,120 (3,400 x 2 x 2 x $39.20). This translates to an increased annual cost of approximately $156.80 per transfusion service.

In summary, the annual cost impact of the rule is estimated to be $342,122 (($95,397 + $533,120)—$286,395) for licensed and unlicensed blood establishments, and a net savings of $1,803 for licensed manufacturers of biological products other than blood and blood components.

D. Impact on Small Entities

The agency does not anticipate that the final rule will have a significant impact on a substantial number of small business establishments. However, because of the limits of available data, the agency is uncertain about the number of small entities affected and the actual extent of current product deviations at these facilities that would trigger reporting and determine the cost impact. Since the agency received no comments supported by data regarding the estimated impact on small entities in the proposed rule, the following

analysis is based on the limited data available.

The licensed manufacturers and unlicensed blood establishments affected by the final rule are included under the major Standard Industrial Code (SIC) group 80 for providers of health services. According to section 601 of the Regulatory Flexibility Act of 1980, the term ''small entity'' encompasses the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' According to the Small Business Administration (SBA), a small business within the blood industry is an enterprise with less than $5 million in annual receipts. A small organization is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field. A ''small governmental jurisdiction'' generally means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Because the rule would reduce reporting requirements for currently licensed facilities, FDA has focused the following small business analysis on those blood collection facilities and transfusion services that will be newly required to report these product deviations, and are therefore expected to incur new costs.

E. Impact on Small Blood and Blood Component Manufacturers

The FDA registry of blood establishments does not provide an indication of the size of the registered entities. Although uncertain, it is likely that some smaller facilities may experience significant costs as a result of compliance with the final rule. According to the 1996 directory of the American Association of Blood Banks (AABB), only 34 regional and community blood centers have annual revenues of less than $5 million and each collect no more than 30,000 donations per year. With an estimated rate of 4.68 product deviation reports per 10,000 units collected [see annual cost estimates in section IV.C of this document], this would imply an estimated 14 product deviation reports (4.68 x 3) per smaller blood center per year, and associated cost of $1,098 ($39.20 x 2 x 14 reports). The one-time cost for these facilities is expected to be similar to the unlicensed registered blood establishments estimate involving 40 hours of staff time, thus $1,568 ($39.20 x 40) per facility.

F. Impact on Small Transfusion Service Facilities

Hospital transfusion services are expected to be the primary entity affected by the requirements, but the extent of the small business impact is uncertain. Although the details of manufacturing activities at transfusion services are not available, FDA examined other data to develop a preliminary assessment of small business impact. The size of U.S. hospitals varies substantially. The 1998 American Hospital Association (AHA) survey data indicate a total of 5,134 U.S. registered community hospitals grouped into 8-bedsize categories. The average annual revenues for facilities in these bedsize categories range from approximately $5.5 million to $513 million. However, since many hospitals are not-for-profit or are operated by State and local governments, the SBA annual receipt criteria for small businesses would not apply to these facilities. Of the 5,134 U.S. community hospitals included in the AHA report 1,330 are under the control of State and local government, 3,045 are nonprofit institutions and the remaining 759 are reported to be investor-owned.

The number of hospitals that would meet at least one of the various SBA definitions for small entities is uncertain. According to the AHA statistics for 1998, the smallest reported hospital size category includes 262 hospitals with 6 to 24 beds, and total gross revenues of $1.43 billion, yielding average revenues of $5.46 million. FDA assumes that the 11 facilities reported to be investor-owned within this bedsize category could qualify as small entities. Although it is possible that all nonprofit hospitals may qualify as small entities, it appears that a number of facilities might be excluded from that definition because they are reported to be hospitals in a system. According to the AHA survey definition, ''hospitals in a system'' refer to those ''hospitals belonging to a corporate body that owns and/or manages health provider facilities or health-related subsidiaries; the system may also own non-health-related facilities.'' The AHA currently has record of 1,592 hospitals that are nonfederal and nonprofit (including State and local government controlled) that are hospitals in a system. If these facilities were excluded, FDA estimates that 2,783 [1,330 State & local + 3,045 nonprofit—1,592 in-a-system] nonfederal, nonprofit hospitals may qualify as small entities. Thus, a total of 2,794 [2,783 + 11] hospitals might qualify as small entities.

The following analysis of potential impact by size of hospital suggests that, regardless of hospital size, the cost impact of product deviation reporting will be limited if the number of deviation reports per facility is proportionate to the utilization of blood transfusions implied by relative number of inpatient surgeries performed by hospitals in different size categories. Table 2 of this document estimates the percentage of all inpatient hospital surgeries, based on the number of inpatient surgeries reported to AHA as performed by hospitals in different bedsize categories. This percentage is used to estimate a share of the total reports that would be made by hospitals in each category. The estimated number of product deviation reports per hospital within a bedsize category is based on the total projected number of reports and the percentage of inpatient surgeries reported for hospitals within each size category.

TABLE 2.—ESTIMATES OF BPDR'S PER HOSPITAL PER YEAR BY BEDSIZE CATEGORY

Bedsize Category	Nonfederal Hospitals	Estimated Percent Inpatient Surgeries	Estimated Share of 1,217 Product Deviation Reports	Estimated Reports per Hospital[1]
6 to 24	262	0.21	2.6	0
25 to 49	906	2.02	24.6	0
150 to 99	1,128	6.03	73.3	0
100 to 199	1,338	19.38	235.9	0
200 to 299	692	20.99	255.4	0
300 to 399	361	16.24	197.6	1
400 to 499	196	12.17	148.1	1
500 +	251	22.97	279.5	1

[1]Rounded to the nearest whole number.

The cost impact of product deviation reporting is based on the table 2 estimates of reports per hospital and the earlier estimate of one-time cost of $784 (20 hours x $39.20) per hospital to modify systems and SOP's for recordkeeping and reporting. Based on the low expected volume of reports per hospital, the agency found that the estimated annual reporting cost, as a percentage of average annual facility revenues, approached zero for hospitals in every bedsize category. This suggests that the relative cost impact may be quite limited, across hospitals of different sizes, if the number of BPDR's required per hospital is proportionate to the number of inpatient surgeries performed by hospitals in different size categories.

G. Expected Benefits of the Rule

As described in the preamble, the benefits of the rule relate to the safety of biological products and protection of the public health. The final rule focuses on the subset of risk events in which the product is actually distributed and the cause of the problem is related to steps in the manufacturing process, that may affect the safety, purity, and potency of the product. FDA needs to receive timely reports of such events in order to quickly address problems, and provide updated industry guidance to assure continued product safety and good manufacturing practice. The requirements provide FDA with the ability to detect broader risks that extend beyond the reach of a single manufacturer or hospital's QA systems and staff resources.

In addition to these public health benefits, the final rule benefits licensed manufacturers in terms of a reduced level of reporting and streamlining the reporting process by providing a standardized report form that may be submitted electronically. Reporting requirements are now focused more narrowly on product deviations that represent more immediate risks.

V. The Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Biological Products: Reporting of Biological Product Deviations in Manufacturing.

Description: FDA is amending the current regulations that require licensed manufacturers of biological products to report to FDA errors and accidents in manufacturing; and adding regulations requiring unlicensed blood establishments to report certain biological product deviations in the manufacture of blood and blood components. Under this final rule, a licensed manufacturer or unlicensed blood establishment must submit a report to FDA based on the following criteria: (1) The event is associated with the manufacturing, to include testing, processing, packing, labeling, and storage, or with the holding or distribution, of a licensed biological product, or a licensed or unlicensed blood or blood component; (2) the deviation occurs in the licensed manufacturer or unlicensed blood establishment's facility or in another facility while the product remains in the control of the licensed manufacturer or unlicensed blood establishment; (3) the deviation may affect the safety, purity, or potency of that product and either represents deviation from CGMP, applicable regulations, applicable standards, or established specifications; or represents an unexpected or unforeseeable event; and (4) the deviation involves a distributed product. The agency is requiring a 45-calendar day reporting timeframe and is making available to industry a standardized format for reporting biological deviations in manufacturing that may be submitted either by hard copy or electronically.

Authority is given to the agency to issue regulations for the efficient enforcement of the act under section 701 of the act (21 U.S.C. 371) and to inspect all establishments responsible for manufacturing biological products (section 704 of the act (21 U.S.C. 374) and 42 U.S.C. 262). FDA regards biological product deviation reporting to be an essential tool in its directive to protect public health by establishing and maintaining surveillance programs that provide timely and useful information.

Description of Respondents: Licensed manufacturers of biological products, unlicensed registered blood establishments, and transfusion services.

As required by section 3506(c)(2)(B) of the PRA, FDA provided an opportunity for public comment on the information collection requirements of the proposed rule (62 FR 49642). Nine letters of comment on the information collection requirements were submitted to OMB. Most of the comments submitted to OMB were the same as those submitted directly to FDA in response to the proposed rule. FDA's responses to these comments are found in section III of this document. Responses to additional comments in the letters received by OMB that were not addressed in section III of this document are addressed in the following paragraphs.

(Comment 33) One comment to OMB and 24 comments submitted to the docket state that the estimated time of 0.5 hours to complete a deviation report is underestimated. Several of these comments further state that their establishments currently average about 4 to 6, or 6 to 8 hours for preparing a deviation report under § 600.14. One comment states that ''[A] single investigation in our institution may take four hours per incident as we thoroughly investigate, report, change SOP's or processes if indicated, and follow-up to ensure that changes were implemented and work as intended.''

FDA agrees that the burden is underestimated and is adjusting the ''hours per response'' estimate in table 3 from 0.5 hours to 2 hours based on: (1) Information from industry representatives about typical reporting procedures, (2) the issuance of guidance that will assist industry in identifying reportable events, and (3) the availability of a standardized report form. The standardized report form, and the ability to submit a report electronically, should streamline the process and improve the quality of time. Activities such as investigating, changing SOP's or processes, and followup are currently required under parts 211, 606, and 820 and, therefore, are not included in the burden calculation for the separate requirement of submitting to FDA a deviation report.

(Comment 34) Two comments state that in determining the estimated time for completing and submitting a deviation report, FDA may not have met its statutory obligations under the PRA because it used anecdotal evidence, that is not representative of current practices.

When FDA seeks information from industry to estimate burden for a proposed rule, the agency ordinarily contacts fewer than 10 representatives. If FDA requested information from 10 or more industry representatives, the agency would be required to prepare a separate burden analysis and seek OMB approval before it could ask for such information. Although less than 10

persons usually do not represent the majority of the industry, the comment period for the proposed rule provides the opportunity for all interested persons to comment on the estimated burden. For this final rule, FDA considered all of the comments received regarding the estimated burden numbers and, in response, adjusted the estimates.

(Comment 35) Another comment states that the added hourly burden of generating these reports may compromise the ability of hospitals to provide optimal technical support for blood transfusion activities.

The requirement for reporting has not changed for licensed manufacturers. Licensed manufacturers are currently required to report errors and accidents under § 600.14, and the agency recommended reporting of errors and accidents by unlicensed blood establishments in a memorandum to registered blood establishments dated March 20, 1991. Unlicensed registered blood establishments and transfusion services are required under 42 CFR 493.1273(a) to comply with CGMP regulations set forth at parts 606 and 640, and specifically with § 606.100(c) for the investigation and followup of any unexplained discrepancy or the failure of a lot or unit to meet any of its specifications, and with § 606.160(b)(7)(iii) for recordkeeping requirements for errors and accidents. The only additional requirement under this final rule is that the unlicensed registered blood establishment or transfusion service submit a report based on this recordkeeping of deviations. FDA estimates that preparing and submitting one report would involve only 2 hours, and that only two reports would be submitted per year by an unlicensed registered blood establishment or transfusion service. The estimated total burden per year is only 4 hours per establishment. Therefore, FDA concludes that the final rule should not affect a hospital's ability to provide optimal technical support for blood transfusion activities.

(Comment 36) One comment notes that the paper-based reporting system that is now being used by FDA does not provide a format from which reported information can be entered into a usable data base without a great deal of difficulty and expense.

FDA agrees with the comment and has prepared a standardized form for reporting deviations in manufacturing a biological product (BPDR, Form FDA–3486) that may be downloaded from CBER's website or received by facsimile. After completion, the form is sent to the identified address in § 600.14(e). In an effort to expedite and simplify reporting, FDA also is providing to industry the opportunity to complete and submit a Form FDA–3486 electronically. The establishment may insert the requested information into the appropriate fields online and submit the report through the Internet.

(Comment 37) One comment notes that FDA estimates that there are no capital costs or operation and maintenance costs associated with the proposed rule. The comment noted that these terms are undefined.

The agency considers capital costs or operation and maintenance costs to be costs other than those needed for usual and customary business practice. FDA believes there are no capital costs or operation and maintenance costs associated with the maintenance of files and records because respondents should have the facilities and the infrastructure for recordkeeping and retention as part of their usual and customary practice. The final rule provides for the use of a standardized reporting form, which will be available for convenience on CBER's website. For those establishments that do not have access to the Internet, the form may also be accessed and submitted by facsimile or mail. Therefore, the purchase of computer equipment and Internet access would not be necessary in order to comply with this rule.

A. Estimated Annual Reporting Burden

The 54,208 total hours estimated in table 3 of this document are based on information from FDA's data bases and CBER's annual summary on error and accident reporting for FY 1999. In calculating the reporting burden for the revised § 600.14 in this final rule, FDA found that approximately 111 licensed manufacturers of biological products other than blood and blood components submitted 93 error and accident reports in FY 1999 under the current § 600.14. In calculating the reporting burden for § 606.171 under this final rule, FDA found that approximately 232 licensed manufacturers of blood and blood components, including Source Plasma, submitted 14,611 error and accident reports.

In calculating the burden for unlicensed registered blood establishments and transfusion services under the new § 606.171, FDA found that 48 establishments of the estimated 2,800 unlicensed registered blood establishments voluntarily submitted 94 error and accident reports; and 15 of the estimated 3,400 transfusion services voluntarily submitted 28 error and accident reports. Based on this voluntary reporting rate, each of the 6,200 unlicensed blood establishment is expected to submit no more than 2 reports annually, totaling 12,400 reports annually.

Licensed manufacturers of blood and blood components collect 90 percent of the nation's blood supply. Accordingly, the estimated total number of reports submitted annually by each licensed blood establishment is greater than the total number of reports submitted by each unlicensed blood establishment.

In the proposed rule, the agency estimated that industry would expend 58,393.5 hours to submit approximately 116,787 total annual responses. In the final rule, FDA estimates that it will take 54,208 hours to submit 27,104 total annual responses. The decrease in total reports submitted annually is due to the more narrow scope in the final rule, which requires BPDR's only for distributed products.

B. Estimated One-Time Burden for Implementation of Rule

FDA has estimated a total of 207,440 hours as a one-time burden for performing the following activities: Staff review of the requirements of the rule, establishing or making adjustments to current systems and SOP's, and staff training. As previously discussed in section IV.B of this document, the estimated one-time burden to perform these activities would be 80 hours for each licensed manufacturer of biological products and licensed manufacturer of blood and blood components, 40 hours for each unlicensed registered blood establishment, and 20 hours for each transfusion service.

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
600.14[2]	111	0.8	93	2	186

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
606.171[3]	232	62.9	14,611	2	29,222
606.171[4]	6,200	2	12,400	2	24,800
Total	6,543		27,104		54,208
One-Time Burden[5]					
Licensed manufacturers[2]	111	1	111	80	8,880
Licensed manufacturers[3]	232	1	232	80	18,560
Unlicensed registered blood establishments	2,800	1	2,800	40	112,000
Transfusion services	3,400	1	3,400	20	68,000
Total					207,440

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]Licensed manufacturers of biological products other than blood and blood components
[3]1ALicensed manufacturers of blood and blood components, including Source Plasma
[4]Unlicensed registered blood establishments and transfusion services
[5]One-time burden activities: Staff review of the requirements of the rule, establishing or making adjustments to current systems and SOP's, and staff training

The information collection requirements of the final rule have been submitted to OMB for review. Prior to the effective date of the final rule, FDA will publish a document in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection requirements in the final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 600 and 606 are amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

2. Amend § 600.3 by adding paragraphs (hh) and (ii) to read as follows:

§ 600.3 Definitions.

* * * * *

(hh) *Distributed* means the biological product has left the control of the licensed manufacturer.

(ii) *Control* means having responsibility for maintaining the continued safety, purity, and potency of the product and for compliance with applicable product and establishment standards, and for compliance with current good manufacturing practices.

3. Revise § 600.14 to read as follows:

§ 600.14 Reporting of biological product deviations by licensed manufacturers.

(a) *Who must report under this section*? (1) You, the manufacturer who holds the biological product license and who had control over the product when the deviation occurred, must report under this section. If you arrange for another person to perform a manufacturing, holding, or distribution step, while the product is in your control, that step is performed under your control. You must establish, maintain, and follow a procedure for receiving information from that person on all deviations, complaints, and adverse events concerning the affected product.

(2) Exceptions:

(i) Persons who manufacture only in vitro diagnostic products that are not subject to licensing under section 351 of the Public Health Service Act do not report biological product deviations for those products under this section but must report in accordance with part 803 of this chapter;

(ii) Persons who manufacture blood and blood components, including licensed manufacturers, unlicensed registered blood establishments, and transfusion services, do not report biological product deviations for those products under this section but must report under § 606.171 of this chapter;

(iii) Persons who manufacture Source Plasma or any other blood component and use that Source Plasma or any other blood component in the further manufacture of another licensed biological product must report:

(A) Under § 606.171 of this chapter, if a biological product deviation occurs during the manufacture of that Source Plasma or any other blood component; or

(B) Under this section, if a biological product deviation occurs after the manufacture of that Source Plasma or

any other blood component, and during manufacture of the licensed biological product.

(b) *What do I report under this section*? You must report any event, and information relevant to the event, associated with the manufacturing, to include testing, processing, packing, labeling, or storage, or with the holding or distribution, of a licensed biological product, if that event meets all the following criteria:

(1) Either:

(i) Represents a deviation from current good manufacturing practice, applicable regulations, applicable standards, or established specifications that may affect the safety, purity, or potency of that product; or

(ii) Represents an unexpected or unforeseeable event that may affect the safety, purity, or potency of that product; and

(2) Occurs in your facility or another facility under contract with you; and

(3) Involves a distributed biological product.

(c) *When do I report under this section*? You should report a biological product deviation as soon as possible but you must report at a date not to exceed 45-calendar days from the date you, your agent, or another person who performs a manufacturing, holding, or distribution step under your control, acquire information reasonably suggesting that a reportable event has occurred.

(d) *How do I report under this section*? You must report on Form FDA–3486.

(e) *Where do I report under this section*? You must send the completed Form FDA–3486 to the Director, Office of Compliance and Biologics Quality (HFM–600), Center for Biologics Evaluation and Research, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, by either a paper or an electronic filing:

(1) If you make a paper filing, you should identify on the envelope that a BPDR (biological product deviation report) is enclosed; or

(2) If you make an electronic filing, you may submit the completed Form FDA–3486 electronically through CBER's website at www.fda.gov/cber.

(f) *How does this regulation affect other FDA regulations*? This part supplements and does not supersede other provisions of the regulations in this chapter. All biological product deviations, whether or not they are required to be reported under this section, should be investigated in accordance with the applicable provisions of parts 211 and 820 of this chapter.

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

4. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

5. Amend § 606.3 by adding paragraphs (k) and (l) to read as follows:

§ 606.3 Definitions.

* * * * *

(k) *Distributed* means:

(1) The blood or blood components have left the control of the licensed manufacturer, unlicensed registered blood establishment, or transfusion service; or

(2) The licensed manufacturer has provided Source Plasma or any other blood component for use in the manufacture of a licensed biological product.

(l) *Control* means having responsibility for maintaining the continued safety, purity, and potency of the product and for compliance with applicable product and establishment standards, and for compliance with current good manufacturing practices.

6. Amend § 606.160 by revising paragraph (b)(7)(iii) to read as follows:

§ 606.160 Records.

* * * * *

(b) * * *

(7) * * *

(iii) Biological product deviations.

* * * * *

7. Add § 606.171 to subpart I to read as follows:

§ 606.171 Reporting of product deviations by licensed manufacturers, unlicensed registered blood establishments, and transfusion services.

(a) *Who must report under this section*? You, a licensed manufacturer of blood and blood components, including Source Plasma; an unlicensed registered blood establishment; or a transfusion service who had control over the product when the deviation occurred, must report under this section. If you arrange for another person to perform a manufacturing, holding, or distribution step, while the product is in your control, that step is performed under your control. You must establish, maintain, and follow a procedure for receiving information from that person on all deviations, complaints, and adverse events concerning the affected product.

(b) *What do I report under this section*? You must report any event, and information relevant to the event, associated with the manufacturing, to include testing, processing, packing, labeling, or storage, or with the holding or distribution, of both licensed and unlicensed blood or blood components, including Source Plasma, if that event meets all the following criteria:

(1) Either:

(i) Represents a deviation from current good manufacturing practice, applicable regulations, applicable standards, or established specifications that may affect the safety, purity, or potency of that product; or

(ii) Represents an unexpected or unforeseeable event that may affect the safety, purity, or potency of that product; and

(2) Occurs in your facility or another facility under contract with you; and

(3) Involves distributed blood or blood components.

(c) *When do I report under this section*? You should report a biological product deviation as soon as possible but you must report at a date not to exceed 45-calendar days from the date you, your agent, or another person who performs a manufacturing, holding, or distribution step under your control, acquire information reasonably suggesting that a reportable event has occurred.

(d) *How do I report under this section*? You must report on Form FDA–3486.

(e) *Where do I report under this section*? You must send the completed Form FDA–3486 to the Director, Office of Compliance and Biologics Quality (HFM–600), 1401 Rockville Pike, suite 200N, Rockville MD, 20852–1448 by either a paper or electronic filing:

(1) If you make a paper filing, you should identify on the envelope that a BPDR (biological product deviation report) is enclosed; or

(2) If you make an electronic filing, you may submit the completed Form FDA–3486 electronically through CBER's website at www.fda.gov/cber.

(f) *How does this regulation affect other FDA regulations*? This part supplements and does not supersede other provisions of the regulations in this chapter. All biological product deviations, whether or not they are required to be reported under this section, should be investigated in accordance with the applicable provisions of parts 211, 606, and 820 of this chapter.

Dated: June 8, 2000.

Margaret M. Dotzel

Associate Commissioner for Policy

[FR Doc. 00–28133 Filed 11–3–00; 8:45 am]

BILLING CODE 4160–00–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 808 and 820

[Docket No. 00N–1561]

Exemption From Federal Preemption of State and Local Cigarette and Smokeless Tobacco Requirements; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking its regulation governing the exemption from Federal preemption of State and local medical device requirements for the sale and distribution of cigarettes and smokeless tobacco to children and adolescents. This action is being taken in response to the Supreme Court Decision of March 21, 2000, in which the court held that Congress has not given FDA the authority to regulate tobacco products as customarily marketed. On March 31, 2000, FDA removed its regulations restricting the sale and distribution of cigarettes and smokeless tobacco to children and adolescents. Because these regulations are not in effect, the State requirements are not preempted. Therefore, FDA is revoking its regulations exempting the State and local requirements from preemption. This rule is also adding a regulation that was inadvertently removed in a previous document.

DATES: This rule is effective November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Rosa M. Gilmore, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2970.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1996 (61 FR 44398), FDA issued a final regulation restricting the sale and distribution of cigarettes and smokeless tobacco to children and adolescents. In the **Federal Register** of November 28, 1997 (62 FR 63271), FDA issued a final rule granting exemption from preemption under section 521 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k) for certain cigarette and smokeless tobacco requirements in Alabama, Alaska, and Utah. These requirements were preempted under section 521 of the act because they were different from FDA's requirements but they could be exempted because they were more stringent than FDA's requirements.

On March 21, 2000, in *Food and Drug Administration* vs. *Brown & Williamson Tobacco Corp.*, et al., the Supreme Court ruled that Congress has not granted FDA jurisdiction to regulate tobacco products as customarily marketed. In accordance with this ruling, the agency issued a final rule in the **Federal Register** of March 31, 2000 (65 FR 17135), removing its regulations restricting the sale and distribution of cigarettes and smokeless tobacco to children and adolescents. The agency inadvertently failed to remove the regulations granting exemptions from Federal preemption for these three States. Because the FDA regulations are not in effect, the State requirements are not preempted and may remain in effect. The agency also inadvertently removed § 820.1(e) (21 CFR 820.1(e)) (65 FR 17135). Section 820.1(e) did not relate to tobacco. Therefore, it is being added in this rule.

List of Subjects

21 CFR Part 808

Intergovernmental relations, Medical devices.

21 CFR Part 820

Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 808 and 820 are amended as follows:

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

1. The authority citation for 21 CFR part 808 continues to read as follows:

Authority: 21 U.S.C. 360j, 360k, 371.

§ 808.51 [Removed]

2. Remove § 808.51.

§ 808.52 [Removed]

3. Remove § 808.52.

§ 808.94 [Removed]

4. Remove § 808.94.

PART 820—QUALITY SYSTEM REGULATION

5. The authority citation for 21 CFR part 820 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, 383.

6. Section 820.1 is amended by adding paragraph (e) to read as follows:

§ 820.1 Scope.

* * * * *

(e) *Exemptions or variances.* (1) Any person who wishes to petition for an exemption or variance from any device quality system requirement is subject to the requirements of section 520(f)(2) of the act. Petitions for an exemption or variance shall be submitted according to the procedures set forth in § 10.30 of this chapter, the FDA's administrative procedures. Guidance is available from the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850, U.S.A., telephone 1–800–638–2041 or 1–301–443–6597, FAX 301–443–8818.

(2) FDA may initiate and grant a variance from any device quality system requirement when the agency determines that such variance is in the best interest of the public health. Such variance will remain in effect only so long as there remains a public health need for the device and the device would not likely be made sufficiently available without the variance.

Dated: October 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28522 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK57

VA Payment for Non-VA Public or Private Hospital Care and Non-VA Physician Services That Are Associated With Either Outpatient or Inpatient Care

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends our medical regulations concerning VA payment for non-VA public or private hospital care provided to eligible VA beneficiaries. This document also amends our medical regulations concerning VA payment for non-VA physician services that are associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non-VA facilities. With certain exceptions, these payments have been based on Medicare methodology. Sometimes VA can negotiate contracts with hospitals or physicians or with their agents to reduce the payment amounts. This document amends these

regulations to allow VA to make lower payments based on such negotiations.

DATES: *Effective Date:* November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Tony Guagliardo, Health Administration Service, (10C3), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8307. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act

This document allows VA to pay hospitals and physicians the amount that they on their own or through agents have negotiated to receive from VA. Accordingly, this document reflects contract actions that are exempt from the prior notice-and-comment and delayed effective date provisions of 5 U.S.C. 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would affect only a small portion of the business of the affected entities. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal domestic assistance numbers for the programs affected by this rule are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 31, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. In § 17.55, a new paragraph (k) is added; and the authority citation at the end of the section is revised, to read as follows:

§ 17.55 Payment for authorized public or private hospital care.

* * * * *

(k) Notwithstanding other provisions of this section, VA, for public or private hospital care covered by this section, will pay the lesser of the amount determined under paragraphs (a) through (j) of this section or the amount negotiated with the hospital or its agent.

(Authority: 38 USC 513, 1703, 1728; § 233 of P. L. 99–576)

3. Remove the undesignated center heading immediately before § 17.56.

4. In § 17.56, a new paragraph (e) is added to read as follows:

§ 17.56 Payment for non-VA physician services associated with outpatient and inpatient care provided at non-VA facilities.

* * * * *

(e) Notwithstanding other provisions of this section, VA, for physician services covered by this section, will pay the lesser of the amount determined under paragraphs (a) through (d) of this section or the amount negotiated with the physician or the physician's agent.

(Authority: 38 U.S.C. 513, 38 U.S.C. 1703, 38 U.S.C. 1728)

5. Add an undesignated center heading immediately before § 17.57 to read as follows:

Use of Community Nursing Home Care Facilities.

[FR Doc. 00–28472 Filed 11–06–00; 8:45 am]

BILLING CODE 8320–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1628

Recipient Fund Balances

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Corporation's rule on recipient fund balances to provide the Corporation with more discretion to determine whether to permit a recipient to maintain a fund balance of up to 25% of its LSC support for a particular reporting period and to specify a limited number of extraordinary and compelling circumstances for which LSC has discretion to permit a recipient to maintain a fund balance in excess of 25% of its LSC support. The final rule also adds additional requirements and limitations applicable to waiver requests and the use of excess fund balances. Finally, the rule is restructured for clarity and for consistency with other Corporation regulations.

EFFECTIVE DATE: This final rule is effective on December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, Legal Services Corporation, 750 First Street, NE.—Suite 1000, Washington, DC 20002–4250; 202–336–8800.

SUPPLEMENTARY INFORMATION: On September 11, 1998, the Operations and Regulations Committee (''Committee'') of the Legal Services Corporation (''LSC'' or ''the Corporation'') Board of Directors (''Board'') met to consider proposed revisions to the Corporation's rule governing recipient fund balances, 45 CFR part 1628. The Committee adopted a proposed rule that was published in the **Federal Register** for public comment at 63 FR 56591 (October 22, 1998). Nineteen comments were received and considered by the Corporation.

Following the close of the comment period, the Committee met on February 21, 1999, to review the public comment on the proposed rule. No action was taken on the proposed rule at that time as the Committee was advised by the Corporation's staff that additional time was needed to consider fully a number of issues raised by the public comment and to formulate informed recommendations for the Committee's consideration in adopting a final rule.

The Committee was briefed by staff on two issues raised by one commenter which challenged the legal sufficiency of the proposed rulemaking and the legal authority for the Corporation to permit any carryover of fund balances

by recipients. The commenter's legal sufficiency claim was mistakenly based on the Administrative Procedures Act, a law which does not apply to LSC rulemaking, and a similarly erroneous allegation that the public record failed to include certain ''factual information'' on which LSC relied—or, in the eyes of the commenter, should have relied—in developing the proposed rule. As explained to the Committee, the preamble to the proposed rule properly incorporated by reference information which was already a matter of public record and readily made these materials and any other factual information available to the public upon request. The commenter further asserted that the Corporation's proposed fund balance provisions were contrary to federal law, specifically relying on the Office of Management and Budget Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (OMB Circular A–110). Contrary to the commenter's assertion, OMB Circular A–110 expressly authorizes the recipients to carry forward unobligated balances to subsequent funding periods. OMB Circular A–110, § _.25(e)(3), 58 FR 62992, 62999 (November 29, 1993).

On June 11, 1999, the Committee again met to consider public comments on the proposed rule. The Committee adopted a number of revisions to the rule, but deferred action on the final rule pending additional staff research into the policies and practices of other agencies awarding federal grants and contracts with regard to extraordinary and compelling circumstances for the carryover of an excess fund balance. The Committee took under consideration the need to permit a fund balance in excess of its 25% limitation in extraordinary cases, where a recipient received a large, lump-sum infusion of funds, for example, from the sale of real property, insurance proceeds, or a court-awarded judgment. Where such funds are derived from the past expenditure of LSC funds, they may, because of the amount or timing of their receipt, cause a fund balance in excess of 25% of the recipient's total LSC support for that year. In particular, the Committee sought additional information from staff on the policies adopted by federal agencies with regard to grantee fund balances and whether fund balances in excess of 25% of a grantee's annual federal support are ever permitted, and, if so, under what circumstances.

On November 19, 1999, the Committee met to consider the staff's report on the outstanding issues raised at its last meeting and to again receive public comment. The Committee was advised that in 1993, OMB Circular A–110, the governing authority for most federal grants to non-profit organizations, was amended to expand the authority of discretionary grantees to undertake certain types of administrative actions without prior agency approval, including the ability to carry forward unobligated fund balances into a subsequent funding period (58 FR 62992, November 29, 1993). Having reviewed the regulations and policies issued by more than twenty federal agencies under the amended OMB guidelines, LSC staff advised the Committee that the Corporation's proposed fund balance policies were more strict than those adopted by most federal agencies. Few federal agencies employ a cap on the amount of funds that may be carried over by a grantee, with or without prior agency approval. Most agencies require notification of fund balances, and some reserve the discretion to disallow the carryover or to offset it against future grant funds under particular circumstances, such as when it exceeded 25% of the grant award, or the grantee was at high risk of failure to comply with statutory requirements. Staff also provided the Committee with a breakout of the fund balances reported by recipients for fiscal year 1997, the most recent, complete data available. After considering the staff report and taking other public comment on the rule, the Committee made a number of additional revisions to the rule and voted to recommend to the Board that the rule as revised be adopted as a final rule. On November 20, 1999, the Board did adopt as final the rule as revised and reported by the Committee.

This final rule is intended to provide the Corporation with more discretion to determine whether to permit a recipient to maintain a fund balance of up to 25% of its LSC support for a particular period and sets forth the requirements and limitations applicable to waiver requests and the uses of fund balances. The final rule also authorizes the Corporation to exercise its discretion to waive the 25% cap on excess fund balances in three specific circumstances when extraordinary and compelling reasons exist for such a waiver. Finally, the rule is restructured for clarity and consistency with other LSC regulations.

A section-by-section analysis is provided below.

Section-by-Section Analysis

Section 1628.1 Purpose

The final rule adopts the revisions to this section as proposed. Those revisions deleted or moved parts of the section because they were not statements of the purpose of the rule. As revised, the purpose of the rule is stated as setting forth the Corporation's policies and procedures for recipient fund balances. The final rule retains the underlying intent of the current rule which is to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients.

Section 1628.2 Definitions

The proposed rule clarified and updated the meaning of three of the current terms to make them consistent with other changes in LSC regulations, and retained a fourth term without change.

In the final rule, ''excess fund balance'' has been added as a defined term for clarity. ''Excess fund balance'' is defined to mean the amount of a recipient's LSC fund balance that exceeds the amount the recipient is authorized to retain under the regulation.

As proposed, the term ''LSC support'' was defined as the sum of three amounts: (1) The recipient's LSC carryover funds from the prior fiscal year; (2) the amount of the recipient's LSC grant for the year in question; and (3) any LSC derivative income earned by the recipient during the year in question. In the final rule, the Corporation has deleted a recipient's prior year carryover funds from the definition of LSC support. As pointed out during the comment period, including carryover funds in LSC support could artificially inflate the amount of funds permitted to be carried over under the percentage ceilings used in the rule. As this result was not intended by the Corporation, the reference to the prior year's carryover funds has been deleted and the remaining components of the definition of ''LSC support'' renumbered accordingly. The language was further amended to make clear the fiscal year being referenced and that one-time and special purpose grants were not to be included in the definition of ''LSC support'' as either financial assistance or derivative income. The rules governing fund balances for one-time and special purpose grants are discussed in more detail in § 1628.3(g) below.

The final rule replaces the defined term ''fund balance amount'' with ''fund balance'' for ease of use and clarity. Other minor language changes were also incorporated for clarity. The final definition makes clear that a ''fund balance'' is the amount by which LSC support, together with the prior year's carryover amount of LSC Funds, exceeds the recipient's expenditures of LSC Funds, including capital acquisitions, as these amounts are reported in the recipient's annual audit. Some commenters recommended doing away with the term ''fund balance'' altogether as that term is inconsistent with generally accepted accounting principles set forth in the Statement of Financial Accounting Standards (FASB) No. 117, Financial Statements for Not-for-Profit Organizations. The current FASB Statement No. 117 speaks in terms of three categories of ''net assets'' rather than fund accounting. This issue was addressed by the Corporation in 1997 when it republished its Accounting Guide for LSC Recipients (August, 1997) following the FASB Statement No. 117 change. To permit the separate reporting of LSC revenue and expenditures, while at the same time adhering to Statement No. 117, Section 2–4 of LSC's Accounting Guide requires separate reporting, preferably through a supplemental schedule to be attached to audited financial statements prepared in accordance with FASB Statement No. 117. The supplemental schedule details the receipt and expenditure of LSC funds and permits the calculation of the LSC ''fund balance.'' Therefore, the final rule retains the term ''fund balance.''

The final rule retains the meaning of the term ''fund balance percentage'' but has revised the language to be consistent with its use as a defined term. The fund balance percentage is the percentage ratio of the LSC fund balance to the recipient's LSC support.

The final rule adopts without change the proposed definition of ''recipient,'' which was updated to reflect the current law limiting grants for financial assistance to those authorized by § 1006(a)(1)(A) of the LSC Act and to be consistent with the meaning of the term as defined elsewhere in the regulations.

Section 1628.3 Policy

The proposed rule restructured this section to consolidate statements of general policy on recipient fund balances in this section and to move provisions that dealt more with procedure to other sections of the rule.

Paragraph (a) states the Corporation's long-standing policy that recipients may, without any prior LSC approval, retain a fund balance of up to 10% of their LSC support. While this policy has not changed from the current rule, the Corporation received significant comment urging that the ceiling on fund balances be raised. A number of commenters argued that their own accountants or auditors recommended higher fund balance retention in the interests of sound financial management for nonprofit corporations. The commenters, however, differed on the appropriate level for such fund balances, with recommendations ranging as low as one month's operating expenses to three or six months of expenses, or even higher. The majority of the recipients that commented suggested increasing the fund balance which could be retained without specific LSC approval to between 15% and 25% of LSC support. Several commenters noted that their other funders generally did not permit their funds to be included in fund balances, making the inclusion of LSC funds for this purpose more critical for the recipient's stability as an ongoing enterprise and to ease the transition for the recipient should it lose some or all of its LSC funding.

The Corporation has retained the 10% ceiling on the level of fund balances that recipients may carryover without specific LSC approval. The Corporation was not convinced by the comments that a higher level was either necessary or appropriate at this time. The primary purpose of LSC funding is to enable the recipient to provide a maximum of high quality legal assistance to eligible clients, rather than to underwrite the long term fiscal stability of the recipient. There is an inherent tension between the purpose of the grant funds and the non-expenditure of these funds solely to underwrite the entity's viability as an ongoing enterprise. Nothing in the comments persuades the Corporation that an amount in excess of the current 10% ceiling is necessary.

In 1980, the GAO was critical of fund balances between 20% and 31% of a recipient's annual grant. While OMB introduced more flexibility into grantee administration of its federal funding through its amendments to Circular A–110, there is no empirical evidence that the GAO criticisms of fund balances for LSC recipients are any less valid today. Nor have the commenters demonstrated any compelling need for higher fund balances. Additionally, large fund balances could create the potential for misuse of such funds. In 1997, the last year for which complete records were available, recipients carried over $17.9 million in LSC funding, compared to $49.6 million in non-LSC funding. The data further reflect that most recipients report carry over of funds and that, of those that do, the majority carried over significantly more non-LSC funds than LSC funds. These data tend to refute the argument of the commenters that LSC funds are necessary for an adequate fund balance because of the general lack of non-LSC funds available for this purpose. Nor does the Corporation adhere to the principle underlying these claims, that LSC funds should be used to underwrite a recipient's financial stability when other funders will not do so. Especially with the advent of competitive grants, LSC would prefer to have its grants go to client service rather than to reserve funds for grant transition activities and needs. Where such needs exist, LSC can provide the necessary funding.

Paragraph (b) permits recipients to request a waiver from LSC to retain a fund balance of up to 25% of their LSC support. Such waivers are granted at the discretion of LSC and require a showing of special circumstances to justify the waiver. As discussed above, several commenters sought a fund balance ceiling of 25% or higher to be automatic, rather than by waiver. However, the Corporation disagreed with these comments and has retained the ceiling of 10% for fund balances which can be retained without prior LSC approval, and up to 25% only upon a waiver request to LSC, supported by a showing of special circumstance. Consistent with the proposed rulemaking, however, LSC has relaxed somewhat the showing required to obtain a waiver for a fund balance of up to 25% of a recipient's LSC support. The particular standards are discussed below in § 1628.4.

In the final rule, the Corporation has added a new paragraph (c) which permits a recipient to request a waiver to retain a fund balance in excess of 25% of their LSC support in extraordinary and compelling circumstances. The rule further limits ''extraordinary and compelling circumstances'' by specifying only three possible sources for such funds: (1) An insurance reimbursement; (2) the sale of real property; and (3) the receipt of monies from a lawsuit in which the recipient was a party.

Although the Corporation did not find it necessary or appropriate to raise the ceilings in effect for routine fund balance carryovers or waivers, it was swayed by the comments concerning unusual and compelling circumstances which could arise that may justify retention of a fund balance in excess of 25% of a recipient's LSC support. In general these circumstances arise when

there is a sudden and unexpected infusion of funds which are derived from prior LSC grant funds but are not part of the current year's funding. By their nature, these funds may be substantial in amount. Instances discussed included the settlement of an insurance claim resulting in the payment to the recipient of a large insurance reimbursement; the receipt of a substantial amount as proceeds from the sale of real property; or, the receipt of an award based on a judgment or settlement in a lawsuit to which the recipient was a party. In these cases, because of the timing of the receipt of the funds or the amount of such funds or both, it may be more prudent to permit the recipient to carryover the funding into the next fiscal year, even if the amount of the carryover will exceed 25%, than to require the recipient to spend the funds in the fiscal year received. The recipient can better plan and find the best use for the funds, rather than being forced into a hasty expenditure simply to avoid the limitation on the carryover of fund balances and the resultant surrender of the excess fund balances to the Corporation.

The Committee considered using a standard of ''extraordinary and compelling'' for these waivers with the three specific circumstances discussed as examples. However, it was felt that more guidance was required to avoid erosion of the standard. Therefore, the Board ultimately decided to limit the permissible circumstances for these extraordinary waivers to the three conditions which have in the past been known to give rise to the sudden infusion of large sums, and hence may precipitate the need for a waiver. By limiting the circumstances justifying such waivers, the Corporation intends to provide notice to recipients of the limited types of circumstance in which extraordinary excess fund balances will be tolerated, thereby avoiding any misunderstanding, abuse, or erosion of the standard.

In the final rule, proposed paragraph (c) is relettered as (d) and otherwise retains the policy that the granting of any waiver request is at the discretion of the Corporation. The final rule makes explicit that the discretion to grant a waiver applies to both requests for waivers of up to 25% of a recipient's LSC support and for waivers in excess of 25%. In addition, the final rule refers to the criteria in § 1628.4(d) which governs the Corporation's exercise of its waiver discretion.

In the final rule, proposed paragraph (d) is relettered as (e) and continues to state that, absent a waiver, a fund balance in excess of 10% of LSC support is to be repaid to the Corporation. In addition, the final rule continues the policy requiring repayment to LSC of any amount in excess of the amount permitted under a waiver granted by the Corporation. As suggested during the comment period, the two sentences describing the alternative means of repayment have been moved to the section on procedures (see § 1628.4(c)).

In the final rule, proposed paragraph (e) is relettered as (f), but is otherwise unchanged. It continues to clarify LSC policy that the recovery of excess fund balances does not constitute a termination of funds under Part 1606 of the Corporation's regulations.

Finally, the final rule reletters paragraph (f) as (g) and retains the substance of the proposed rule to make clear that one-time and special purpose grants awarded by the Corporation are not subject to the fund balance rules in this part, are not part of the calculation of fund balances pursuant to this rule, but are to be separately accounted for and reported. The rule also continues LSC's policy that unexpended funds from one-time and special purpose grants must be returned to the Corporation at the end of the grant term unless the Corporation has approved the expenditure of those funds in writing. The Corporation Office of Compliance and Enforcement is planning to update the LSC Accounting Guide to reflect the revisions to the rule, including treatment of one-time and special purpose grants as provided for in this provision.

Section 1628.4 Procedure

This section sets out the procedures applicable to recipient fund balances. It has been revised to provide the basis on which the Corporation will exercise its discretion to grant a waiver of an excess fund balance and the requirements which are intended to ensure careful oversight by the Corporation of a recipient's fund balances. The procedures apply to both waivers of the 10% ceiling for a fund balance of up to 25% of a recipient's LSC support and waivers of the 25% ceiling in extraordinary and compelling circumstances. The final rule consolidates the procedural requirements in the current rule in this section and updates those requirements as necessary.

Paragraph (a) of the final rule sets out the timeframe for recipients whose fund balance exceeds the 10% ceiling to request a waiver from the Corporation and the required content of such waiver requests. The final rule provides a recipient with 30 days from the submission of the recipient's annual financial audit in which to request a waiver. By tying the waiver request to the submission date for the recipient's annual financial audit, the Corporation intends to place recipients on notice of a fixed date for such requests. As used in this paragraph, the submission date for the recipient's annual financial audit is the date on which such audit is due to be submitted to the Corporation, which is currently specified in the LSC Audit Guide as 120 days from the close of the grantee's fiscal year.

Several comments urged that the rule provide for advance or preliminary approvals. According to the comments, advance approval would permit better fiscal planning and would allow the expenditure of fund balances earlier in the following fiscal year. Although these concerns have merit, approval is by definition based on the amount of fund balance indicated in the recipient's audit, and that audit is not available until after the end of the fiscal year. This rule does not preclude the recipient's request for a Corporation action on a waiver prior to the close of the fiscal year, it simply does not require the Corporation to provide for advance approval. The Corporation already has a practice of providing informal guidance to recipients who inquire early about their anticipated fund balances. This practice will continue to be available to recipients, but need not be required by regulation.

Paragraph (a) of the final rule incorporates the content of waiver requests which was specified in paragraph (c) of the proposed rule. The final rule continues to require that waiver requests specify: (1) The fund balance as reported in the recipient's annual audit; (2) the reason for the excess fund balance; (3) the recipient's plans for use of the excess fund balance; (4) the fund balance, if any, that the recipient projects for the current fiscal year; and (5) the circumstances justifying retention of the excess fund balance. The Corporation revised item (3) to delete the proposed reference to a Technology Investment Plan and other specific requirements related to information technology systems. The Corporation decided there was insufficient support for singling out information technology systems for special treatment under its fund balance rules. The need to acquire or update the hardware or software related to a recipient's information technology systems is simply one example of equipment or property acquisition for which an excess fund balance may be used. Other stylistic and clarifying language changes have been made,

including expanding the reference to circumstances in item (5) to include both the special circumstances required to justify the retention of an excess fund balance of up to 25% of the recipient's LSC support and the extraordinary and compelling circumstances specified in § 1628.3(c) necessary to justify retention of a fund balance in excess of 25% of the recipient's LSC support.

The Corporation proposed in paragraph (b) of this section to identify its obligations to consider the recipient's final audit, fund balance statements, and waiver requests, if any, and to provide timely written notice to the recipient of any fund balance amount to be recovered and the method of recovery. In the final rule, the scope of paragraph (b) was narrowed to focus on the Corporation's obligation to respond in a timely fashion to a recipient's request for a waiver or to notify the recipient that the excess fund balance must be repaid to the Corporation. In addition, the final rule requires that the Corporation respond within 45 days of its receipt of a waiver request. The 45 day period for the Corporation's decision and response to a waiver request was deemed reasonable and necessary because of the likelihood that multiple requests would be submitted at about the same time each year. In this regard, the written response to a waiver request or notice of demand for repayment of the excess fund balance may be provided by the Corporation by physical delivery, such as regular mail, or electronically, such as e-mail, when feasible. Either method is likewise acceptable for the submission of waiver requests.

The final rule contains a new paragraph (c) which consolidates the information previously located in paragraph (b) (discussed above) concerning the timeliness of repayment notices and in the policy section (see § 1628.3(e), *supra*) concerning the methods of repayment. The final rule continues to require written notice of repayment of an excess fund balance at least 30 days prior to the date when repayment is due. Furthermore, the final rule continues to authorize the Corporation to decide, after consultation with the recipient, on the method of repayment. Two repayment methods are contemplated: a lump sum payment or a pro rated deduction from the recipient's monthly grant payments spread over a specified number of months. Irrespective of the recovery method used, however, the recipient should generally expect the recovery to be complete within the term of the current grant.

Paragraph (d) of the proposed rule stated that excess fund balances could not be expended by the recipient prior to approval by the Corporation of a waiver request. This paragraph has been deleted from the final rule as unnecessary and redundant. It remains the policy of the Corporation that a recipient needs to obtain LSC's approval of a waiver request before it may expend any excess fund balances.

In the final rule, proposed paragraph (e) is relettered as paragraph (d) and continues to identify the standards governing the Corporation's decision to grant a waiver request. The overarching standard continues to be that recipients provide high quality legal assistance to clients in an effective and economical manner. While prohibiting excess fund balances promotes this purpose, regulated use of carryover funds under certain circumstances is also consistent with this purpose. Based on changing needs and the Corporation's experience with fund balances since 1984, the standards enumerated in paragraph (d) are intended to reflect both generally and specifically the circumstances under which the Corporation may grant a fund balance waiver.

The first standard under paragraph (d) garnered the most comment. The Corporation had proposed relaxing the standard from ''emergencies, or unusual or unexpected occurrences, or extraordinary circumstances'' to ''emergencies, unusual or unexpected occurrences, or circumstances'' which give rise to an excess fund balance. Commenters generally approved the broader discretion available to the Corporation under the proposed standard. According to the commenters, justifiable reasons for waiving the 10% ceiling on fund balance retention exist which do not rise to the current standard of ''extraordinary circumstances.'' One commenter, however, critiqued the proposed standard as too lax and feared it may result in a *de facto* increase in the ceiling on fund balances from 10% to 25%.

In the final rule, the standard has been changed to refer to the ''circumstances giving rise to the existence of a fund balance in excess of 10% of LSC support set out in § 1628.3(b) or (c).'' Thus, the final standard incorporates by reference the need for ''special circumstances'' to justify a waiver to retain an excess fund balance of up to 25% of a recipient's LSC support and ''extraordinary and compelling circumstances'' as specified in § 1628.3(c) to justify a waiver for a fund balance in excess of 25% of a recipient's LSC support. For waivers of up to 25% of LSC support, the Corporation has more flexibility and discretion than under the current standard to grant a waiver, while at the same time requiring a showing of a special circumstance to avoid such waivers from becoming the norm. Moreover, to obtain a waiver in excess of 25% of LSC support, the recipient must demonstrate that one of the three circumstances specified in § 1628.3(c) gave rise to the excess fund balance in order to show extraordinary and compelling circumstances to justify a waiver. Thus, the ability of a recipient to obtain a waiver to retain a fund balance in excess of 25% of its LSC support is narrowly circumscribed.

Moreover, the circumstances giving rise to the excess fund balance remain but one of four factors to be considered by the Corporation in granting or denying a waiver request. The final rule retains without change two factors from the current rule: the special needs of clients and the recipient's financial management record. The final factor combines subparagraphs (3) and (4) of the proposed rule into a single subparagraph (3) in the final rule. As revised, subparagraph (3) in the final rule retains authority for the Corporation to consider the recipient's need for a cash reserve for payments to private attorneys participating in the recipient's private attorney involvement (''PAI'') program and adds language authorizing the consideration of the recipient's need to acquire equipment or property or for other expenditures which are reasonable and necessary for the performance of the LSC grant. The additional language, in part, replaces the proposed rule's subparagraph (4) which separately stated as a factor the recipient's need for a cash reserve to replace or update information technology systems. Only a few comments addressed the technology issue and a review of past fund balance requests and prior approval requests under Part 1630 (Cost standards and procedures) indicated no need for a specific regulatory factor related solely to information technology systems. The language in the final rule is expected to provide the Corporation with sufficient discretion and flexibility to deal with a variety of requests for waivers, not merely those related to information technology systems. For example, a cash reserve in a coming fiscal year may be needed to acquire new property or to acquire equipment that may make the program more accessible to handicapped clients, or for additional staff necessary to handle an anticipated influx of clients due to changes in

medical, housing or other benefits adversely impacting on the client community.

In the final rule, the proposed new paragraph (f) is re-lettered as paragraph (e), and its substantive provisions for tighter controls on the use of fund balances by recipients are retained without change. Thus, the Corporation's written approval of waiver request will specify the time period within which the excess fund balance must be expended and the uses for which the funds may be expended. In specifying the time period for the expenditure of any excess fund balances, the Corporation's written approval will indicate whether the expenditure may be permitted beyond the end of the current fiscal year.

The final rule retains as paragraph (f) the current and proposed requirements for the separate reporting of any excess fund balance retained by a recipient for expenditure pursuant to an approved waiver request. Revisions to this paragraph clarify that approved excess fund balances should be reported separately by natural line item in the current fiscal year's audited financial statements. ''Natural line item'' or ''natural expense classification'' is a term of art in the accounting field which means the itemizing of expenses according to the kinds of economic benefits received by incurring the expense. Examples of natural line items or natural expense classifications include salaries and wages, employee benefits, supplies, rent, and utilities. See the American Institute of Certified Public Accountants Audit and Accounting Guide for Not-for-Profit Organizations, June 1, 1996 edition, Glossary, at 367.

Finally, in the final rule, a new paragraph (g) has been added. Paragraph (g) requires recipients to inform the Corporation of and seek its guidance with respect to changes in the conditions on the timing or purposes for the expenditure of excess fund balances as set out in the Corporation's written approval of a waiver request. The new paragraph is intended to place recipients on notice of their obligation to inform LSC of changes in circumstances which make compliance with the terms and conditions of their waiver difficult or impossible, for example, uncontrollable delays in settling on the purchase of new property, sudden and unexpected market changes that may alter the economics of a planned purchase, or newly emergent priorities for which the expenditure should be redirected. The Corporation will then provide the recipient with guidance on whether the change in the purpose of the expenditure or the need for more time for the expenditure, or both, warrants a change in the conditions for the waiver. Failure of a recipient to notify the Corporation and obtain approval for changes in its waiver conditions could result in any nonconforming expenditures being treated as a questioned cost by the Corporation under Part 1630.

Section 1628.5 Fund Balance Deficits

The final rule retains with only minor technical or clarifying changes the provisions of the current rules governing recipient deficits. Deficits continue to be discouraged and use of LSC funds to liquidate a deficit requires prior Corporation approval. Absent prior approval, LSC funds used for this purpose will result in a questioned cost. Only a few conforming language changes have been made to this section.

List of Subjects in 45 CFR Part 1628

Administrative practice and procedures, Legal services

For reasons set forth in the preamble, LSC revises 45 CFR Part 1628 to read as follows:

PART 1628—RECIPIENT FUND BALANCES

Sec.

1628.1 Purpose.
1628.2 Definitions.
1628.3 Policy.
1628.4 Procedures.
1628.5 Fund balance deficits.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996f (a)(3).

§ 1628.1 Purpose

The purpose of this part is to set out the Corporation's policies and procedures applicable to recipient fund balances. The Corporation's fund balance policies are intended to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients.

§ 1628.2 Definitions.

(a) *Excess fund balance* means a recipient's LSC fund balance that exceeds the amount a recipient is permitted to retain under this part.

(b) *LSC support* means the sum of:

(1) The amount of financial assistance awarded by the Corporation to the recipient for the fiscal year included in the recipient's annual audited financial statement, not including one-time and special purpose grants; and

(2) Any LSC derivative income, as defined in § 1630.2(c), earned by the recipient for the fiscal year included in the recipient's annual audited financial statement, not including derivative income from one-time and special purpose grants.

(c) The LSC *fund balance* is the excess of LSC support plus the prior year carryover amount over expenditures of LSC funds (including capital acquisitions), as each is reported in the recipient's annual financial statements.

(d) The *fund balance percentage* is the amount of the LSC fund balance expressed as a percentage of the recipient's LSC support.

(e) *Recipient,* as used in this part, means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

§ 1628.3 Policy.

(a) Recipients are permitted to retain from one fiscal year to the next LSC fund balances up to 10% of their LSC support.

(b) Recipients may request a waiver to retain a fund balance up to a maximum of 25% of their LSC support for special circumstances.

(c) Recipients may request a waiver to retain a fund balance in excess of 25% of a recipient's LSC support only for the following extraordinary and compelling circumstances when the recipient receives an insurance reimbursement, the proceeds from the sale of real property, or a payment from a lawsuit in which the recipient was a party.

(d) A waiver pursuant to paragraph (b) or (c) of this section may be granted at the discretion of the Corporation pursuant to the criteria set out in § 1628.4(d).

(e) In the absence of a waiver, a fund balance in excess of 10% of LSC support shall be repaid to the Corporation. If a waiver of the 10% ceiling is granted, any fund balance in excess of the amount permitted to be retained shall be repaid to the Corporation.

(f) A recovery of an excess fund balance pursuant to this part does not constitute a termination under 45 CFR part 1606. *See* § 1606.2(c)(2)(ii).

(g) One-time and special purpose grants awarded by the Corporation are not subject to the fund balance policy set forth in this part. Revenue and expenses relating to such grants shall be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended subsequent to the expiration date of the grant without the

prior written approval of the Corporation. Absent approval from the Corporation, all unexpended funds under such grants shall be returned to the Corporation.

§ 1628.4 Procedures.

(a) Within 30 days of the submission to LSC of its annual audited financial statements, a recipient may request a waiver of the 10% ceiling on LSC fund balances. The request shall specify:

(1) The LSC fund balance as reported in the recipient's annual audited financial statements;

(2) The reason(s) the excess fund balance resulted;

(3) The recipient's plan for disposition of the excess fund balance during the current fiscal year;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's current fiscal year; and

(5) The special circumstances justifying the retention of the excess fund balance up to 25%, or the extraordinary and compelling circumstances set out in § 1628.3(c) justifying a fund balance in excess of 25%.

(b) Within 45 days of receipt of the recipient's waiver request submitted pursuant to paragraph (a) of this section, the Corporation shall provide a written response to the request and a written notice to the recipient of any fund balance due and payable to the Corporation as well as the method for repayment.

(c) In the event that repayment is required, the Corporation shall give written notice 30 days prior to the effective date for repayment. Repayment shall be in a lump sum or by pro rata deductions from the recipient's grant checks for a specific number of months. The Corporation shall determine which of the specified methods of repayment is reasonable and appropriate in each case after consultation with the recipient.

(d) The decision of the Corporation regarding the granting of a waiver shall be guided by the statutory mandate requiring the recipient to provide high quality legal services in an effective and economical manner. In addition, the Corporation shall consider the following factors:

(1) Emergencies, unusual or unexpected occurrences, or the circumstances giving rise to the existence of a fund balance in excess of 10% of LSC support set out in § 1628.3(b) or (c);

(2) the special needs of clients;

(3) The need to retain a cash reserve for payments to private attorneys participating in the recipient's private attorney involvement (PAI) program; for acquisition of equipment or property; or for other expenditures which are reasonable and necessary for the performance of the LSC grant; and

(4) The recipient's financial management record.

(e) The Corporation's written approval of a request for a waiver shall require that the recipient use the funds it is permitted to retain within the time period set out in the approval and for the purposes approved by the Corporation.

(f) Excess fund balances approved by the Corporation for expenditure by a recipient shall be separately reported by natural line item in the current fiscal year's audited financial statements. This may be done by establishing a separate fund or by providing a separate supplemental schedule as part of the audit report.

(g) The recipient shall promptly inform and seek guidance from the Corporation when it determines a need for any changes to the conditions on timing or purposes set out in the Corporation's written approval of a recipient's request for a waiver.

§ 1628.5 Fund balance deficits.

(a) Sound financial management practices such as those set out in Chapter 3 of the Corporation's Accounting Guide for LSC Recipients should preclude deficit spending. Use of current year LSC grant funds to liquidate deficit balances in the LSC fund from a preceding period requires the prior written approval of the Corporation.

(b) Within 30 days of the submission of the recipient's annual audit, the recipient may apply to the Corporation for approval of the expenses associated with the liquidation of the deficit balance in the LSC fund.

(c) In the absence of approval by the Corporation, expenditures of current year LSC grant funds to liquidate a deficit from a prior year shall be identified as questioned costs under 45 CFR part 1630.

(d) The recipient's request must specify the same information relative to the deficit LSC fund balance as that set forth in § 1628.4(a)(1) and (2). Additionally, the recipient must develop and submit a plan approved by its governing body describing the measures which will be implemented to prevent a recurrence of a deficit balance in the LSC fund. The Corporation reserves the right to require changes in the submitted plan.

(e) The decision of the Corporation regarding acceptance of these deficit-related costs shall be guided by the statutory mandate requiring the recipient to provide high quality legal services performed in an effective and economical manner. Special consideration will be given for emergencies, unusual occurrences, or other special circumstances giving rise to a deficit balance.

Dated: October 31, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs.

[FR Doc. 00–28473 Filed 11–06–00; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 83–484; FCC 00–386]

Repeal or Modification of the Personal Attack and Political Editorial Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerns repeal of the personal attack and political editorial rules for broadcast licensees and cable system operators. This order repeals the broadcast and cable personal attack and political editorial rules. The order also vacates the Commission's earlier Order and Request to Update Record which had suspended for 60 days the personal attack and political editorial rules. The U.S. District Court of Appeals, D.C. Circuit, by order of October 11, 2000 directed the Commission to repeal the rules, noting that the Commission may institute a new rulemaking proceeding to determine whether, consistent with constitutional constraints, the public interest requires the personal attack and political editorial rules.

DATES: This rule is effective October 26, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cyndi Thomas, Policy and Rules Division, Mass Media Bureau, at (202) 418–2600.

SUPPLEMENTARY INFORMATION: This is a summary of the *Order* in MM Docket No. 83–484, FCC 00–386, adopted October 26, 2000; released October 26, 2000. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257,

Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW., Room CY–B402, Washington, DC. The complete text is also available under the file name fcc00386.pdf on the Commission's Internet site at *www.fcc.gov.*

Synopsis of Order

1. Pursuant to the D.C. Circuit Court of Appeals' order in *Radio-Television News Directors Association* v. *FCC,* No. 98–1305, slip op. (D.C. Cir. Oct. 11, 2000) (*RTNDA*), the Commission hereby repeals §§ 73.1920 and 73.1930 of our rules, 47 CFR 73.1920, 73.1930, the broadcast personal attack and political editorial rules. Further, in light of these actions, the Commission vacates its *Order and Request to Update Record* released October 4, 2000 (FCC 00–360) (65 FR 60387, October 11, 2000) and terminate this proceeding.

2. The Commission also repeals the personal attack and political editorial rules that apply to cable television operators. 47 CFR 76.209(b), (c), and (d). Although these rules were not specifically cited in the proceeding before the Court of Appeals in *RTNDA,* they are identical to those rules in all material respects. The potential elimination of these rules was raised in a Notice of Proposed Rule Making in MM Docket No. 83–331, 48 FR 26471 (June 8, 1983), and was specifically addressed in a 1996 request for further information in the instant docket, MM Docket No. 83–484, 48 FR 28295 (June 21, 1983). Given the delay in concluding these proceedings and the Court of Appeals' decision, the Commission also vacates these identical cable television rules placed at issue in MM Docket No. 83–331. The Commission does so on the procedural grounds set forth in the Court of Appeals' decision in *RTNDA,* without expressing any conclusion as to the substantive issues underlying these rules. As the Court of Appeals noted, ''[o]f course, the Commission may institute a new rule-making proceeding to determine whether, consistent with constitutional constraints, the public interest requires the personal attack and political editorial rules.'' *RTNDA,* slip op. at 4. With respect to the personal attack and political editorial rules, ''these are issues that the court has yet to decide.'' *Id.*

Ordering Clauses

3. Sections 73.1920, 73.1930 and 76.209(b), (c), and (d) of the Commission's rules, 47 CFR 73.1920, 73.1930, 76.209(b), (c), (d) are repealed.

4. The Commission's rules are amended as set forth.

5. The *Order and Request to Update Record,* FCC 00–360 (rel. Oct. 4, 2000) is vacated.

6. This proceeding is terminated.

7. This action is taken pursuant to sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303.

List of Subjects

47 CFR Part 73

Radio, television broadcasting.

47 CFR Part 76

Cable television service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 73 and 76 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.1920 [Removed]

2. Section 73.1920 is removed.

§ 73.1930 [Removed]

3. Section 73.1930 is removed.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

4. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

5. Sections 76.209 is revised to read as follows:

§ 76.209 Fairness doctrine; personal attacks; political editorials.

A cable television system operator engaging in origination cablecasting shall afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

Note to § 76.209: See public notice, ''Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance,'' 29 FR 10415.

[FR Doc. 00–28353 Filed 11–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 96–86; FCC 00–348]

Development of Operational Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission adopts a revised band plan for the Public Safety 700 MHz band, which is twenty-four megahertz of spectrum allocated for public safety services at 764–776 MHz and 794–806 MHz (''the 700 MHz band''). This new plan represents an improved layout and will promote better assignment and operational possibilities for the public safety community. The Commission also adopts technical criteria to protect certain global navigation satellite systems (GNSS). The agency designates channels for mutual aid purposes in the public safety bands below 512 MHz to improve interoperability capabilities for public safety entities that operate in these existing bands.

DATES: Effective December 7, 2000.

FOR FURTHER INFORMATION CONTACT: Peter Daronco *pdaronco@fcc.gov* or Karen Franklin *kfrankli@fcc.gov,* at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This document is a summary of the Commission's Third Memorandum Opinion and Order (Third MO&O) and Third Report and Order (Third R&O), FCC 00–348 in WT Docket No. 96–86, adopted on September 18, 2000, and released on October 10, 2000. The full text of this Third MO&O and Third R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037. The full text may also be downloaded at *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the Third MO&O and the Third R&O

1. *Band Plan.* The Third MO&O addresses the remaining issues raised in the petitions for reconsideration of the First Report and Order (First R&O) in WT Docket No. 96–86, 63 FR 58645, November 2, 1998, which are granted to the extent indicated and are otherwise denied. On reconsideration, the Commission revises the band plan adopted in the First R&O to reposition the location of the narrowband and wideband channel groups for the general use, interoperability, and reserve spectrum and to designate 48 narrowband channels (24 channel pairs) for low power use for on-scene communication. Among the limitations imposed on use of these frequencies, the maximum effective radiated power (ERP) on these channels is limited to 2 watts. Additionally, applications for 18 of the channel pairs are subject to the regional planning process where the regional planning committee will determine the most appropriate low power application(s) on these channels and the frequency coordinators will be responsible for providing appropriate interference protection. The other 6 channel pairs will be licensed on a nationwide, itinerant basis. A Commission license will be required for operation on any of the low power channels.

2. In the Third R&O portion of this combined item, the Commission addresses designation and licensing issues for spectrum reserved in the First R&O to be subject to the Third Notice of Proposed Rule Making (Third NPRM) in WT Docket No. 96–86, 63 FR 58685, November 2, 1998. The Commission designates 2.4 MHz of spectrum, all narrowband channels for statewide, geographic-area licenses. The governor, or designee, of each state has the option until December 31, 2001, to apply for all or part of this 2.4 MHz of spectrum under a state license. Whatever spectrum has not been applied for by December 31, 2001, will revert to General Use public safety and will be administered by the relevant RPC. Each state license will be granted subject to the condition that the state certifies, on or before each applicable benchmark date, that it is providing or prepared to provide ''substantial service'' as set forth in the new § 90.529 of the Commission's Rules. The Commission reserves 6.2 MHz of the 24 MHz allocated for public safety for future developments in broadband technologies. Of the 6.2 MHz reserved, 0.8 MHz is set-aside pending resolution of interoperability guard band issues raised in the Fourth Notice of Proposed Rulemaking (Fourth NPRM) in WT Docket No. 96–86, 65 FR 51788, August 2, 2000. The remaining 5.4 MHz of the 700 MHz band are grouped into four segments of 1.35 MHz each located between the narrowband and wideband segments and reserved for future developments in broadband technologies.

3. *Protection of Satellite-Based Global Systems.* The Commission designates 794–806 MHz band for mobile-to-base communications because; in part, of its proximity to the adjacent 806–824 MHz band and in an effort to facilitate unit-to-unit operations in the 700 MHz and 800 MHz bands. The Commission also adopted specific emission limits for equipment operating in the 1559–1610 MHz band that will sufficiently protect aeronautical radionavigation operations. Outside of the 1559–1610 MHz band, the Commission's traditional standard (*i.e.,* generally 43 + 10 log P) will apply.

4. *Interoperability Below 512 MHz.* The Commission designates 5 VHF channels in the 150–174 MHz band and 4 UHF channel pairs in the 450–512 MHz band for nationwide interoperability use. For existing licensees operating on these channels, the Commission provides a transition period through January 1, 2005, after which these licensees will be secondary to interoperability communication. Under our Rules, an entity must have a license to operate a base or control station on these interoperability channels. Mobile operation, however, is permitted on these channels without an individual license (*i.e.,* a blanket licensing approach). Public safety licensees who are eligible to hold a part 90 license, or who are otherwise licensed under part 90 of our Rules, can operate mobile units on these interoperability channels without an individual license. Additionally, as suggested in comments, we also will require, as of January 1, 2005, every newly certified public safety mobile radio unit to have the capacity to transmit and receive on at least one nationwide interoperability channel (*i.e.,* the calling channel) in the band in which it is operating. For licensing and administration of these interoperability channels, the Commission will rely on the four public safety frequency coordinators, who we envision will jointly develop an interoperability plan regarding the management and nationwide use of these interoperability channels, perhaps in concert with the group(s) tasked with administering the interoperability channels in the 700 MHz band. Additionally, the Commission designates two channels in the 156–162 MHz band for interoperability purposes in thirty-three inland Economic Areas and adopts criteria for licensing on these channels, including frequency coordination. Until general interoperability provisions can be made with Canada and Mexico, interoperability operations within the Canadian and Mexican border areas will need to be coordinated on an individual basis with these countries in the usual manner.

Third Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix A of the *Second Notice of Proposed Rulemaking* (Second NPRM) 62 FR 60199, November 7, 1999 issued in this proceeding. The Commission sought written public comments on the proposals in the Second NPRM, including comments on the IRFA. No comments were filed in direct response to the IRFA. Subsequently, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix A of the First R&O issued in this proceeding. A Supplemental Final Regulatory Flexibility Analysis, (*SFRFA*) was incorporated in Appendix A of the *Memorandum Opinion and Order on Reconsideration,* (First MO&O) 64 FR 60123, November 4, 1999, issued in this proceeding. A Second Supplemental Final Regulatory Flexibility Analysis *Second SFRFA* was incorporated in Appendix A of the Second Memorandum Opinion and Order (Second MO&O) issued in this proceeding. The *Third Supplemental Final Regulatory Flexibility Analysis* (Third SFRFA) contained in this *Third MO&O* supplements the information contained in the FRFA, First SFRFA, and Second SFRFA and is limited to matters raised on reconsideration or clarification with regard to the First R&O and addressed in this Third MO&O. This Third SFRFA conforms to the RFA.

I. Need for, and Objectives of, the Third MO&O

1. In this Third MO&O, we address the multiple Petitions for Reconsideration and/or Clarification filed in connection with the First R&O in this docket that established a band plan and adopted service rules in the newly-reallocated public safety spectrum at 764–776 MHz and 794–806 MHz (''the 700 MHz band''). This Third MO&O presents our decisions in response to those various portions of the petitions that address the: (i) Band plan

for the 700 MHz band, and (ii) low power narrowband devices for on-scene communication.

2. In the Third MO&O, we revise the band plan adopted in the First R&O to reposition the location of the narrowband and wideband channel groups for the general use, interoperability, and reserve spectrum. We also modify the adopted narrowband general use channel plan by designating forty-eight narrowband channels for low power use for on-scene communication. These clarifications are needed in order to promote efficient spectrum usage and flexibility.

II. Summary of Significant Issues Raised by Public Comments in Response to the FRFA

3. No comments were filed in direct response to the FRFA.

III. Description and Estimate of Numbers of Small Entities Affected by Rule Amendment

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (''SBA''). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities.

5. *Public Safety Radio Pool Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Spectrum in the 700 MHz band for public safety services is governed by 47 U.S.C. 337; there are approximately 127,540 licensees within these services. Non-Federal governmental entities as well as private businesses are licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity. The rule changes adopted in this Third MO&O could affect public safety entities who wished to utilize frequencies in the low power pool for uses such as on-scene firefighting communications and various other short-range communications systems which would be developed for 700 MHz band equipment.

6. *Radio and Television Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

7. *Television Stations.* This proceeding will affect full service TV station licensees (Channels 60–69), TV translator facilities, and low power TV (''LPTV'') stations. The SBA defines a TV broadcasting station that has no more than $10.5 million in annual receipts as a small business. TV broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by TV to the public, except cable and other pay TV services. Included in this industry are commercial, religious, educational, and other TV stations. Also included are establishments primarily engaged in TV broadcasting and which produce taped TV program materials. Separate establishments primarily engaged in producing taped TV program materials are classified under another SIC number. There were 1,509 TV stations operating in the Nation in 1992. That number has remained fairly constant as indicated by the approximately 1,551 operating TV broadcasting stations in the Nation as of February 28, 1997. For 1992, the number of TV stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments. There are currently 95 full service analog TV stations, either operating or with approved construction permits on channels 60–69.

8. In the *DTV Proceeding,* we adopted a Digital Television (''DTV'') Table, which provides only 15 allotments for digital television stations on channels 60–69 in the continental United States. There are seven DTV allotments in channels 60–69 outside the continental United States. Thus, the rules will affect approximately 117 TV stations; approximately 90 of those stations may be considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-TV affiliated companies. We recognize that the rules may also impact minority-owned and women-owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0 percent) of 1,221 commercial TV stations in the United States. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9 percent) of 1,342 commercial and non-commercial TV stations in the United States.

9. There are currently 4,977 TV translator stations and 1,952 LPTV stations. Approximately 1,309 low power TV and TV translator stations are on channels 60–69 which could be affected by policies in this proceeding. The Commission does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of TV stations are designated under this analysis as potentially small businesses.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

10. The only compliance requirement that is newly imposed by this Third MO&O is that we now require applicants for channels which where once reserved and are now available for low power licensing to go through the regional planning committee (RPC) process, including frequency coordination. RPCs will be responsible for determining the most appropriate low power application(s) on these channels and the frequency

coordinators will be responsible for providing appropriate interference protection.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

12. *Channel Plans.* We appropriately decided to modify the narrowband and wideband interoperability channeling plans to permit the use of efficient transmitter combiners for common antennas. This revision lowers costs for public safety entities. Thus, these rule changes will benefit all public safety entities, including small entities. On the other hand, denying these petitions was not a viable alternative because maintaining the channel plan adopted in the First R&O would have increased costs for public safety entities, including small entities, by precluding the use of combiners. Additionally, our decision grouping the reserve spectrum into four segments of 1.35 MHz each located between the narrowband and wideband segments offers improved flexibility to accommodate future requirements that are unforeseen at this time. These rule changes will have future benefits for all public safety entities, including small entities.

13. *Low Power Channels.* Our decision allocating channels nationwide for low power mobile operations offers improved flexibility for the public safety community to meet specialized, on-scene communication requirements. Thus, these rule changes will benefit all public safety entities, including small entities. Moreover, designating the twenty-four pairs as low power channels nationwide will lower costs for equipment manufacturers and public safety users, including small entities, as will our decision to exempt these low power devices from the interoperability capability, digital modulation, and trunking requirements. The regional planning and frequency coordination process that we apply to the ''regional'' channels and the licensing process that we apply to all of these channels are necessary to minimize interference. We minimized burdens by exempting the nationwide, itinerant channels from regional planning and frequency coordination. This exemption benefits all public safety entities including small entities, resulting in reduced costs and improved operational flexibility to meet on-scene communication requirements. We also note that about half of the new low power channels were previously general use channels and thus already subject to regional planning, frequency coordination, and licensing under the First R&O. Other alternatives were not changing the rule and/or requiring regional planning and frequency coordination for all of the low power channels. Our decision reflects a balance between the need to minimize interference and the need for operational flexibility.

14. By establishing this low power designation, we ease the economic burden, of funding communications systems in the new 700 MHz band, on public safety agencies, including small entities, that forego purchasing more expensive high power equipment when less expensive low-power equipment meets their short distance communications needs. We also ease the burden on equipment manufacturers, including small entities, because this low power designation provides flexibility to produce high-power equipment, low-power equipment, or both. Moreover, exempting this low power equipment from the interoperability capability requirement will quicken the type certification process for manufacturers of this low power equipment.

Report to Congress

The Commission will send a copy of the Third MO&O, including the Third Supplemental Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to SBREFA. A copy of the Third MO&O including the Third Supplemental Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**. In addition, the Commission will send a copy of the Third MO&O, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), Initial Regulatory Flexibility Analysis (collectively referred to as ''IRFAs'') were incorporated in the Notice of Proposed Rule Making (Public Safety NPRM) 61 FR 25185, May 20, 1996, the Second Notice of Proposed Rule Making (Second NPRM) and the Third Notice of Proposed Rulemaking (Third NPRM) in Docket 96–86. The Commission sought written public comments on the proposals in the Public Safety NPRM, Second NPRM, and Third NPRM, including comments on the IRFAs. No comments on the IRFAs were received. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

1. Need for, and Objective of, the Third R&O.

15. In the Third R&O portion of this combined item, we address technical, designation and licensing issues for the spectrum that we reserved in the First R&O to be ''subject to the Third NPRM''. In addition, we adopt technical criteria for 700 MHz band operations to protect satellite-based global navigation systems (''GNSS'') from harmful interference and establish measures to promote interoperability on public safety channels below 512 MHz. These are crucial developmental steps towards the flexible regulatory framework needed to meet vital current and future public safety communications needs.

I. Summary of Significant Issues Raised by Public Comments in Response to the IRFAs

16. Based on the comments submitted generally by small entities, the Commission found that the rules we proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses. Therefore, the IRFAs solicited comments on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. No comments were submitted directly in response to the IRFAs; however, as described in Section V, we have taken into account all general comments received which addressed the impact on small entities.

II. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

17. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (i) is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the

SBA. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities.

18. *Public Safety Radio Pool Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Spectrum in the 700 MHz band for public safety services is governed by 47 U.S.C. 337; there are approximately 127,540 licensees within these services. Non-Federal governmental entities as well as private businesses are licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity. The rule changes adopted in this Third MO&O could affect public safety entities who wished to utilize frequencies in the low power pool for uses such as on-scene firefighting communications and various other short-range communications systems which would be developed for 700 MHz band equipment. As required by the Regulatory Flexibility Act (RFA), Initial Regulatory Flexibility Analysis (collectively referred to as ''IRFAs'') were incorporated in the Public Safety Notice, the Second Notice and the Third Notice in Docket 96–86. The Commission sought written public comments on the proposals in the Public Safety NPRM, Second NPRM, and Third NPRM, including comments on the IRFAs. No comments on the IRFAs were received. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

19. *Radio and Television Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

20. *Television Stations.* This proceeding will affect full service TV station licensees (Channels 60–69), TV translator facilities, and low power TV (LPTV) stations. The SBA defines a TV broadcasting station that has no more than $10.5 million in annual receipts as a small business. TV broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by TV to the public, except cable and other pay TV services. Included in this industry are commercial, religious, educational, and other TV stations. Also included are establishments primarily engaged in TV broadcasting and which produce taped TV program materials. Separate establishments primarily engaged in producing taped TV program materials are classified under another SIC number.

21. There were 1,509 TV stations operating in the Nation in 1992. That number has remained fairly constant as indicated by the approximately 1,551 operating TV broadcasting stations in the Nation as of February 28, 1997. For 1992, the number of TV stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments. There are currently 95 full service analog TV stations, either operating or with approved construction permits on channels 60–69. In the *DTV Proceeding,* we adopted a Digital Television (''DTV'') Table which provides only 15 allotments for DTV stations on channels 60–69 in the continental United States. There are seven DTV allotments in channels 60–69 outside the continental United States. Thus, the rules will affect approximately 117 TV stations; approximately 90 of those stations may be considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-TV affiliated companies. We recognize that the rules may also impact minority-owned and women-owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0 percent) of 1,221 commercial TV stations in the United States. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9 percent) of 1,342 commercial and non-commercial TV stations in the United States. There are currently 4,977 TV translator stations and 1,952 LPTV stations. Approximately 1,309 low power TV and TV translator stations are on channels 60–69 which could be affected by policies +in this proceeding. The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of TV stations are designated under this analysis as potentially small businesses. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

III. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

22. This Third R&O adopts some rules that will entail additional compliance requirements. These three additional requirements may have an effect on small entities. First, we adopt additional technical criteria for 700 MHz band operations. These new requirements are enacted in order to protect satellite-based global navigation systems from harmful interference. Although this requirement may result in increases in manufacturing costs, including for small manufacturing entities, and may result in higher equipment costs, including for small entities, this modification is essential due to safety concerns related to GNSS operations. Second, we establish measures to promote interoperability on public safety channels below 512 MHz. After January 1, 2005, applications for equipment certification will only be granted for mobile and portable transmitters operating on public safety frequencies in the 150–174 MHz and/or 450–470 MHz bands that are capable of operating on at least one nationwide public safety interoperability channel designated in the band(s) in which the equipment operates. Although this requirement may result in increases in manufacturing costs, including for small manufacturing entities, and may result in higher equipment costs, including for small entities, this modification is essential to improve interoperability capabilities in existing public safety bands for public safety entities, including small entities, that operate in

these bands. Lastly, we also require applicants for interoperability channels designated in the 156–162 MHz band (in thirty-three inland VHF public coast areas (VPC)) to complete the frequency coordination process. This process requires applicants to pay fees to frequency coordinators. These fees are generally based on the number of sites, frequencies, and complexity of the coordination process. The adoption of these rules is crucial in order to minimize the potential for interference among the varied users of these channels.

IV. Steps Taken Tto Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

24. *State License.* We designate 2.4 MHz of the 700 MHz band for licensing directly to each state. The rules we adopt will preclude all non-state entities from being licensed for the designated state license frequencies. Most commenters agreed that licensing states for this amount of spectrum (for state agency use) is reasonable. We also include provisions to ensure that this spectrum will become available for ''general use'' if a given state either (i) declines to apply for a state license or (ii) fails to provide or be prepared to provide ''substantial service'' by certain benchmark dates. Additionally, we amend § 90.179 to allow states to share the use of the 2.4 MHz of spectrum with local and other public safety entities, which removes an impediment to small entities accessing this spectrum under sharing agreements with states. We considered a variety of alternative approaches for the use and licensing of the reserve spectrum. We declined to adopt an alternative ''State Licensing'' approach under which states—rather than regional planning committees—would manage state, local, and Federal use of all or most of the 8.8 MHz of spectrum reserved subject to the Third NPRM. While there were no comments specifically responding to the IRFAs, we considered numerous comments that raised the concern that licensing states for the entire amount would designate the spectrum in a manner deleterious to small entities. Accordingly, we designated an appropriate amount of spectrum for state use instead of designating all of the reserve spectrum to manage. We also believe our decision to allocate the same 2.4 MHz nationwide will benefit small entities because they will not face the possibility of interference on a variety of frequencies from their parent state as well as from adjoining states.

25. *GNSS Protection Criteria.* The technical solutions we adopt to protect certain global navigation satellite systems (''GNSS'') will impact all manufacturers of equipment that operates in the 700 MHz public safety band. This includes even small manufacturing entities. However, as discussed in the Third Report and Order, these limits are necessary to protect GNSS operations, including Global Orbiting Navigation Satellite Systems and Global Positioning System in accordance with international requirements. Moreover, Congress directed the Commission to ''protect the integrity of the [GPS] frequency spectrum against interference and disruption.'' Nevertheless, we have attempted to minimize, to the extent possible, the effect of these additional technical requirements.

26. *Interoperability below 512 MHz.* We establish measures to promote interoperability on public safety channels below 512 MHz by designating specific channels in each band for nationwide interoperability purposes. We did this because the record demonstrated the need for improved interoperability capabilities below 512 MHz. This designation requires that existing licensees on these channels operate on a secondary basis to interoperability communication. In order to minimize the impact of these rules, we ''grandfathered'' these licensees on a secondary basis only to interoperability communication rather than ordering them to vacate the channels or use them exclusively for interoperability purposes. We also provide these licensees a transition period, until January 1, 2005. We selected the ''least licensed channels'' in each band to minimize the economic impact arising from the need to designate interoperability channels in these existing public safety bands. Additionally, after January 1, 2005, applications for equipment certification will only be granted for mobile and portable transmitters operating on public safety frequencies in these bands that are capable of operating on at least one nationwide public safety interoperability channel designated in the band(s) in which the equipment operates. We provide a similar transition period for equipment manufacturers in order to minimize the impact of these rules. This transition period will allow small manufacturing entities, in particular, an opportunity to plan for this new requirement. The alternative of not adopting this interoperability capability requirement was not acceptable because of the need to improve public safety interoperability below 512 MHz. Lastly, we also require applicants for interoperability channels designated in the 156–162 MHz band (in thirty-three inland VHF public coast areas (VPC)) to complete the frequency coordination and licensing process. We briefly considered the alternative of not requiring frequency coordination for these channels. This was unacceptable because of the potential for interference among the varied users of these channels.

27. As discussed in the Third R&O, we note that one reason for establishing measures to promote interoperability below 512 MHz is to assist public safety entities, including small entities, that cannot afford to or do not want to purchase equipment in the new 700 MHz public safety band, wherein 2.6 megahertz of spectrum is designated for nationwide interoperability. We also attempted to minimize burdens on public safety entities, including small entities, by not requiring that existing public safety licensees apply-for and be licensed to operate mobile and portable transmitters on the nationwide interoperability channels in the existing public safety bands below 470 MHz.

Report to Congress

The Commission will send a copy of the Third R&O, including this Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to SBREFA. A copy of the Third R&O including the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**. In addition, the Commission will send a copy of the Third R&O, including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

1. Authority for issuance of this Third Memorandum Opinion and Order and Third Report and Order is contained in sections 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of

1934, as amended, 47 U.S.C. 154(i), 302, 303(f) and (r), 332, 337.

2. Pursuant to 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(f) and (r), 332, 337 that part 90 of the Commission's Rules, 47 CFR part 90, is amended as set forth in the rule changes, effective December 7, 2000 of this Third MO&O and Third R&O

3. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Third MO&O and Third R&O, including the Supplemental Final and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.1 is amended by revising paragraph (b), to read as follows:

§ 90.1 Basis and purpose.

* * * * *

(b) *Purpose.* This part states the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. These rules do not govern the licensing of radio systems belonging to and operated by the United States.

3. Section 90.7 is amended by adding definitions for *Interoperability* and *State* to read as follows:

§ 90.7 Definitions.

* * * * *

Interoperability. An essential communication link within public safety and public service wireless communications systems which permits units from two or more different entities to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results.

* * * * *

State. Any of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, and Guam.

* * * * *

4. Section 90.20 is amended in paragraph (c)(3) in the table under Megahertz by revising the entries for 151.130, 151.1375, 151.145, 154.445, 154.4525, 155, 745, 155.7525, 155.760, 158.730, 158.7375, 158.745, 159.465, 159.4725, 453.200, 453.20625, 453.2125, 453.21875, 453.225, 453.450, 453.45625, 453.4625, 453.46875, 453.475, 453.700, 453.70625, 453.7125, 453.71875, 453.725, 453.850, 453.85625, 453.8625, 453.86875, 453.875, 458.200, 458.20625, 458.2125, 458.21875, 458.225, 458.450, 458.45625, 458.4625, 458.46875, 458.475, 458.700, 458.70625, 458.7125, 458.71875, 458.725, 458.850, 458.85625, 458.8625, 458.86875, 458.875 and by adding paragraphs (d)(80) through (d)(83) and paragraph (g) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
Megahertz			
* * *	*	* *	*
151.130	.....do	28, 81	PH
151.1375	.....do	27, 28, 80	PH
151.145	.....do	28, 81	PO
* * *	*	* *	*
154.445	.....do	28, 81	PF
154.4525	.....do	27, 28, 80.	PF
* * *	*	* *	*
155.745	.....do	81	PX
155.7525	.....do	27, 80, 83	PX
155.760	.....do	81	PX
* * *	*	* *	*
158.730	.....do	81	PP
158.7375	.....do	27, 80	PP
158.745	Base or mobile	81	PX
* * *	*	* *	*
159.465	.....do	81	PO
158.4725	.....do	27, 80	PO
* * *	*	* *	*
453.200	.....do	81	PX
453.20625	.....do	44, 82	PX
453.2125	.....do	27, 80, 83	PX
453.21875	.....do	44, 82	PX
453.225	.....do	81	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	*	* *	*
453.450	.....do	81	PX
453.45625	.....do	44, 82	PX
453.4625	.....do	27, 80	PX
453.46875	.....do	44, 82	PX
453.475	.....do	81	PX
* * *	*	* *	*
453.700	.....do	81	PX
453.70625	.....do	44, 82	PX
453.7125	.....do	27, 80	PX
453.71875	.....do	44, 82	PX
453.725	.....do	81	PX
* * *	*	* *	*
453.850	.....do	81	PX
453.85625	.....do	44, 82	PX
453.8625	.....do	27, 80	PX
453.86875	.....do	44, 82	PX
453.875	.....do	81	PX
* * *	*	* *	*
458.200	.....do	81	PX
458.20625	.....do	44, 82	PX
458.2125	.....do	27, 80, 83	PX
458.21875	.....do	44, 82	PX
458.225	.....do	81	PX
* * *	*	* *	*
458.450	.....do	81	PX
458.45625	.....do	44, 82	PX
458.4625	.....do	27, 80	PX
458.46875	.....do	44, 82	PX
458.475	.....do	81	PX
* * *	*	* *	*
458.700	.....do	81	PX
458.70625	.....do	44, 82	PX
458.7125	.....do	27, 80	PX
458.71875	.....do	44, 82	PX
458.725	.....do	81	PX
* * *	*	* *	*
458.850	.....do	81	PX
458.85625	.....do	44, 82	PX
458.8625	.....do	27, 80	PX
458.86875	.....do	44, 82	PX
458.875	.....do	81	PX
* * *	*	* *	*

(d) * * *

(80) After December 7, 2000 this frequency is available primarily for public safety interoperability only communications. Stations licensed prior to December 7, 2000 may continue to use this frequency on a co-primary basis until January 1, 2005. After January 1, 2005, all operations will be secondary to co-channel interoperability communications.

(81) After December 7, 2000 new stations will only be licensed with an authorized bandwidth not to exceed 11.25 kHz. Licensees authorized prior to December 7, 2000 may continue to use bandwidths wider than 11.25 kHz on a co-primary basis until January 1, 2005. After January 1, 2005, all stations operating with an authorized bandwidth greater than 2006. 11.25 kHz will be secondary to adjacent channel interoperability operations.

(82) This frequency is reserved for assignment only in support of, and on a secondary basis to, nationwide interoperability use.

(83) This interoperability frequency is dedicated for the express purpose of nationwide interoperability calling.

* * * * *

(g) Former public correspondence working channels in the maritime VHF (156–162 MHz) band allocated for public safety use in 33 inland Economic Areas.

(1) We define service areas in the marine VHF (156–162 MHz) band by forty-two geographic areas called VHF Public Coast Service Areas (VPCSAs). See § 80.371(c)(1)(ii) of this chapter (Public correspondence frequencies). VPCSAs are based on, and composed of one or more of, the U.S. Department of Commerce's 172 Economic Areas (EAs). See 60 Fed Reg. 13114 (Mar. 10, 1995). You may inspect and copy maps of the

EAs and VPCSAs at the FCC Reference Center, Room CY A–257, 445 12th St., S.W., Washington, DC 20554. These maps and data are also available on the FCC website at *http://www.fcc.gov/oet/info/maps/areas/*. We number public correspondence channels in the maritime VHF (156–162 MHz) band as channels 24 to 28 and channels 84 to 88. Each channel number represents a channel pair. See § 80.371(c) of this chapter.

(2) We allocated two contiguous 25 kHz public correspondence channels in the maritime VHF (156–162 MHz) band for public safety use in 33 VPCSAs that are not near major waterways. These 33 VPCSAs are located in an inland region stretching from the western Great Plains to eastern California and Oregon. Each of these 33 inland VPCSAs corresponds to a single EA. Channel pairs 25, 84, and 85 are paired 25 kHz bandwidth channels as set forth in paragraph (g)(2)(i) Table A of this section. In each of the 33 inland VPCSAs/EAs listed in paragraph (g)(2)(i)Table B of this section, two of these three channel pairs are allocated for public safety use by entities eligible for licensing under paragraph (a) of this section.

(i) Channel Numbers and Corresponding Center Frequencies, and Certified Coordinators Table A as follows:

TABLE A.—LIST OF CHANNEL NUMBERS AND CORRESPONDING CENTER FREQUENCIES, AND CERTIFIED COORDINATORS

Channel No.	Mobile station transmit center frequency in MHz	Base station transmit center frequency in MHz	Coordinator
25	157.250	161.850	PX
84	157.225	161.825	PX
85	157.275	161.875	PX

(ii) Channels Allocated for Public Safety Use in 33 Inland VPCSAs/Eas Table B as follows:

TABLE B.—LIST OF CHANNELS ALLOCATED FOR PUBLIC SAFETY USE IN 33 INLAND VPCSAS/EAS

VHF public coast service area	Name	Economic area	Public safety channel pairs
10	Grand Forks	110	25, 84
11	Minot	111	25, 84
12	Bismarck	112	25, 84
13	Aberdeen	114	25, 84
14	Rapid City	115	25, 84
15	North Platte	121	25, 84
16	Western Oklahoma	126	25, 85
17	Abilene	128	25, 85
18	San Angelo	129	25, 85
19	Odessa-Midland	135	25, 85
20	Hobbs	136	25, 85
21	Lubbock	137	25, 85
22	Amarillo	138	25, 85
23	Santa Fe	139	25, 84
24	Pueblo	140	25, 84
25	Denver-Boulder-Greeley	141	25, 84
26	Scottsbluff	142	25, 84
27	Casper	143	25, 84
28	Billings	144	25, 84
29	Great Falls	145	25, 84
30	Missoula	146	25, 84
31	Idaho Falls	148	25, 85
32	Twin Falls	149	25, 85
33	Boise City	150	25, 84
34	Reno	151	25, 84
35	Salt Lake City-Ogden	152	25, 85
36	Las Vegas	153	25, 84
37	Flagstaff	154	25, 84
38	Farmington	155	25, 84
39	Albuquerque	156	25, 84
40	El Paso	157	25, 85
41	Phoenix-Mesa	158	25, 84
42	Tucson	159	25, 84

(3) The channels pairs set forth in Table B paragraph (g)(2)(ii) of this section are designated primarily for the purpose of interoperability communication.

(4) Channel pairs 25, 84, and 85 as listed in Table B paragraph (g)(2)(ii) of this section were formerly allocated and assigned (under § 80.371(c) (1997) of this chapter) as public correspondence working channels in the maritime VHF 156–162 MHz band; these channels were also shared (under former § 90.283 (1997) of this chapter) with private land radio mobile stations including

grandfathered public safety licensees). Thus, there are grandfathered licensees nationwide (maritime and private land mobile radio stations, including by rule waiver) operating on these channels both inside and outside of the 33 EAs listed in Table B paragraph (g)(2)(ii) of this section

(5) All applicants and licensees under this paragraph must comply with the relevant technical sections under this part unless otherwise stated in this paragraph (g) of this section using the following standards and procedures:

(i) Provide evidence of frequency coordination in accordance with § 90.175. Public safety coordinators except the Special Emergency Coordinator are certified to coordinate applications for the channels pairs set forth in Table B paragraph (g)(2)(ii) (*i.e.,* letter symbol PX under paragraph (c)(2) of this section).

(ii) Station power, as measured at the output terminals of the transmitter, must not exceed 50 Watts for base stations and 20 Watts for mobile stations, except in accordance with the provisions of paragraph (g)(5)(vi) of this section. Antenna height (HAAT) must not exceed 122 meters (400 feet) for base stations and 4.5 meters (15 feet) for mobile stations, except in accordance with paragraph (g)(5)(vi) of this section. Antenna height (HAAT) must not exceed 122 meters (400 feet) for base stations and 4.5 meters (15 feet) for mobile stations, except in accordance with paragraph (g)(5)(vi) of this section. Such base and mobile channels shall not be operated on board aircraft in flight.

(iii) Frequency protection must be provided to other stations in accordance with the following guidelines for each channel and for each area and adjacent area:

(A) Protect coast stations licensed prior to July 6, 1998, by the required separations shown in Table C below.

(B) Protect stations described in paragraph (g)(4) of this section, by frequency coordination in accordance with § 90.175 of this part.

(C) Protect public safety stations granted under paragraph (g) of this section by frequency coordination in accordance with § 90.175 of this part.

(D) *Where the Public safety designated channel is not a Public Safety designated channel in an adjacent EA:* Applicants shall engineer base stations such that the maximum signal strength at the boundary of the adjacent EA does not exceed 5 dBμV/m.

(iv) The following table, along with the antenna height (HAAT) and power (ERP), must be used to determine the minimum separation required between proposed base stations and co-channel public coast stations licensed prior to July 6, 1998 under Part 80 of this chapter. Applicants whose exact ERP or HAAT are not reflected in the table must use the next highest figure shown.

TABLE C.—REQUIRED SEPARATION IN KILOMETERS (MILES) OF BASE STATION FROM PUBLIC COAST STATIONS

Base Station Characteristics					
HAAT	ERP (watts)				
Meters (feet)	400	300	200	100	50
15 (50)	138 (86)	135 (84)	129 (80)	129 (80)	116 (72)
30 (100)	154 (96)	151 (94)	145 (90)	137 (85)	130 (81)
61 (200)	166 (103)	167 (104)	161 (100)	153 (95)	145 (90)
122 (400)	187 (116)	177 (110)	183 (114)	169 (105)	159 (99)

(v) In the event of interference, the Commission may require, without a hearing, licensees of base stations authorized under this section that are located within 241 kilometers (150 miles) of a co-channel public coast, I/LT, or grandfathered public safety station licensed prior to July 6, 1998, or an international border, to reduce power, decrease antenna height, and/or install directional antennas.

Mobile stations must be operated only within radio range of their associated base station.

(vi) Applicants seeking to be licensed for stations exceeding the power/antenna height limits of the table in paragraph (g)(5)(iv) of this section must request a waiver of that paragraph and must submit with their application an interference analysis, based upon an appropriate, generally-accepted terrain-based propagation model, that shows that co-channel protected entities, described in paragraph (g)(5)(iii) of this section, would receive the same or greater interference protection than the relevant criteria outlined in paragraph (g)(5)(iii) of this section.

5. Section 90.35 is amended in paragraph (b)(3) in the table under Megahertz by revising the entries for 159.480 and adding paragraph (c)(82) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(3) * * *

INDUSTRY BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
Megahertz			
* * *	* *	* *	*
159,480	.....do	8, 82	IP
* * *	* *	* *	*

(c) * * *

(82) After December 7, 2000 new stations will only be licensed with an authorized bandwidth not to exceed 11.25 kHz. Licensees authorized prior to December 7, 2000 may continue to use bandwidths wider than 11.25 kHz on a co-primary basis until January 1, 2005. After January 1, 2005, all stations operating with an authorized bandwidth greater than 11.25 kHz will be secondary to adjacent channel public safety interoperability operations. (*See* § 90.20(c)(3)).

* * * * *

6. Section 90.175 is amended by adding paragraphs (i)15 and (i)(16) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(i) * * *

(15) Applications for a state license under § 90.529.

(16) Applications for narrowband low power channels listed for itinerant use in § 90.531(b)(4).

* * * * *

7. Section 90.179 is amended by revising paragraph (g) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(g) Notwithstanding paragraph (a) of this section, licensees authorized to operate radio systems on Public Safety Pool frequencies designated in § 90.20 may share their facilities with Federal Government entities on a non-profit, cost-shared basis. Such a sharing arrangement is subject to the provisions of paragraphs (b), (d), and (e) of this section. State governments authorized to operate radio systems under § 90.529 may share the use of their systems (for public safety services not made commercially available to the public) with any entity that would be eligible for licensing under § 90.523 and Federal government entities.

8. Section 90.203 is amended by adding paragraph (j)(1) to read as follows:

§ 90.203 Certification Required.

* * * * *

(j) * * *

(1) Applications for certification received on or after January 1, 2005, for mobile and portable transmitters designed to transmit voice on public safety frequencies in the 150–174 MHz band will be granted only if the mobile/portable equipment is capable of operating on the nationwide public safety interoperability calling channel in the 150–174 MHz band. (See § 90.20(c), (d) of this part.) Applications for certification received on or after January 1, 2005, for mobile and portable transmitters designed to transmit voice on public safety frequencies in the 450–470 MHz band will be granted only if the mobile/portable equipment is capable of operating on the nationwide public safety interoperability calling channel in the 450–470 MHz band. (See § 90.20(c), (d) of this part.)

* * * * *

9. Section 90.529 is added to read as follows:

§ 90.529 State License.

(a) Narrowband channels designated as state channels in § 90.531 are licensed to each state (as defined in § 90.7) as follows:

(1) Each state that chooses to take advantage of the spectrum designated as state channels must file an application for up to 2.4 megahertz of this spectrum no later than December 31, 2001. For purposes of this section, the elected chief executive (Governor) of each state, or his or her designee, shall be deemed the person authorized to apply for the State License.

(2) What ever part of this 2.4 megahertz that a state has not applied for by December 31, 2001, will revert to General Use and be administered by the relevant RPC (or RPCs in the instances of states that encompass multiple RPCs).

(b) Each state license will be granted subject to the condition that the state certifies on or before each applicable benchmark date that it is:

(1) providing or prepared to provide ''substantial service'' to one-third of their population or territory by January 1, 2012, *i.e.,* within five years of the date that incumbent broadcasters are required to relocate to other portions of the spectrum;

(2) providing or prepared to provide ''substantial service'' to two-thirds of their population or territory by January 1, 2017, *i.e.,* within ten years of the date that incumbent broadcasters are required to relocate to other portions of the spectrum.

(c) The Commission will deem a state ''prepared to provide substantial service'' if the licensee certifies that a radio system has been approved and funded for implementation by the deadline date. ''Substantial service'' refers to the construction and operation of 700 MHz facilities by public safety entities providing service which is sound, favorable , and substantially above a level of mediocre service which just might minimally warrant renewal.

(d) If a state licensee fails to meet any condition of the grant the state license is modified automatically to the frequencies and geographic areas where the state certifies that it is providing substantial service.

(e) Any recovered state license spectrum will revert to General Use. However, spectrum licensed to a state under a state license remains unavailable for reassignment to other applicants until the Commission's database reflects the parameters of the modified state license.

10. Section 90.531 is amended by revising paragraphs (b)(1) through (b)(3) and (c)(1) through (c)(3) and adding paragraph (b)(4) through (b)(6) to read as follows:

§ 90.531 Band plan.

(b) * * *

* * * * *

(1) *Narrowband interoperability channels.* The following narrowband channels are designated for nationwide interoperability licensing and use: 23, 24, 39, 40, 63, 64, 79, 80, 103, 104, 119, 120,143, 144, 159, 160, 183, 184, 199, 200, 223, 224, 239, 240, 263, 264, 279, 280, 303, 304, 319, 320, 641, 642, 657, 658, 681, 682, 697, 698, 721, 722, 737, 738, 761, 762, 777, 778, 801, 802, 817, 818, 841, 842, 857, 858, 881, 882, 897, 898, 921, 922, 937, 938, 983, 984, 999, 1000, 1023, 1024, 1039, 1040, 1063, 1064, 1079, 1080, 1103, 1104, 1119, 1120, 1143, 1144, 1159, 1160, 1183, 1184, 1199, 1200, 1223, 1224, 1239, 1240, 1263, 1264, 1279, 1280, 1601, 1602, 1617, 1618, 1641, 1642, 1657, 1658, 1681, 1682, 1697, 1698, 1721, 1722, 1737, 1738, 1761, 1762, 1777, 1778, 1801, 1802, 1817, 1818, 1841, 1842, 1857, 1858, 1881, 1882, 1897, 1898.

(2) *Narrowband reserve channels.* The following narrowband channels are undesignated and reserved pending further Commission action in WT Docket No. 96–86 *(proceeding pending)*: 21, 22, 37, 38, 61, 62, 77, 78, 101, 102, 117, 118, 141, 142, 157, 158, 181, 182, 197, 198, 221, 222, 237, 238, 261, 262, 277, 278, 301, 302, 317, 318, 643, 644, 659, 660, 683, 684, 699, 700, 723, 724, 739, 740, 763, 764, 779, 780, 803, 804, 819, 820, 843, 844, 859, 860, 883, 884, 899, 900, 923, 924, 939, 940, 981, 982, 997, 998, 1021, 1022, 1037, 1038, 1061, 1062, 1077, 1078, 1101, 1102, 1117, 1118, 1141, 1142, 1157, 1158, 1181, 1182, 1197, 1198, 1221, 1222, 1237, 1238, 1261, 1262, 1277, 1278, 1603, 1604, 1619, 1620, 1643, 1644, 1659, 1660, 1683, 1684, 1699, 1700, 1723, 1724, 1739, 1740, 1763, 1764, 1779, 1780, 1803, 1804, 1819,1820, 1843, 1844, 1859, 1860, 1883, 1884, 1899, 1900.

(3) *Narrowband low power channels subject to regional planning.* The following narrowband channels are designated for low power use for on-scene incident response purposes using mobiles and portables subject to Commission-approved regional planning committee regional plans. Transmitter power must not exceed 2 watts (ERP): Channels 1–8 paired with Channels 961–968, and Channels 949–958 paired with Channels 1909–1918.

(4) *Narrowband low power itinerant channels.* The following narrowband channels are designated for low power use for on-scene incident response purposes using mobiles and portables. These channels are licensed nationwide for itinerant operation. Transmitter power must not exceed 2 watts (ERP): Channels 9–12 paired with Channels 969–972 and Channels 959–960 paired with Channels 1919–1920.

(5) *Narrowband state channel.* The following narrowband channels are designated for direct licensing to each state (including U.S. territories, districts, and possessions): 25–36, 65–76, 105–116, 145–156, 185–196, 225–236, 265–276, 305–316, 645–656, 685–696, 725–736, 765–776, 805–816, 845–856, 885–896, 925–936, 985–996, 1025–1036, 1065–1076, 1105–1116, 1145–1156, 1185–1196, 1225–1236, 1265–1276, 1605–1616, 1645–1656, 1685–1696, 1725–1736, 1765–1776, 1805–1816, 1845–1856, 1885–1896.

(6) *Narrowband general use channels.* All narrowband channels established in paragraph (b) of this section, other than those listed in paragraphs (b)(1), (b)(2), (b)(4) and (b)(5) of this section are designated for assignment to public safety eligibles subject to Commission-approved regional planning committee regional plans.

(c) * * *

(1) *Wideband interoperability channels.* The following wideband channels are designated for nationwide interoperability licensing and use: 28–30, 37–39, 46–48, 73–75, 83–84, 91–93, 148–150, 157–159, 166–168, 193–195, 202–204, 211–213.

(2) *Wideband reserve channels.* The following wideband channels are reserved: 1–27, 94–120, 121–147, 214–240.

(3) *Wideband general use channels.* All wideband channels established in paragraph (c), except for those listed in paragraphs (c)(1) and (c)(2) of this section, are designated for assignment to public safety eligibles subject to Commission-approved regional planning committee regional plans.

* * * * *

11. Section 90.535 is amended by revising paragraph (a) to read as follows:

§ 90.535 Modulation and spectrum usage efficiency requirements.

* * * * *

(a) All transmitters in the 764–776 MHz and 794–806 MHz frequency bands must use digital modulation. Mobile and portable transmitters may have analog modulation capability only as a secondary mode in addition to its primary digital mode. Mobile and portable transmitters that only operate on the low power channels designated in §§ 90.531(b)(3), 90.531(b)(4), are exempt from this digital modulation requirement.

* * * * *

12. Section 90.537 is revised to read as follows:

§ 90.537 Trunking requirement.

All systems using six or more narrowband channels in the 764–776 MHz and 794–806 MHz frequency bands must be trunked systems. Nationwide interoperability channels listed in § 90.531(b)(1), and the narrowband low power channels listed in §§ 90.531(b)(3), 90.531(4), are not counted as narrowband channels for the purposes of this trunking requirement.

13. Section 90.541 is amended by adding paragraph (d) to read as follows:

§ 90.541 Transmitting power limits.

* * * * *

(d) Transmitters operating on the narrowband low power channels listed in §§ 90.531(b)(3), 90.531(b)(4), must not exceed 2 watts (ERP).

14. Section 90.543 is amended by adding paragraphs (e) and (f) to read as follows:

§ 90.543 Emission limitations.

* * * * *

(e) For operations in the 764 to 776 MHz and 794 to 806 MHz bands, all emissions including harmonics in the band 1559–1610 MHz shall be limited to −70 dBW/MHz equivalent isotropically radiated power (EIRP) for wideband signals, and −80 dBW EIRP for discrete emissions of less than 700 Hz bandwidth. For the purpose of equipment authorization, a transmitter shall be tested with an antenna that is representative of the type that will be used with the equipment in normal operation.

(f) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

15. Section 90.547 is revised to read as follows:

§ 90.547 Interoperability channel capability requirement.

Mobile and portable transmitters operating in the 764–776 MHz and 794–806 MHz frequency bands must be capable of operating on all of the designated nationwide narrowband interoperability channels pursuant to standards adopted by the Public Safety National Coordination Committee and approved by the Commission. Mobile and portable transmitters that only operate on the low power channels designated in §§ 90.531(b)(3), 90.531(b)(4), are exempt from this interoperability channel capability requirement.

[FR Doc. 00–28348 Filed 11–6–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 991223347-9347; I.D. 102600C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Recreational Fishery Closure

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

ACTION: Fishery closure; request for comments.

SUMMARY: NMFS announces changes to the recreational fishery for lingcod, within the Pacific Coast groundfish fishery. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), is intended to protect lingcod.

DATES: Changes to management measures are effective 0001 hours (local time) November 2, 2000, unless modified, superseded, or rescinded. These changes are effective until the effective date of the 2001 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register.** Comments on this rule will be accepted through November 22, 2000.

ADDRESSES: Submit comments to Donna Darm, Acting Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko (Northwest Region, NMFS) 206-526-6140.

SUPPLEMENTARY INFORMATION: The following change to current lingcod management measures for waters off California was recommended by the Pacific Fishery Management Council (Council,) in consultation with the State of California, at its September 11-15, 2000, meeting in Sacramento, CA, and by the California Fish and Game Commission (Commission) at its October 19-20, 2000, meeting in San Diego, CA.

On October 6, 2000, NMFS published a document in the **Federal Register** announcing inseason changes to trip limits for Pacific coast groundfish (65 FR 59752). The preamble to that document discussed the possibility of further inseason actions to close certain fisheries off California, pending decisions made in the Commission's October meeting.

At its October 19-20, 2000, meeting, the Commission discussed whether fishery closures were necessary for the months of November and December to protect overfished and depleted species (bocaccio, lingcod, canary rockfish, cowcod). The best available information used by the Commission indicated that the coastwide lingcod optimum yield (OY) would be exceeded by October 31, 2000. Since the weather in central and southern California often remains conducive to recreational fishing throughout the year, the Commission decided to close the recreational lingcod fishery within State waters (0-3 nm offshore) for November and December in order to prevent further landings of lingcod. The Commission also asked NMFS to set complementary regulations for Federal waters (3-200 nm offshore).

At its September 2000 meeting, the Council had asked NMFS to coordinate with the State of California to implement Federal management measures consistent with those of the State. Consistent with the Council's request and to ensure that the lingcod fishery conforms with the lingcod overfished species rebuilding plan, this action implements the Commission's recommendations on a lingcod fishery closure within Federal waters off California. Previously, the Council had asked NMFS to close the recreational fishery for lingcod off Washington State. Therefore, all commercial fisheries for lingcod are closed in November and December. Oregon's recreational fishery for lingcod remains open, but landings are expected to be minimal due to rough winter weather constraining fishing opportunities.

NMFS Actions

For the reasons stated here, NMFS concurs with the Council's recommendations and announces the following changes to the 2000 annual management measures (65 FR 221, January 4, 2000, as amended at 65 FR 4169, January 26, 2000; 65 FR 17805, April 5, 2000; 65 FR 25881, May 4, 2000; 65 FR 31283, May 17, 2000; 65 FR 33423, May 23, 2000; and 65 FR 45308, July 21, 2000) as follows:

In Section IV, under D. Recreational Fishery, paragraph (1) (b) is revised to read as follows:

IV. NMFS Actions

D. Recreational Fishery

* * * * *

(1) * * *

(b) lingcod. Recreational fishing for lingcod off the coast of California is closed from [insert date of filing for public inspection with the Office of the Federal Register] through December 31, 2000.

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP and the annual specifications and management measures and emergency rule published at 65 FR 221 (January 4, 2000) and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries (AA), NOAA, finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because this action is necessary to protect an overfished species that is managed under a rebuilding plan, and affording additional advance notice would reduce the agency's ability to protect that overfished species. In addition, the affected public had the opportunity to comment on these actions at the September 11-15, 2000, Council meeting and at the October 19-20, 2000, Commission meeting. Accordingly, the AA finds good cause exists to waive the 30-day delay in effectiveness.

These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 1, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–28534 Filed 11–2–00; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register
Vol. 65, No. 216
Tuesday, November 7, 2000

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–102–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC—8—100, -200, and —300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. This proposal would require inspection to determine the orientation of the Wiggins fuel couplers of the fuel tank vent line and scavenge line in the right wing at station 249, and follow-on corrective actions. This action is necessary to prevent contact between the nuts of the Wiggins fuel couplers and the stiffener on the access panel of the upper surface of the right wing, which could compromise the lightning protection of the fuel tank of the right wing in the event of a lightning strike, and could result in possible fuel tank explosion. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 7, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–102–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–102–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. TCAA advises that it received a report indicating that a Wiggins fuel coupler had come in contact with the stiffener of the wing access panel at wing station 249.

Investigation revealed that the Wiggins fuel couplers in the right wing of both the fuel tank vent line and scavenge line had been installed incorrectly, with the nut of each coupler facing the outboard side of the wing, rather than the inboard side. This incorrect installation allowed contact between one nut of the coupler and the stiffener on the access panel of the upper surface of the right wing. Such contact could compromise the lightning protection of the fuel tank of the right wing in the event of a lightning strike, and could result in possible fuel tank explosion.

Explanation of Relevant Service Information

The manufacturer has issued Bombardier Alert Service Bulletin A8–28–32, dated January 14, 2000, which describes procedures for a one-time general visual or x-ray inspection to determine the orientation of the Wiggins fuel couplers of the fuel tank vent line

and scavenge line in the right wing at station 249. For airplanes on which the couplers are oriented correctly, the alert service bulletin describes procedures for rework of the stiffener on the access panel of the upper surface of the right wing. For airplanes on which any incorrectly oriented coupler is found, the alert service bulletin describes procedures for removal of the coupler and a one-time detailed visual inspection to detect damage of that coupler.

For airplanes on which no damaged coupler is found, the alert service bulletin describes procedures for reinstallation of the coupler in the correct orientation and rework of the stiffener on the access panel of the upper surface of the right wing. However, for airplanes on which any damaged coupler is found, the alert service bulletin describes procedures for blending out the damage and performing a detailed visual inspection of the fuel coupler for cracks; and reinstallation of the coupler in the correct orientation and rework of the stiffener on the access panel of the upper surface of the right wing, or replacement of the coupler with a new or serviceable coupler in the correct orientation and rework the stiffener on the access panel of the upper surface of the right wing, if necessary.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCAA classified this alert service bulletin as mandatory and issued Canadian airworthiness directive CF–2000–05, dated February 28, 2000, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between This Proposed AD and Relevant Service Information

Operators should note that certain compliance times specified in this proposed AD differ from those specified in the alert service bulletin:

- For airplanes having correctly oriented fuel couplers, the alert service bulletin recommends reworking the stiffener within 5,000 flight hours after the initial inspection. The Canadian airworthiness directive requires the rework ''at the next convenient maintenance opportunity but not later than the next 'C' check or 5,000 hours flight time after the effective date of this directive, whichever occurs first.'' However, this proposed AD would require the rework for these airplanes within 5,000 flight hours after the effective date of the AD.
- For airplanes having incorrectly oriented fuel couplers, the alert service bulletin also recommends reworking the stiffener within 5,000 flight hours of the initial inspection. However, this proposed AD requires the rework for these airplanes prior to further flight after detecting the incorrect orientation.

In developing the compliance times for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the compliance times specified in the Canadian airworthiness directive. In light of these factors, the FAA finds that its proposed compliance times for the rework represent the appropriate intervals of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 195 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the actions (inspection) specified in Part A of the alert service bulletin, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $11,700, or $60 per airplane.

It would take approximately 2 work hours per airplane to accomplish the actions (rework) specified in Part B of the alert service bulletin, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $23,400, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2000–NM–102–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes having serial numbers 003 through 540 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent contact between the nuts of the Wiggins fuel couplers and the stiffener on the access panel of the upper surface of the right wing, which could compromise the lightning protection of the fuel tank of the right wing in the event of a lightning strike, and could result in possible fuel tank explosion, accomplish the following:

General Visual or X-ray Inspection

(a) Within 90 days after the effective date of this AD: Perform a one-time general visual or x-ray inspection to determine the orientation of the Wiggins fuel couplers of the fuel tank vent line and scavenge line in the right wing at station 249, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–28–32, dated January 14, 2000.

Action for Airplanes Having Correctly Oriented Fuel Couplers

(b) For airplanes on which the orientation of all Wiggins fuel couplers is found to be correct, as specified in Bombardier Alert Service Bulletin A8–28–32, dated January 14, 2000: Within 5,000 flight hours after the effective date of this AD, rework the stiffener on the access panel of the upper surface of the right wing in accordance with Part B of the Accomplishment Instructions of the alert service bulletin.

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

Actions for Airplanes Having an Incorrectly Oriented Fuel Coupler

(c) For airplanes on which the orientation of any Wiggins fuel coupler is incorrect, as specified in Bombardier Alert Service Bulletin A8–28–32, dated January 14, 2000: Prior to further flight, remove the incorrectly oriented Wiggins fuel coupler, and perform a one-time detailed visual inspection to detect damage of the fuel coupler, in accordance with Part A of the Accomplishment Instructions of the alert service bulletin.

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

(1) If no damage is found: Prior to further flight, reinstall the Wiggins fuel coupler in the correct orientation, as specified in the alert service bulletin, and rework the stiffener on the access panel of the upper surface of the right wing, in accordance with Part B of the Accomplishment Instructions of the alert service bulletin. No further action is required by this AD.

(2) If any damage is found, prior to further flight, blend out the damage and perform a detailed visual inspection of the fuel coupler for cracks, in accordance with the alert service bulletin.

(i) If no crack is found, and blending CAN be accomplished to meet the limits specified in the Accomplishment Instructions of the alert service bulletin: Prior to further flight, reinstall the Wiggins fuel coupler in the correct orientation, as specified in the alert service bulletin, and rework the stiffener on the access panel of the upper surface of the right wing, in accordance with Part B of the Accomplishment Instructions of the alert service bulletin. No further action is required by this AD.

(ii) If any crack is found, or if blending CANNOT be accomplished to meet the limits specified in the Accomplishment Instructions of the alert service bulletin: Prior to further flight, replace the Wiggins fuel coupler with a new or serviceable coupler in the correct orientation, as specified in the alert service bulletin, and rework the stiffener on the access panel of the upper surface of the right wing, in accordance with Part B of the Accomplishment Instructions of the alert service bulletin. No further action is required by this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

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

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–05, dated February 28, 2000.

Issued in Renton, Washington, on November 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28481 Filed 11–06–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

14 CFR Part 285

[Docket No. 000831249–0249–01]

RIN 0693–ZA39

National Voluntary Laboratory Accreditation Program; Operating Procedures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of proposed rulemaking: request for comments.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, requests comments on proposed amendments to regulations pertaining to the operation of the National Voluntary Laboratory Accreditation Program (NVLAP). NIST proposes to revise the NVLAP procedures to ensure continued consistency with international standards and guidelines currently set forth in the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 17025:1999, General requirements for the competence of testing and calibration laboratories, and ISO/IEC Guide 58:1993, Calibration and testing laboratory accreditation systems—General requirements for operation and recognition, thereby facilitating and promoting acceptance of test and calibration results between countries to avoid barriers to trade. Provisions in this regard will facilitate cooperation between laboratories and other bodies, assist in the exchange of information

and experience and in the harmonization of standards and procedures, and establish the basis for national and international mutual recognition arrangements.

In addition, NIST proposes to reorganize and simplify part 285 for ease of use and understanding. While the existing regulations accurately set forth the NVLAP procedures, the regulations themselves are complex and difficult to understand. In an effort to simplify the format and make the regulations more user friendly, NIST proposes to rewrite in plain English and consolidate sections previously contained in subparts A through C of part 285.

DATES: Submit comments on or before January 8, 2001.

ADDRESSES: Address all comments concerning this proposed rule to David F. Alderman, Chief, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaitehrsburg, MD 20899–2140.

FOR FURTHER INFORMATION CONTACT: David F. Alderman, Chief, National Voluntary Laboratory Accreditation Program, 301–975–4016.

SUPPLEMENTARY INFORMATION:

Background

Part 285 of title 15 of the Code of Federal Regulations sets out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates as an unbiased third party to accredit both testing and calibration laboratories.

The NVLAP procedures were first published in the **Federal Register** as part 7 of title 15 of the Code of Federal Regulations (CFR) (41 FR 8163, February 25, 1976). On June 2, 1994, the procedures were redesignated as part 285 of title 15 of the CFR, expanded to include accreditation of calibration laboratories, and updated to be compatible with conformity assurance and assessment concepts, including the provisions contained in ISO/IEC Guide 25:1990, General requirements for the competence of calibration and testing laboratories (59 FR 22742, May 3, 1994).

Description and Explanation of Proposed Changes

The National Institute of Standards and Technology proposes to revise 15 CFR Part 285 to ensure continued consistency with international standards and guidelines. At this time, the management and technical requirements of the new standard, ISO/IEC 17025:1999, General requirements for the competence of testing and calibration laboratories, and the internationally accepted requirements for accrediting bodies, including those found in ISO/IEC Guide 58:1993, Calibration and testing laboratory accreditation systems—General requirements for operation and recognition, are applicable; however, the proposed revisions include provisions allowing for updated versions and replacements of these documents. ISO/IEC 17025:1999 supersedes and replaces ISO/IEC Guide 25:1990, upon which the current NVLAP accreditation criteria are based.

In addition, NIST proposes to reorganize the simplify part 285 for ease of use and understanding. While the existing regulations accurately set forth the NVLAP procedures, the regulations themselves are complex and difficult to understand. In an effort to simplify the format and make the regulations more user friendly, NIST proposes to rewrite in plain English and consolidate sections previously contained in subparts A through C of part 285. Since the consolidated format does not require subparts, NIST proposes to remove subparts A through C. The removal of these subparts will not alter the operations of NVLAP, but will promote ease of use and facilitate understanding of the program's operations.

To ensure continued consistency with applicable international standards and guidelines, NIST proposes to remove subpart D, Conditions and Criteria for Accreditation, and to apply the conditions and criteria contained in the applicable internationally accepted documents as they are revised from time to time, as set forth in new section 285.14, Criteria for Accreditation.

Request for Comments

The Director of the National Institute of Standards and Technology, United States Department of Commerce, requests comments on proposed changes to regulations found at 15 CFR Part 285 pertaining to the National Voluntary Laboratory Accreditation Program.

Persons interested in commenting on the proposed regulations should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Department of Commerce Central Reference and Records Inspection Facility, room 6022, 14th and Constitution Ave. NW, Washington, DC 20230.

Classification Section

Paperwork Reduction Act

This proposed rule contains information collection requirements subject to the Paperwork Reduction Act. The collection has been forwarded to the Office of Management and Budget (OMB) for approval under the Act. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, no collection of information subject to the requirements of the Act, Unless that collection of information displays a currently valid OMB control number. The information collected will be used by NVLAP to help assess laboratory compliance with the applicable criteria. Responses to the collection of information are required for a laboratory to be considered for NVLAP accreditation. Confidentiality of the information submitted will be handled in accordance with § 285.2 of this proposed rule. It is estimated that the annual public burden for the collection will average 2.75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503 (Attention: NIST Desk Officer).

Executive Order 12866

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

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) the regulation is procedural and has no impact on any entity unless that entity chooses to participate, in which case, the cost to any participant is the same, small cost ($500/application; other associated costs cannot be projected because they are dependent upon in which LAP an entity is participating, and in some cases LAPs have not yet been established) for any size participant; (2) access to NVLAP's

accreditation system is not conditional upon the size of a laboratory or membership of any association or group, nor are there undue financial conditions to restrict participation; and (3) the technical components of NVLAP, that is, the specific technical criteria that individual laboratories are accredited against, are not significantly changed by this proposal.

List of Subjects in 15 CFR Part 285

Laboratories, Measurement standards, Reporting and recordkeeping requirements, Voluntary standards

Dated: October 30, 2000.

Karen H. Brown,

Deputy Director.

For reasons set forth in the preamble, it is proposed that 15 CFR. chapter II, be amended by revising part 285 to read as follows:

PART 285—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

Sec.

285.1 Purpose.
285.2 Confidentiality.
285.3 Referencing NVLAP accreditation.
285.4 Establishment of laboratory accreditation programs (LAPs) within NVLAP.
285.5 Termination of a LAP.
285.6 Application for accreditation.
285.7 Assessment.
285.8 Proficiency testing.
285.9 Granting accreditation.
285.10 Renewal of accreditation.
285.11 Changes to scope of accreditation.
285.12 Monitoring visits.
285.13 Denial, suspension, revocation or termination of accreditation.
285.14 Criteria for accreditation.
285.15 Obtaining documents.

Authority: 15 U.S.C. 272 et seq.

§ 285.1 Purpose.

The purpose of Part 285 is to set out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates as an unbiased third party to accredit both testing and calibration laboratories. Supplementary technical and administrative requirements are provided in supporting handbooks and documents as needed, depending on the criteria established for specific Laboratory Accreditation Programs (LAPs).

§ 285.2 Confidentiality.

To the extent permitted by applicable laws, NVLAP will protect the confidentiality of all information obtained relating to the application, on-site assessment, proficiency testing, evaluation, and accreditation of laboratories.

§ 285.3 Referencing NVLAP accreditation.

The term *NVLAP* (represented by the NVLAP logo) is a federally registered certification mark of the National Institute of Standards and Technology and the federal government, who retain exclusive rights to control the use thereof. Permission to use the term and/or logo is granted to NVLAP-accredited laboratories for the limited purposes of announcing their accredited status, and for use on reports that describe only testing and calibration within the scope of accreditation. NIST reserves the right to control the quality of the use of the term *NVLAP* and of the logo itself.

§ 285.4 Establishment of laboratory accreditation programs (LAPs) within NVLAP.

NVLAP establishes LAPs in response to legislative actions or to requests from private sector entities and government agencies. For legislatively mandated LAPs, NVLAP shall establish the LAP. For requests from private sector entities and government agencies, the Chief of NVLAP shall analyze each request, and after consultation with interested parties through public workshops and other means shall establish the requested LAP if the Chief of NVLAP determines there is need for the requested LAP.

§ 285.5 Termination of a LAP.

(a) The Chief of NVLAP may terminate a LAP when he/she determines that a need no longer exists to accredit laboratories for the services covered under the scope of the LAP. In the event that the Chief of NVLAP proposes to terminate a LAP, a notice will be published in the **Federal Register** setting forth the basis for that determination.

(b) When a LAP is terminated, NVLAP will no longer grant or renew accreditations following the effective date of termination. Accreditations previously granted shall remain effective until their expiration date unless terminated voluntarily by the laboratory or revoked by NVLAP. Technical expertise will be maintained by NVLAP while any accreditation remains effective.

§ 285.6 Application for accreditation.

A laboratory may apply for accreditation in any of the established LAPs. The applicant laboratory shall provide a completed application to NVLAP, pay all required fees and agree to certain conditions as set forth in the NVLAP Application for Accreditation, and provide a quality manual to NVLAP (or a designated NVLAP assessor) prior to the assessment process.

§ 285.7 Assessment.

(a) *Frequency and scheduling.* Before initial accreditation, during the first renewal year, and every two years thereafter, an on-site assessment of each laboratory is conducted to determine compliance with the NVLAP criteria.

(b) *Assessors.* NVLAP shall select qualified assessors to evaluate all information collected from an applicant laboratory pursuant to § 285.6 of this part and to conduct the assessment on its behalf at the laboratory and any other sites where activities to be covered by the accreditation are performed.

(c) *Conduct of assessment.* (1) Assessors use checklists provided by NVLAP so that each laboratory receives an assessment comparable to that received by others.

(2) During the assessment, the assessor meets with management and laboratory personnel, examines the quality system, reviews staff information, examines equipment and facilities, observes demonstrations of testing or calibrations, and examines tests or calibration reports.

(3) The assessor reviews laboratory records including resumes, job descriptions of key personnel, training, and competency evaluations for all staff members who routinely perform, or affect the quality of the testing or calibration for which accreditation is sought. The assessor need not be given information which violates individual privacy, such as salary, medical information, or performance reviews outside the scope of the accreditation program. The staff information may be kept in the laboratory's official personnel folders or separate folders that contain only the information that the NVLAP assessor needs to review.

(4) At the conclusion of the assessment, the assessor conducts an exit briefing to discuss observations and any deficiencies with the authorized representative who signed the NVLAP application and other responsible laboratory staff.

(d) *Assessment report.* At the exit briefing, the assessor submits a written report on the compliance of the laboratory with the accreditation requirements, together with the completed checklists, where appropriate.

(e) *Deficiency notification and resolution.* (1) Laboratories are informed of deficiencies during the on-site assessment, and deficiencies are documented in the assessment report (see paragraph (d) of this section).

(2) A laboratory shall, within thirty days of the date of the assessment report, provide documentation that the specified deficiencies have either been corrected and/or a plan of corrective actions as described in the NVLAP handbooks.

(3) If substantial deficiencies have been cited, NVLAP may require an additional on-site assessment, at additional cost to the laboratory, prior to granting accreditation. All deficiencies and resolutions will be subject to thorough review and evaluation prior to an accreditation decision.

(4) After the assessor submits their final report, NVLAP reviews the report and the laboratory's response to determine if the laboratory has met all of the on-site assessment requirements.

§ 285.8 Proficiency testing.

(a) NVLAP proficiency testing is consistent with the provisions contained in ISO/IEC Guide 43 (Parts 1 and 2), Proficiency testing by interlaboratory comparisons, where applicable, including revisions from time to time. Proficiency testing may be organized by NVLAP itself or a NVLAP-approved provider of services. Laboratories must participate in proficiency testing as specified for each LAP in the NVLAP program handbooks.

(b) *Analysis and reporting.* Proficiency testing data are analyzed by NVLAP and reports of the results are made known to the participants. Summary results are available upon request to other interested parties; e.g., professional societies and standards writing bodies. The identity and performance of individual laboratories are kept confidential.

(c) *Proficiency testing deficiencies.* (1) Unsatisfactory participation in any NVLAP proficiency testing program is a technical deficiency which must be resolved in order to obtain initial accreditation or maintain accreditation.

(2) Proficiency testing deficiencies are defined as, but not limited to, one or more of the following:

(i) Failure to meet specified proficiency testing performance requirements prescribed by NVLAP;

(ii) Failure to participate in a regularly scheduled ''round'' of proficiency testing for which the laboratory has received instructions and/or materials;

(iii) Failure to submit laboratory control data as required; and

(iv) Failure to produce acceptable test or calibration results when using NIST Standard Reference Materials or special artifacts whose properties are well-characterized and known to NIST/NVLAP.

(3) NVLAP will notify the laboratory of proficiency testing deficiencies and actions to be taken to resolve the deficiencies. Denial or suspension of accreditation will result from failure to resolve deficiencies.

§ 285.9 Granting accreditation.

(a) The Chief of NVLAP is responsible for all NVLAP accreditation actions, including granting, denying, renewing, suspending, and revoking any NVLAP accreditation.

(b) Initial accreditation is granted when a laboratory has met all NVLAP requirements. One of four accreditation renewal dates (January 1, April 1, July 1, or October 1) is assigned to the laboratory and is usually retained as long as the laboratory remains in the program. Initial accreditation is granted for a period of one year; accreditation expires and is renewable on the assigned date.

(c) Renewal dates may be reassigned to provide benefits to the laboratory and/or NVLAP. If a renewal date is changed, the laboratory will be notified in writing of the change and any related adjustment in fees.

(d) when accredition is granted, NVLAP shall provide to the laboratory a Certificate of Accredition and a Scope of Accreditation.

§ 285.10 Renewal of accredition.

(a) An accredited laboratory must submit both its application for renewal and fees to NVLAP prior to expiration of the laboratory's current accreditation to avoid a lapse in accreditation.

(b) On-site assessments of currently accredited laboratories are performed in accordance with the procedures in § 285.7. If deficiencies are found during the assessment of an accredited laboratory, the laboratory must follow the procedures set forth in § 285.7(e)(2) of this part or face possible suspension or revocation of accreditation.

§ 285.11 Changes to scope of accreditation.

A laboratory may request in writing changes to its Scope of Accreditation. If the laboratory requests additions to its Scope, it must meet all NVLAP criteria for the additional tests or calibrations, types of tests or calibrations, or standards. The need for an additional on-site assessment and/or proficiency testing will be determined on a case-by-case basis.

§ 285.12 Monitoring visits.

(a) In addition to regularly scheduled assessments, monitoring visits may be conducted by NVLAP at any time during the accreditation period. They may occur for cause or on a random selection basis. While most monitoring visits will be scheduled in advance with the laboratory, NVLAP may conduct unannounced monitoring visits.

(b) The scope of a monitoring visit may range from checking a few designated items to a complete review. The assessors may review deficiency resolutions, verify reported changes in the laboratory's personnel, facilities, or operations, or administer proficiency testing, when appropriate.

§ 285.13 Denial, suspension, revocation or termination of accreditation.

(a) A laboratory may at any time voluntarily terminate its participation and responsibilities as an accredited laboratory by advising NVLAP in writing of its desire to do so.

(b) If NVLAP finds that an accredited laboratory does not meet all NVLAP requirements, has violated the terms of its accreditation, or does not continue to comply with the provisions of these procedures, NVLAP may suspend the laboratory's accreditation, or advise of NVLAP's intent to revoke accreditation.

(1) If a laboratory's accreditation is suspended, NVLAP shall notify the laboratory of that action stating the reasons for and conditions of the suspension and specifying the action(s) the laboratory must take to have its accreditation reinstated. Conditions of suspension will include prohibiting the laboratory from using the NVLAP logo on its test or calibration reports, correspondence, or advertising during the suspension period in the area(s) affected by the suspension.

(2) NVLAP will not require a suspended laboratory to return its Certificate and Scope of Accreditation, but the laboratory must refrain from using the NVLAP logo in the area(s) affected until such time as the problem(s) leading to the suspension has been resolved. When accreditation is reinstated, NVLAP will authorize the laboratory to resume testing or calibration activities in the previously suspended area(s) as an accredited laboratory.

(c) If NVLAP proposes to deny or revoke accreditation of a laboratory, NVLAP shall inform the laboratory of the reasons for the proposed denial or revocation and the procedure for appealing such a decision.

(1) The laboratory will have thirty days from the date of receipt of the proposed denial or revocation letter to appeal the decision to the Director of NIST. If the laboratory appeals the decision to the Director of NIST, the proposed denial or revocation will be stayed pending the outcome of the appeal. The proposed denial or

revocation will become final through the issuance of a written decision to the laboratory in the event that the laboratory does not appeal the proposed denial or revocation within the thirty-day period.

(2) If accreditation is revoked, the laboratory may be given the option of voluntarily terminating the accreditation.

(3) A laboratory whose accreditation has been revoked must cease use of the NVLAP logo on any of its reports, correspondence, or advertising related to the area(s) affected by the revocation. If the revocation is total, NVLAP will instruct the laboratory to return its Certificate and Scope of Accreditation and to remove the NVLAP logo from all test or calibration reports, correspondence, or advertising. If the revocation affects only some, but not all of the items listed on a laboratory's Scope of Accreditation, NVLAP will issue a revised Scope that excludes the revoked area(s) in order that the laboratory might continue operations in accredited areas.

(d) A laboratory whose accreditation has been voluntarily terminated, denied or revoked, may reapply and be accredited if the laboratory:

(1) Completes the assessment and evaluation process; and

(2) Meets the NVLAP conditions and criteria for accreditation.

§ 285.14 Criteria for accreditation.

The requirements for laboratories to be recognized by the National Voluntary Laboratory Accreditation Program as competent to carry out tests and/or calibrations are contained in clauses 4 and 5 of ISO/IEC 17025, General requirements for the competence of testing and calibration laboratories, including revisions from time to time.

§ 285.15 Obtaining documents.

(1) Application forms, NVLAP handbooks, and other NVLAP documents and information may be obtained by contacting the NVLAP, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, Maryland 20899–2140; phone: 301–975–4016; fax: 301–926–2884; e-mail: nvlap@nist.gov.

(b) Copies of all ISO/IEC documents are available from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, New York, 10036; phone: 212–642–4900; fax: 212–398–0023; web site: <www.ansi.org>. You may inspect copies of all applicable ISO/IEC documents at the National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 820 West Diamond Avenue, Room 297, Gaithersburg, MD.

[FR Doc. 00–28577 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Extension of Time To File Annual Reports for Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule amendments.

SUMMARY: Commodity Futures Trading Commission (''Commission'') Rules 4.22(c) and (d) [1] require that commodity pool operators (''CPOs'') distribute annual reports containing specified information, certified by an independent public accountant, to each pool participant within 90 calendar days after the end of the pool's fiscal year.[2] The proposed revisions to Rule 4.22 would permit CPOs to file a claim for an extension of time to file the pool's annual report where the pool is invested in other collective investment vehicles, and the CPO's independent accountant cannot obtain the information necessary to comply with the rule in a timely manner.

DATES: Comments must be received by December 7, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to ''Extension of Time to File Annual Reports for Commodity Pools.''

FOR FURTHER INFORMATION CONTACT: Kevin P. Walek, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5463; electronic mail: ''kwalek@cftc.gov''.

SUPPLEMENTARY INFORMATION:

I. Background

Commission Rule 4.22(c) requires a CPO to distribute to pool participants, and file with the Commission, an Annual Report containing specified financial information for each pool that it operates. The annual report requirement is intended to ensure that the CPO is dealing fairly with its participants and to provide a mechanism to facilitate the Commission's inspection of the registrant's operations. Rule 4.22(d) requires that an independent public accountant certify the financial statements contained in the Annual Report. The CPO must file this certified Annual Report within 90 days of the close of the pool's fiscal year. Rule 4.22(f) currently allows CPOs to apply for extensions of the 90-day time requirement where the CPO cannot distribute the report in the required time period without ''substantial undue hardship.'' The Commission has had the benefit of the assistance of National Futures Association (''NFA'') in processing these requests.

In recent years, the number of extensions has risen dramatically. [3] The majority of such requests are made by CPOs of commodity pools that invest in other collective investment vehicles. (These commodity pools are commonly referred to as ''funds of funds.'') The CPOs of these funds of funds have explained that they cannot obtain the information necessary for their independent public accountants to finish auditing the pools' financial statements by the time specified in Rule 4.22(c). In order to complete the audit of the financial statements of the pool, the independent public accountant needs information establishing the value of the pool's material investments. These investments may be in a number of collective investment vehicles, such as other commodity pools, securities funds, or hedge funds, both domestic and offshore. The information that the independent accountant requires is frequently unavailable until the collective investment vehicles complete their own certified financial statements. Thus, in many cases, the CPO cannot obtain the information its independent accountant requires about the collective investment vehicle in time for the pool's Annual Report to be prepared, audited, and distributed by the due date.

Due to the increasing number of requests for extensions of time to file annual reports for funds of funds, the Commission proposes to amend its

[1] Commission rules referred to herein can be found at 17 CFR Ch. I (2000).

[2] Rule 4.7(b)(3) provides the requirements for annual report filings for pools for which exemption from the specific requirements of Rules 4.22(c) and (d) has been claimed pursuant to Rule 4.7(b)(3)(i).

[3] For filing year 1998 there were more than 200 such extensions and for filing year 1999 there were over 300 such extensions.

regulations to make these extensions available on a standardized basis. In order to treat similarly situated pools fairly and equitably, the Commission proposes that the rules contained herein apply whether or not a CPO was previously granted an extension of time to file the annual reports of funds of funds. As detailed in the next section, CPOs would file the initial notice, containing specified representations, in advance of the annual report's due date for the first year the extension is claimed. In subsequent years, the representations could be made in a statement filed at the same time as the pool's Annual Report.

II. Description of the Proposed Extension

The proposed extension provisions would be added to existing Rule 4.22(f), which will be reorganized and renumbered, as discussed further below. The salient features of the extension provisions are proposed to be included in Rule 4.22(f)(2) as follows.

Subparagraph (i) requires that the pool's first notice claiming the extension be filed within 90 days after the end of the pool's fiscal year (the normal deadline for filing the annual report). Subparagraph (ii) requires that the CPO identify itself and the pool for which the request is being made. Subparagraph (iii) requires that the CPO indicate the date by which it intends to file and distribute the annual report, which date must be no more than 150 calendar days after the end of the pool's fiscal year (that is, a maximum extension of 60 days). Thus, the CPO must analyze the circumstances related to the operation of its pool and specify the period for which relief is needed. Commission staff have reviewed past requests and found that, in general, the requested extension period ranged from 30 to 60 days. Thus, the Commission believes that up to a 60 day extension should be sufficient in most situations. Subparagraph (iv) requires that the CPO provide, as part of the notice, specified representations demonstrating the need for the extension. The CPO will not be required to obtain a written statement from the independent accountant selected to audit the pool confirming that information in the CPO's notice. The CPO will be required to name the independent accountant who has informed the CPO of the necessity of that information. Subparagraph (v) provides that, in subsequent years, the requisite representations may be made in a statement filed at the same time as the annual report. Finally, subparagraph (vi) requires that the CPO responsible for the pool's operation sign the notice or statement.

III. Technical Changes to Rule 4.22(f)

The new fund of funds extension provisions are proposed to be added as Rule 4.22(f)(2). Existing Rule 4.22(f) would be retained. Current subsections 4.22(f)(1), 4.22(f)(2) and 4.22(f)(3) are proposed to be renumbered as subsections 4.22(f)(1)(i) through (iii), respectively.

IV. Additional Consideration Regarding Rule 4.7 Entities

Pursuant to Commission Rule 4.7, CPOs of pools whose participants are limited to qualified eligible persons [4] may claim exemption from certain Part 4 requirements. Among the provisions from which the CPO may claim relief is the requirement that the exempt pool's financial statements distributed to pool participants be certified by an independent public accountant. In the experience of Commission staff, most CPOs operating pools for which relief under Rule 4.7 has been claimed nonetheless obtain certified financial statements to include in their annual report. The Commission does not wish to discourage this practice. Therefore, CPOs may claim the relief provided in proposed Rule 4.22(f)(2) without regard to whether they have claimed relief pursuant to Rule 4.7. This point is clarified in proposed Rule 4.22(f)(2).

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[5] The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.[6] Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the rule amendments proposed herein, if adopted, will not have a significant economic impact on a substantial number of small entities.

[4] The criteria for qualified eligible persons are contained in Rule 4.7(a), as amended effective August 4, 2000 (65 FR 67848 (August 4, 2000)).

[5] 47 FR 18618–18621 (April 30, 1982).

[6] 47 FR 18619–18620.

B. Paperwork Reduction Act

Proposed Rule 4.22(f)(2) affects information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget for its review. Collection of Information Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants, OMB Control Number 3038–0005.

The expected effect of the proposed rule will be to increase the burden previously approved by OMB for this collection of information by 175 hours. Specifically, the burden associated with proposed Rule 4.22(f)(2) is expected to be increased by 175 hours:

Estimated number of respondents (after proposed extension): 350.

Annual responses by each respondent: 1.

Estimated average hours per response: 0.5.

Annual reporting burden: 175.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission. The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of 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.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the

Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street N.W., Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 4

Brokers, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular sections 2(a)(1), 4l, 4m, 4n, 4o, and 8a, 7 U.S.C. 2, 6l, 6m, 6n, 6o, and 12(a), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.22 is amended by:

a. redesignating paragraphs (f)(1) introductory text, (f)(1)(i), (f)(1)(ii), (f)(1)(iii), and (f)(1)(iv) as (f)(1)(i) introductory text, (f)(1)(i)(A), (f)(1)(i)(B), (f)(1)(i)(C), and (f)(1)(i)(D);

b. redesignating paragraphs (f)(2) introductory text, (f)(2)(i), and (f)(2)(ii) as (f)(1)(ii) introductory text, (f)(1)(ii)(A), and (f)(1)(ii)(B);

c. redesignating paragraphs (f)(3) introductory text, (f)(3)(i), and (f)(3)(ii) as (f)(1)(iii) introductory text, (f)(1)(iii)(A), and (f)(1)(iii)(B); and

d. adding a new paragraph (f)(2) to read as follows:

§ 4.22 Reporting to pool participants.

* * * * *

(f) * * *

(2) In the event a commodity pool operator finds that it cannot obtain information necessary to prepare certified financial statements for a pool that it operates within the time specified in either paragraph (c) of this section or §4.7(b)(3)(i), as a result of the pool investing in another collective investment vehicle, it may claim an extension of time under the following conditions:

(i) The commodity pool operator must, within 90 calendar days of the end of the pool's fiscal year, file a notice with National Futures Association and the Commission, except as provided in paragraph (f)(2)(v) of this section.

(ii) The notice must contain the name, main business address, main telephone number and the National Futures Association registration identification number of the commodity pool operator, and name and the identification number of the commodity pool.

(iii) The notice must state the date by which the Annual Report will be distributed and filed (the ''Extended Date''), which must be no more than 150 calendar days after the end of the pool's fiscal year. The Annual Report must be distributed and filed by the Extended Date.

(iv) The notice must include representations by the commodity pool operator that:

(A) The pool for which the Annual Report is being prepared has investments in one or more collective investment vehicles (the ''Investments'');

(B) The commodity pool operator has been informed by the certified public accountant selected to audit the commodity pool's financial statements that specified information establishing the value of the Investments is necessary in order for the accountant to render an opinion on the commodity pool's financial statements. The notice must include the name of the accountant; and

(C) The information specified by the accountant cannot be obtained in sufficient time for the Annual Report to be prepared, audited, and distributed before the Extended Date.

(v) For each fiscal year following the filing of the notice described in paragraph (f)(2)(i) of this section, the commodity pool operator may claim the extension of time by filing a statement containing the representations specified in paragraph (f)(2)(iv) of this section, at the same time as the pool's annual report.

(vi) Any notice or statement filed pursuant to paragraph (f)(2) of this section must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

* * * * *

Issued in Washington, D.C. on October 31, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–28367 Filed 11–6–00; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 00N–1545]

Applications for FDA Approval to Market a New Drug; Proposed Revision of Postmarketing Reporting Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations describing postmarketing reporting requirements to implement certain provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). The proposed changes apply to drug products that are life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition and that were not originally derived from human tissue and replaced by a recombinant product. The proposed rule would implement provisions of the Modernization Act by requiring an applicant who is the sole manufacturer of one of these products to notify FDA at least 6 months before discontinuing manufacture of the drug product.

DATES: Submit written comments by February 5, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance for industry referred to in this proposed rule. Submit written requests for single copies of the guidance referred to in this proposal to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, FAX 1–888–CBERFAX or 301–827–3844. Send two self-addressed adhesive labels to assist the office in processing your request. Requests should be identified with the

docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Andrea C. Masciale, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 21, 1997, President Clinton signed into law the Modernization Act (Public Law 105–115). Section 131 of the Modernization Act amends the Federal Food, Drug, and Cosmetic Act (the act) by codifying new section 506C (21 U.S.C. 356c). Section 506C of the act requires manufacturers who are the sole manufacturers of certain drug products to notify us (FDA) at least 6 months before discontinuing manufacture of the products. We may reduce the 6-month notification period if good cause exists for the reduction. Under section 506C of the act, we must provide information to the public about the product discontinuance. The proposed revisions to our postmarketing reporting requirements described in this notice are intended to implement these new provisions of the act.

A presidential memoradum on plain language (June 1, 1998) directs each agency to write regulations that are simple and easy to understand. As a result, we prepared this proposed regulation consistent with our plain language initiative. Please send any comments you have on the clarity of the regulations to the Dockets Management Branch (address above).

II. Section 506C of the Act

Section 506C(a) of the act requires sole manufacturers of a drug product that meets the following three criteria to notify us at least 6 months before discontinuing manufacture of the product:

1. The product must be life supporting, life sustaining, or intended for use in the prevention of a debilitating disease or condition;
2. The product must have been approved under section 505(b) or (j) of the act (21 U.S.C. 355(b) or (j)); and
3. The product must not have been originally derived from human tissue and replaced by a recombinant product.

Under section 506C(b) of the act, we may reduce the 6-month notification period required under section 506C(a) if the manufacturer who seeks our reduction of the notification period certifies to us that good cause exists for the reduction. Section 506C(b) of the act provides examples of situations where good cause exists as follows:

- A public health problem may result from continuation of manufacturing for the 6-month period;
- A biomaterials shortage prevents the continuation of manufacturing for the 6-month period;
- A liability problem may exist for the manufacturer if the manufacturing is continued for the 6-month period;
- Continuation of the manufacturing for the 6-month period may cause substantial economic hardship for the manufacturer;
- The manufacturer has filed for bankruptcy under chapter 7 or 11 of title 11, United States Code (11 U.S.C. 701 *et seq.* and 1101 *et seq.*); or
- The manufacturer can stop making the product but still distribute it to satisfy existing market need for 6 months.

Section 506C(c) of the act requires us to distribute, to the maximum extent practicable, information to the public about the discontinuation of products described in section 506C(a).

III. Description of the Proposed Rule

A. Notification Requirements

Section 314.81(b)(3)(iii) (21 CFR 314.81(b)(3)(iii)) of our current regulations requires all applicants to notify us when they withdraw a drug product from sale in the United States. This notification must take place within 15 days of the withdrawal.

As described above, under section 506C(a) of the act, the sole manufacturer of a drug product that meets the following three criteria must notify us at least 6 months before discontinuing manufacture of the product:

1. The product must be life supporting, life sustaining, or intended for use in the prevention of a debilitating disease or condition;
2. The product must have been approved under section 505(b) or (j) of the act; and
3. The product must not have been originally derived from human tissue and replaced by a recombinant product.

We are proposing to amend our postmarketing reporting regulations in § 314.81 to implement these new statutory requirements. Proposed § 314.81(b)(3)(iii) would state that applicants who are sole manufacturers of these drug products must notify us at least 6 months before discontinuing manufacture of the products.

Under this proposal, a life supporting or life sustaining drug would be a drug product that is essential to, or that yields information that is essential to, the restoration or continuation of a bodily function important to the continuation of human life. This definition of a life sustaining or life supporting product has been adapted from our regulations governing medical devices (21 CFR 860.3(e)). The Center for Devices and Radiological Health, in adopting the medical device interpretation of life sustaining or life supporting product (43 FR 32988, July 28, 1978), noted its reliance on the legislative history of the 1976 Medical Device Amendments to the act (Public Law 94–295) regarding the definition and application of the term (H. Rept. 94–1090, Medical Device Amendments, May 6, 1976 (Committee of Conference), p. 56).

We interpret the phrase ''debilitating disease or condition,'' as stated in section 506C(a) of the act, to mean serious disease or condition. The use of the phrase ''serious disease or condition'' is consistent with other regulations (e.g., Accelerated Approval of New Drugs and Biological Products for Serious or Life-Threatening Illnesses (21 CFR parts 314 subpart H and 601 subpart E) (accelerated approval rule)) and policy statements (e.g., guidance for industry, ''Fast Track Drug Development Programs—Designation, Development, and Application Review'' (October 1998) (fast track guidance)). As discussed in the preamble to the proposed accelerated approval rule (57 FR 13234, April 15, 1992), determination of the seriousness of a condition is a matter of judgment, but generally is based on its impact on such factors as survival, day-to-day functioning, or the likelihood that the disease, if left untreated, will progress from a less severe condition to a more serious one. The fast track guidance elaborates on our current approach to determining whether a disease or condition is serious by providing several examples of situations in which a drug would be considered to prevent a serious disease or condition. The fast track guidance is available at the CDER and CBER addresses above.

By the terms of the statute, the requirements of section 506C of the act are limited to products that we have approved under the authority of section 505(b) or (j) of the act. To implement this limitation, products we have approved under the authority of section 351 of the Public Health Service Act (42 U.S.C. 262) would not be covered by this proposed regulation.

To implement the last requirement of section 506C(a) of the act, the proposed rule specifically excludes from the notification requirements a manufacturer whose product was originally derived from human tissue and was subsequently replaced by a recombinant product.

B. Reduction in the Discontinuance Notification Period

Under section 506C(b) of the act, we may reduce the 6-month notification period if we find good cause for the reduction, generally as established by manufacturer certification that good cause exists for the reduction.

FDA is proposing § 314.91 to implement section 506C(b) of the act. Proposed § 314.91 would allow the agency to reduce for good cause the 6-month notification period required under proposed § 314.81(b)(3)(iii)(*a*). Under proposed § 314.91(b), we can reduce the 6-month discontinuance notification period when we find good cause exists for the reduction. We may find good cause exists based on information certified by an applicant in a written request for a reduction of the discontinuance notification period. In limited circumstances, we also may find good cause exists based on information already known to us. These circumstances can include the withdrawal of the drug from the market based upon formal regulatory action (e.g., under the procedures described 21 CFR 314.150) for the publication of a notice of opportunity for a hearing describing the basis for the proposed withdrawal of a drug from the market) or resulting from consultations between the applicant and us. To assist a manufacturer in requesting a reduction in the notification period, proposed § 314.91(c)(1) provides a template for certification that good cause exists.

Proposed § 314.91 repeats the examples in section 506C of the act and describes the information an applicant must provide FDA to establish good cause:

- To certify that a public health problem may result from continuation of manufacturing for the 6-month period, a manufacturer would need to describe in detail the potential threat to the public health (proposed § 314.91(d)(1)).
- To certify that a biomaterials shortage prevents the continuation of manufacturing for the 6-month period, the manufacturer would need to: (1) Describe in detail the steps it has taken to try to secure an adequate supply of biomaterials to enable manufacturing during the 6-month period, and (2) explain why the biomaterials could not be secured (proposed § 314.91(d)(2)).
- To certify that a liability problem may exist for the manufacturer if the manufacturing is continued for the 6-month period, the manufacturer would need to explain to the agency in detail the potential liability problem (proposed § 314.91(d)(3)).
- To certify that continuation of the manufacturing for the 6-month period may cause substantial economic hardship for the manufacturer, the manufacturer would need to describe in detail the financial impact on the company of manufacturing the drug product for 6 more months (proposed § 314.91(d)(4)).
- To certify that the manufacturer has filed for bankruptcy under chapter 7 or 11 of title 11, United States Code, the manufacturer would need to send the agency documentation of the filing or proof that the filing occurred (proposed § 314.91(d)(5)).
- To certify that the manufacturer can stop making the product but still distribute it to satisfy existing market need for 6 months, the manufacturer would need to describe in detail its processes: (1) To determine market need and (2) to ensure distribution for the 6-month period (proposed § 314.91(d)(6)).

A manufacturer may also establish good cause by other circumstances (proposed § 314.91(d)(7)). To certify that other circumstances establish good cause, the manufacturer would need to fully explain to us the need for a reduction in the 6-month notification period.

In assessing a manufacturer's assertion that good cause exists to warrant a reduction in the notification period, we may consider information in the certification and other information already available to us.

C. Disclosure of Discontinuance Information to the Public

As noted above, section 506C(c) of the act states that to the maximum extent practicable, we are to distribute information to the public about the discontinuation of products described in section 506C(a).

To implement section 506C(c) of the act, we are proposing § 314.81(b)(3)(iii)(*d*). Under this regulation, we would publicly disclose a list of the drugs that will be discontinued under the rule. The listing of discontinued products would include:

- The brand and generic name, the manufacturer, and indication(s) of the drug product;
- Whether a reduction in the notification period was granted by the agency under proposed § 314.91;
- If applicable, the reason(s) for a notification period of less than 6 months; and
- Any additional information the agency may have regarding anticipated product availability.

The proposed rule would require this information to be distributed through posting on the Internet and notice in the **Federal Register** (proposed § 314.81(b)(3)(iii)(*c*)).

IV. Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule may have a significant impact on a substantial number of small entities, an agency must consider alternatives that would minimize the economic impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires agencies to prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

We believe that this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866 and in these two statutes. As shown below, the proposed rule will result in minimal additional costs to industry. As a result, the proposed rule is not significant as defined by the Executive Order. We have further determined, as described below, that the proposed rule would affect only about one manufacturing firm per year. Therefore, the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and will not require further analysis under the Regulatory Flexibility Act. The Unfunded Mandates Reform Act does not require us to prepare a statement of costs and benefits for the proposed rule because the proposed rule in any 1-year expenditure would not exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

The proposed rule would require that manufacturers of certain drug products notify the agency at least 6 months before discontinuing their manufacture. As explained in section V of this

document, the regulatory conditions that trigger this requirement occur only infrequently. Based on agency experience, we estimate that such circumstances would occur no more than once per year. Moreover, the proposed notification requirement would impose a significant burden only when market conditions deteriorate so quickly that firms could not foresee the desired action 6 months in advance. Most pharmaceutical firms rely on established long-term marketing plans.

For those very few instances where a manufacturer needs to discontinue production and could not provide 6-months notice, the proposed rule permits us to reduce the notification period for good cause. Manufacturers can request a reduced notification period by submitting a written certification, based on considerations such as public health, legal liability, biomaterial shortage, or substantial economic hardship. A certification of substantial economic hardship would need to demonstrate that the reduced notification period was necessary to avoid substantial economic hardship to the manufacturer.

V. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (the PRA), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, we are publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, we invite comment on: (1) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Applications for FDA Approval to Market a New Drug; Proposed Revision of Postmarketing Reporting Requirements

Description: The proposed rule would implement section 506C of the act and would require applicants who are the sole manufacturers of certain drug or biologic products to notify us at least 6 months before discontinuing the manufacture of the product. For the rule to apply, a product would need to meet the following three criteria:

1. The product must be life supporting, life sustaining, or intended for use in the prevention of a debilitating disease or condition;
2. The product must have been approved by FDA under section 505(b) or (j) of the act; and
3. The product must not have been originally derived from human tissue and replaced by a recombinant product.

The proposed rule would allow us to reduce the 6-month notification period if we find good cause for the reduction. An applicant would be able to request that we reduce the notification period by certifying that good cause for the reduction exists. Under the proposed rule, we would also publicly disclose information about the drugs that are discontinued under the rule. Existing regulations, which appear in 21 CFR part 314, establish postmarketing reporting requirements for approved drugs. Current § 314.81(b)(3)(iii) (OMB Control No. 0910–0001), which would be renumbered § 314.81(b)(3)(iv) under the proposed rule, requires an applicant to notify us within 15 days of withdrawing a drug product from sale. This proposed rule would add two new reporting requirements.

A. Notification of Discontinuance

Under the proposed rule, at least 6 months before an applicant intends to discontinue manufacture of a product, the applicant would need to send us written notification of the discontinuance. For drugs regulated by CDER, the applicant would send notification to the director of the division in CDER that is responsible for the application, with one copy to the CDER Drug Shortage Coordinator and one copy to CDER's Drug Listing Branch. For drugs regulated by CBER, the applicant would send notification to the Director of CBER. We would require that the notification be sent to these offices to ensure that our efforts regarding the discontinuation of the product are commenced in a timely manner. We intend to work with members of the industry and with the applicant during the 6-month notification period to ease patient transition from the drug that will be discontinued to alternate therapy.

B. Certification of Good Cause

We may reduce the 6-month notification period if we find good cause for the reduction. As described in section 506C(b) of the act and proposed § 314.91, an applicant would be able to establish good cause by submitting written certification to the director of the division in CDER that is responsible for the application, with one copy to the CDER Drug Shortage Coordinator and one copy to CDER's Drug Listing Branch or, for drugs regulated by CBER, to the Director of CBER, that:

- A public health problem may result from continuation of manufacturing for the 6-month period (proposed § 314.91(d)(1));
- A biomaterials shortage prevents the continuation of manufacturing for the 6-month period (proposed § 314.91(d)(2));
- A liability problem may exist for the manufacturer if the manufacturing is continued for the 6-month period (proposed § 314.91(d)(3));
- Continuation of the manufacturing for the 6-month period may cause substantial economic hardship for the manufacturer (proposed § 314.91(d)(4));
- The manufacturer has filed for bankruptcy under chapter 7 or 11 of title 11, United States Code (proposed § 314.91(d)(5));
- The manufacturer can stop making the product but still distribute it to satisfy existing market need for 6 months (proposed § 314.91(d)(6)); or
- Other good cause exists for a reduction in the notification period (proposed § 314.91(d)(6)).

With each certification described above, the applicant would need to describe in detail the basis for the applicant's conclusion that such circumstances exist. We would require that the written certification that good cause exists be submitted to the offices identified above to ensure that our efforts regarding the discontinuation take place in a timely manner.

Description of Respondents: An applicant who is the sole manufacturer and who intends to discontinue marketing of a drug product that: (1) Is life supporting, life sustaining, or intended for use in the prevention of a debilitating disease or condition; (2) was approved by FDA under section 505(b) or (j) of the act; and (3) was not originally derived from human tissue and replaced by recombinant product.

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden for notification of product discontinuance and certification of good cause under this proposed rule.

Notification of Discontinuance: Based on data collected from the CDER drug

shortage coordinator, CDER review divisions, and CBER review offices in fiscal year (FY) 1999, one applicant discontinued manufacture of one product meeting the criteria of section 506C of the act. Each applicant meeting the criteria would be required under proposed § 314.81(b)(3)(iii) to notify the agency of the discontinuance at least 6 months before manufacturing ceased. Although the procedures for notifying the agency that are set forth in the proposed rule were not in place in FY 1999, we estimate that the number of manufacturers who would be required to notify us of discontinuance would remain the same. Therefore, the number of respondents is estimated to be one. The total annual responses are the total number of notifications of discontinuance that are expected to be submitted to CDER or CBER in a year. In FY 1999, an applicant would have been required to notify us of one product discontinuance under the proposed procedures. We estimate that the total annual responses will remain the same, averaging one response per respondent. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a notification of product discontinuance, including the time it takes to gather and copy the statement. Based on experience in working with applicants regarding similar collections of information, we estimate that approximately 2 hours on average would be needed per response. Therefore, we estimate that 2 hours will be spent per year by respondents notifying us of a product discontinuance under these proposed regulations.

Certification of Good Cause: Based on data collected from the CDER drug shortage coordinator, CDER review divisions, and CBER review offices in FY 1999, one applicant discontinued manufacture of one product meeting the criteria of section 506C of the act. Each applicant would have the opportunity under proposed § 314.91 to request a reduction in the 6-month notification period by certifying to us that good cause exists for the reduction. We do not expect that each eligible applicant will certify that good cause exists for a reduction. Furthermore, the number of applicants who would be in a position to request a reduction is quite small. Therefore, the number of respondents is estimated to be one. The total annual responses are the total number of notifications of discontinuance that are expected to be submitted to us in a year. We estimate that the total annual responses will remain small, averaging one response per respondent. The hours per response is the estimated number of hours that a respondent would spend preparing the detailed information certifying that good cause exists for a reduction in the notification period, including the time it takes to gather and copy the documents. Based on experience in working with applicants regarding similar collections of information, we estimate that approximately 16 hours on average would be needed per response. Therefore, we estimate that 16 hours will be spent per year by respondents certifying that good cause exists for a reduction in the 6-month notification period under proposed § 314.91.

We invite comments on this analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Notification of discontinuance (proposed § 314.81(b)(3)(iii))	1	1	1	2	2
Certification of good cause (proposed § 314.91)	1	1	1	16	16
Total					18

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

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), we have submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments on this information collection by December 7, 2000, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

VI. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the order, and, consequently, a federalism summary impact statement is not required.

VII. Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal by February 5, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. Electronic Access

Copies of the guidance for industry referred to in this proposed rule are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 314 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 371, 374, 379e.

2. Section 314.81 is amended by redesignating paragraph (b)(3)(iii) as (b)(3)(iv); by removing from newly redesignated paragraph (b)(3)(iv)(*c*) the phrase ''(b)(3)(iii)'' and adding in its place the phrase ''(b)(3)(iv)''; and by adding new paragraph (b)(3)(iii) to read as follows:

§ 314.81 Other postmarketing reports.

* * * * *

(b) * * *

(3) * * *

(iii) *Notification of discontinuance.* (*a*) An applicant who is the sole manufacturer of an approved drug product must notify FDA in writing at least 6 months prior to discontinuing manufacture of the drug product if:

(*1*) The drug product is life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition; and

(*2*) The drug product was not originally derived from human tissue and replaced by a recombinant product.

(*b*) For drugs regulated by the Center for Drug Evaluation and Research (CDER), the notification required by paragraph (b)(3)(iii)(*a*) of this section must be sent to the director of the division responsible for the application as identified to the applicant under § 314.440(a)(1). The applicant must send one copy of the notification to the Drug Shortage Coordinator, at the address of the Director of CDER, and one copy of the notification to the Drug Listing Branch. For drugs regulated by the Center for Biologics Evaluation and Research (CBER), the notification required by paragraph (b)(3)(iii)(*a*) of this section must be sent to the Director of CBER.

(*c*) FDA will publicly disclose a list of all drug products to be discontinued under paragraph (b)(3)(iii)(*a*) of this section. If the notification period is reduced under § 314.91, the list will state the reason(s) for such reduction and the anticipated date that manufacturing will cease.

* * * * *

3. Section 314.91 is added to read as follows:

§ 314.91 Obtaining a reduction in the discontinuance notification period.

(a) *What is the discontinuance notification period?* The discontinuance notification period is the 6-month period required under § 314.81(b)(3)(iii)(*a*). The discontinuance notification period begins when an applicant who is the sole manufacturer of certain products notifies FDA that it will discontinue manufacturing the product. The discontinuance notification period ends when manufacturing ceases.

(b) *When can FDA reduce the discontinuance notification period?* FDA can reduce the 6-month discontinuance notification period when it finds good cause exists for the reduction. FDA may find good cause exists based on information certified by an applicant in a request for a reduction of the discontinuance notification period. In limited circumstances, FDA may find good cause exists based on information already known to the agency. These circumstances can include the withdrawal of the drug from the market based upon formal FDA regulatory action (e.g., under the procedures described in § 314.150 for the publication of a notice of opportunity for a hearing describing the basis for the proposed withdrawal of a drug from the market) or resulting from the applicant's consultations with the agency.

(c) *How can an applicant request a reduction in the discontinuance notification period?* (1) The applicant must certify in a written request that, in its opinion and to the best of its knowledge, good cause exists for the reduction. The applicant must submit the following certification:

The undersigned certifies that good cause exists for a reduction in the 6-month notification period required in § 314.81(b)(3)(iii)(*a*) for discontinuing the manufacture of (*name of the drug product*). The following circumstances establish good cause (*one or more of the circumstances in paragraph (d) of this section*).

(2) The certification must be signed by the applicant or the applicant's attorney, agent (representative), or other authorized official. If the person signing the certification does not reside or have a place of business within the United States, the certification must contain the name and address of, and must also be signed by, an attorney, agent, or other authorized official who resides or maintains a place of business within the United States.

(3) For drugs regulated by the Center for Drug Evaluation and Research (CDER), the certification must be submitted to the director of the division that is responsible for the application as identified to the applicant under § 314.440(a)(1). One copy of the certification must be sent to the Drug Shortage Coordinator, at the address of the Director of CDER, and one copy of the certification must be sent to the Drug Listing Branch. For drugs regulated by the Center for Biologics Evaluation and Research (CBER), the certification must be submitted to the Director of CBER.

(d) *What circumstances and information can establish good cause for a reduction in the discontinuance notification period?* (1) A public health problem may result from continuation of manufacturing for the 6-month period. This certification must include a detailed description of the potential threat to the public health.

(2) A biomaterials shortage prevents the continuation of the manufacturing for the 6-month period. This certification must include a detailed description of the steps taken by the applicant in an attempt to secure an adequate supply of biomaterials to enable manufacturing to continue for the 6-month period and an explanation of why the biomaterials could not be secured.

(3) A liability problem may exist for the manufacturer if the manufacturing is continued for the 6-month period. This certification must include a detailed description of the potential liability problem.

(4) Continuation of the manufacturing for the 6-month period may cause substantial economic hardship for the manufacturer. This certification must include a detailed description of the financial impact of continuing to manufacture the drug product over the 6-month period.

(5) The manufacturer has filed for bankruptcy under chapter 7 or 11 of title 11, United States Code (11 U.S.C. 701 *et seq.* and 1101 *et seq.*). This certification must be accompanied by documentation of the filing or proof that the filing occurred.

(6) The manufacturer can continue distribution of the drug product to satisfy existing market need for 6 months. This certification must include a detailed description of the manufacturer's processes to ensure such distribution for the 6-month period.

(7) Other good cause exists for the reduction. This certification must include a detailed description of the need for a reduction.

Dated: October 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28519 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Financial Management Service

31 CFR Part 205

Public Meetings on Proposed Revisions to the Regulations Implementing the Cash Management Improvement Act

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of public meetings.

SUMMARY: On October 12, 2000 the Financial Management Service (FMS) published a notice of proposed rule making (NPRM) to revise the regulations at 31 CFR Part 205 implementing the Cash Management Improvement Act of 1990 (65 FR 60796). These regulations govern the transfer of funds between the Federal Government and States for certain Federal assistance programs. As a next step in the process, FMS is holding public meetings to seek input on all aspects of the NPRM. All parties in attendance may give a prepared statement and/or raise questions in the meetings.

DATES: The public meetings will be held on November 30, 2000 in San Francisco, CA and on December 8, 2000 in Washington, DC. Persons desiring to attend must register by November 22, 2000. See supplementary information section on how to register.

ADDRESSES: The first meeting will be held in San Francisco at FMS' San Francisco Regional Financial Center, 390 Main Street, in Conference Rooms A 7 B on the 6th Floor at 10 a.m. (PST).

The second meeting wil be held in Washington, DC at the General Services Administration Building, 7th and D Streets (SW), in the GSA Auditorium at 10 a.m. (EST).

FOR FURTHER INFORMATION CONTACT: Oscar S. Ona, at (202) 874–6799, Martha Thomas Mitchell, at (202) 874–6757, or Matt Helfrich, at (202) 874–6754.

SUPPLEMENTARY INFORMATION:

Background

The Cash Management Improvement Act (CMIA) was enacted to create greater efficiency and equity in the exchange of funds between the Federal Government and the States. Prior to the enactment of CMIA, Federal agencies expressed concerns that States were drawing down funds well in advance of the time those funds were needed by the States. States, on the other hand, expressed concerns about having to pay out their own funds in advance of receiving funds from the Federal Government.

CMIA, which requires the heads of executive agencies to provide for the timely disbursement of Federal funds in accordance with regulations prescribed by the Secretary of the Treasury, has three major provisions designed to address these issues:

- States and Federal agencies must minimize the time between transfer of funds from the U.S. Treasury and the clearance of funds out of the accounts of a State.
- The Secretary of the Treasury shall enter into a Treasury-State Agreement with each State which specifies the funds transfer procedures for Federal assistance programs.
- In general, States and the Federal Government are respectively entitled to interest when the other fails to make a funds transfer in a timely fashion. States owe the Federal Government interest for the time Federal funds are in State accounts before they are spent for Federal assistance program purposes. The Federal Government owes a State interest if the State disburses its own funds with obligational authority before receiving Federal funds.

The notice of proposed rule making (NPRM) updates the existing regulation based upon eight years of program implementation experience (since the issuance of Part 205) on the part of States, Federal program agencies, the General Accounting Office and the Department of the Treasury. The concerns of all stakeholders were considered in drafting the NPRM. The proposed changes are:

- The NPRM raises the default dollar thresholds that determine which programs are subject to CMIA's interest provisions. This allows States to make fewer programs subject to subpart A of the rule, reducing the administrative burden of tracking smaller dollar volume programs, but retaining coverage of the large dollar programs. A State retains the option of retaining or expanding program coverage by applying a lower dollar threshold amount.
- The NPRM makes Treasury-State Agreements (TSAs) effective until terminated instead of being valid for one to five years. This provision enables FMS and States to smooth the high-volume renegotiation process that exists due to 47 States sharing July 1 as the first day of the fiscal year. By reducing the number of renegotiations each year, FMS and States can focus resources on efficient CMIA implementation.
- The NPRM eliminates restrictions on allowable funding techniques. States and FMS can agree to any funding technique that meets certain requirements, including reimbursable funding.
- The CMIA provides that a State is entitled to interest if it disburses its own funds for program purposes in accordance with Federal law, Federal regulation, or Federal-State agreement. Some agencies require States to obtain agency approval of certain expenditures. Those requirements may be set forth in a Federal law, Federal regulation, or Federal-State Agreement. The NPRM requests comment on the nature and operation of agency approval requirements that currently are in place.
- The NPRM proposes that funds transfers requested by States and later allowed by Federal agencies for program reasons by subject to the interest provisions of CMIA. Disallowed fund transfers are not addressed by the current CMIA regulation. The NPRM specifically seeks comment on the implementation of this provision.
- The NPRM incorporates previously issued Policy Statements into the regulation. Over the past seven years, FMS has issued a number of Policy Statements clarifying proper CMIA implementation. This draft integrates the relevant Policy Statements into the body of the regulation. Outdated Policy Statements have been discarded.
- The NPRM raises the refund transaction exemption threshold to $50,000 (from $10,000). Adequate coverage will be maintained and the administrative burden of tracking small dollar amounts will be eliminated.
- The NPRM requires that all transfers of Federal funds be conducted in accordance with the Debt Collection Improvement Act (DCIA) of 1996. All Federal funds transactions must be conducted via Electronic Funds Transfer (EFT).
- The NPRM has been reformatted in accordance with the Administration's ''Plan Language'' Executive Memorandum issued on June 1, 1998. The regulation has been rewritten in a manner to make it easier to understand.

How to Register: Any person desiring to attend either of the two public meetings must register for the meetings by November 22, 2000. Requests to present a prepared statement at the public meetings should be made at the time of registration. This request should include the topic(s) which will be addressed, along with a brief description of the statement.

Any restrictions on the length of the prepared statement will depend on the number of requests received. The FMS staff will acknowledge receipt of requests to present a prepared statement and will inform participants of the schedule for presentation.

Registration for both public meetings can be completed through the Internet. The CMIA webpage, found *http://www.fms.treas.giv/policymia*, will provide an online registration form, allowing all interested parties to register for either public meeting. Registration can also be done by any of the following means: via email by sending your request to cmiasignup@fms.treas.gov; by facsimile transmission to fax number (202) 874–6965; by phone by calling Martha Thomas Mitchell at (202) 874–6757 or Oscar S. Ona at (202) 874–6799; by written request sent to Martha Thomas Mitchell-Public Meetings, Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 404F, 401 14th Street, SW, Washington, DC 20227, or hand delivered on business days between 9:00 a.m. and 5:00 p.m.

Please be sure to include your name and contact phone number, which meeting you will attend, and the organization or agency you represent.

Requests to present a prepared statement at either meeting should be made at the time of registration. The online registration form will provide a field to specify whether you would like to participate. The topic to be addressed in the testimony should be disclosed, as well as a brief description of issues which will be discussed. Requests to present a statement should also be disclosed in conjunction with registration via email, fax, mail, or telephone.

Please notify Oscar S. Ona, at (202) 874–6799 by November 22, 2000 if auxiliary aids or services are needed, including an interpreter or handicapped access.

Dated: November 2, 2000.

Bettsy Lane,

Assistant Commissioner, Federal Finance Financial Management Service.

[FR Doc. 00–28579 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–35–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6896–7]

RIN 2060–AH13

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for municipal solid waste (MSW) landfills. The proposed rule is applicable to both major and area landfill sources, and contains the same requirements as the Emission Guidelines and New Source Performance Standards (EG/NSPS) for MSW landfills. The proposed rule adds startup, shutdown, and malfunction (SSM) requirements, adds operating condition deviations for out-of-bounds monitoring parameters, and changes the reporting frequency for one type of report.

The proposed rule fulfills the requirements of section 112(d) of the Clean Air Act (CAA), which requires the Administrator to regulate emissions of hazardous air pollutants (HAP) listed in section 112(b), and helps implement the Urban Air Toxics Strategy developed under section 112(k) of the CAA. The intent of the standards is to protect the public health by requiring new and existing sources to control emissions of HAP to the level reflecting the maximum achievable control technology (MACT). The HAP emitted by MSW landfills include, but are not limited to, vinyl chloride, ethyl benzene, toluene, and benzene. Each of the HAP emitted from MSW landfills can cause adverse health effects provided sufficient exposure. For example, vinyl chloride can adversely affect the central nervous system and has been shown to increase the risk of liver cancer in humans, while benzene is known to cause leukemia in humans.

DATES: *Comments.* Submit comments on or before January 8, 2001.

Public Hearing: If anyone contacts the EPA requesting to speak at a public hearing by November 27, 2000, a public hearing will be held on December 7, 2000.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–98–28, U.S. Environmental Protection Agency, 1200 Pennsylvania 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 begin at 10:00 a.m. and will be held at EPA's Office of Administration Auditorium in Research Triangle Park, North Carolina, or an alternate site nearby.

Docket. Docket No. A–98–28 for this proposal and associated Docket No. A–88–09 contain supporting information used in developing the standards. These dockets are located at the U.S. EPA, 401 M Street SW, Washington, DC 20460, in Room M–1500, Waterside Mall (ground floor, central mall), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Laur, Waste and Chemical Processes Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5256, facsimile number (919) 541–0246, electronic mail (e-mail) address laur.michele@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by 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: Docket No. A–98–28. 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 ''Confidential Business Information''. 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: Ms. Michele Laur, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Durham, NC 27701. Do not submit CBI electronically.

The EPA will disclose information identified as ''Confidential Business Information'' only to the extent allowed and 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, Emission Standard Division (MD–13), U.S. EPA, Research Triangle Park, NC

27711, telephone (919) 541–5671, at least 2 days in advance of the public 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 action. 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 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 action are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. 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 this action is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action 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:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry: Air and water resource and solid waste management.	924110	9511	Solid waste landfills.
Industry: Refuse systems—solid waste landfills	562212	4953	Solid waste landfills.
State, local, and Tribal government agencies	562212 924110	4953	Solid waste landfills; Air and water resource and solid waste management.

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 carefully examine the applicability criteria in §§ 63.1935 and 63.1940 of proposed subpart AAAA. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The information presented in the preamble is organized as follows:

I. Introduction and Background Information
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What are the health effects associated with municipal solid waste landfills?
II. Summary of the Proposed Rule
A. What source categories are affected by this proposed rule?
B. What are the primary sources of emissions and what are the emissions?
C. What is the affected source?
D. What would the proposed rule require?
E. When would I have to begin complying with the proposed rule?
F. Are new and existing sources defined differently for purposes of the proposed rule than for the EG/NSPS and what is the effect of this difference?
G. How must I demonstrate compliance?
III. Rationale for the Proposed Rule
A. How did EPA select the affected source?
B. How did EPA determine the basis and level of the proposed rule for existing and new major sources?
C. How did EPA determine the standard for area sources?
D. Why is NMOC used as a surrogate for HAP?
E. How did EPA select the format of the standard?
F. How did EPA determine the requirements of the proposed rule?
G. What is the basis for the startup, shutdown, and malfunction, and monitoring and reporting requirements?
H. How did EPA determine compliance dates?
I. What are some of the special issues affecting MSW landfills?
IV. Summary of the Environmental, Energy, and Economic Impacts
V. Administrative Requirements
A. Executive Order 12866—Regulatory Planning and Review
B. Executive Order 13132—Federalism
C. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act

Abbreviations and Acronyms Used in This Document

ASCII—American Standard Code for Information Interchange
CAA—Clean Air Act
CBI—Confidential Business Information
CEMS—continuous emissions monitoring systems
CFR—Code of Federal Regulations
CMS—continuous monitoring system
EPA—Environmental Protection Agency
EG—emission guidelines
FR—Federal Register
GACT—generally available control technology
HAP—hazardous air pollutants
ICR—Information Collection Request
kg/year—kilograms per year
m^3—cubic meters
MACT—maximum achievable control technology
mg/dscm—milligrams per dry standard cubic meter
mg/m^3—milligrams per cubic meter
Mg/year—megagrams per year
MSW—municipal solid waste
NAICS—North American Industrial Classification System
NESHAP—national emission standards for hazardous air pollutants
ng/dscm—nanograms per dry standard cubic meter
NMOC—nonmethane organic compounds
NSPS—new source performance standards
NTTAA—National Technology Transfer and Advancement Act
OAQPS—Office of Air Quality Planning and Standards
OMB—Office of Management and Budget
OP—Office of Policy
PCS—petroleum contaminated soils
PMACT—presumptive maximum achievable control technology
ppmv—parts per million by volume
Pub. L.—Public Law
RCRA—Resource Conservation and Recovery Act
RFA—Regulatory Flexibility Act
SBREFA—Small Business Regulatory Enforcement Fairness Act
SIC—Standard Industrial Classification
SSM—startup, shutdown, and malfunction
TTN—Technology Transfer Network
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code
VOC—volatile organic compounds

I. Introduction and Background Information

The proposed subpart AAAA is based on the emission guidelines and new source performance standards in 40 CFR part 60, subparts Cc and WWW, with some additional requirements, and further ensures the reduction of HAP emissions from MSW landfills. The additional requirements above and beyond the EG/NSPS are provisions for a SSM plan with the associated records and reports, reporting of operating condition deviations for out-of-range monitoring parameters, and one type of annual report required by the EG/NSPS is required to be submitted every 6 months instead of once a year.

A. What Is the Source of Authority for Development of NESHAP?

Under section 112(d) of the CAA, we are required to regulate major sources of the 188 HAP listed in section 112(b). On July 16, 1992, we published a list of industrial source categories, which included MSW landfills, that emit one or more of these HAP. We must promulgate standards for the control of emissions of HAP from both new and existing major source MSW landfills. For ''major'' source MSW landfills (those that emit 10 tons per year (tpy) or more of a listed pollutant or 25 tpy or more of a combination of pollutants), the CAA requires us to develop standards that require the application of MACT.

Under section 112(k) of the CAA, EPA developed a strategy to control emissions of HAP from area sources in urban areas, identifying 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. Municipal solid waste landfills were listed as one of the 29 area source categories on July 19, 1999 because 13 of the listed HAP are emitted from MSW landfills (64 FR 38706).

B. What Criteria Are Used in the Development of NESHAP?

The CAA requires NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable for new and existing major sources. 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 all major hazardous air pollutant emission sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each category. 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 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 (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost, nonair quality health and environmental impacts, and energy requirements.

Finally, the CAA allows NESHAP to reflect an alternative standard for area sources. The alternative standard provides for the use of generally available control technologies (GACT) or management practices to reduce emissions of HAP.

C. What Are the Health Effects Associated With Municipal Solid Waste Landfills?

The proposed rule ensures reductions of emissions of nearly 30 HAP including, but not limited to, vinyl chloride, ethyl benzene, toluene, and benzene. The degree of adverse effects to human health from exposure to these HAP can range from mild to severe. The extent and degree to which the human health effects may be experienced are dependent upon the ambient concentration observed in the area (as influenced by emission rates, meteorological conditions, and terrain); the frequency of and duration of exposures; characteristics of exposed individuals (genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population; and pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence).

Vinyl Chloride. Acute (short-term) exposure to high levels of vinyl chloride in air has resulted in central nervous system (CNS) effects, such as dizziness, drowsiness, and headaches in humans. Chronic (long-term) exposure to vinyl chloride through inhalation and oral exposure in humans has resulted in liver damage. There are human and animal studies showing adverse effects which raise a concern about potential reproductive and developmental hazards to humans from exposure to vinyl chloride. Cancer is a major concern from exposure to vinyl chloride via inhalation. Vinyl chloride exposure has been shown to increase the risk of a rare form of liver cancer in humans. The EPA has classified vinyl chloride as a Group A, known human carcinogen.

Ethyl Benzene. Acute exposure to ethyl benzene in humans results in respiratory effects, such as throat irritation and chest constriction, irritation of the eyes, and neurological effects such as dizziness. Chronic exposure to ethyl benzene by inhalation in humans has shown conflicting results regarding its effects on the blood. Animal studies have reported effects on the blood, liver, and kidneys from chronic inhalation exposure to ethyl benzene. No information is available on the developmental or reproductive effects of ethyl benzene in humans, but animal studies have reported developmental effects, including birth defects in animals exposed via inhalation. The EPA has classified ethyl benzene in Group D, not classifiable as to human carcinogenicity.

Toluene. Acute inhalation of toluene by humans may cause effects to the CNS, such as fatigue, sleepiness, headache, and nausea, as well as irregular heartbeat. Repeated exposure to high concentrations may induce loss of coordination, tremors, decreased brain size, involuntary eye movements, and impaired speech, hearing, and vision. Chronic inhalation exposure of humans to lower levels of toluene also causes irritation of the upper respiratory tract, eye irritation, sore throat, nausea, dizziness, headaches, and difficulty with sleep. Studies of children of pregnant women exposed by inhalation to toluene or to mixed solvents have reported CNS problems, facial and limb abnormalities, and delayed development. In addition, inhalation of toluene during pregnancy may increase the risk of spontaneous abortion. The EPA has developed a reference concentration of 0.4 milligrams per cubic meter for toluene. Inhalation of this concentration or less over a lifetime would be unlikely to result in adverse noncancer effects. No data exist that suggest toluene is carcinogenic. The EPA has classified toluene in Group D, not classifiable as to human carcinogenicity.

Benzene. Acute inhalation exposure of humans to benzene may cause drowsiness, dizziness, headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness. Chronic inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells and aplastic anemia, in occupational settings. Reproductive effects have been reported for women exposed by inhalation to high levels, and adverse effects on the

developing fetus have been observed in animal tests. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in humans occupationally exposed to benzene. The EPA has classified benzene as a Group A, known human carcinogen.

The proposed rule reduces nonhazardous air pollutant volatile organic compound (VOC) emissions as well. Emissions of VOC have been associated with a variety of health and welfare impacts. Volatile organic compound emissions, together with nitrogen oxides, are precursors to the formation of tropospheric ozone, or smog. Exposure to ambient ozone is responsible for a series of public health impacts, such as alterations in lung capacity; eye, nose, and throat irritation; nausea; and aggravation of existing respiratory disease. Ozone exposure can also damage forests and crops.

II. Summary of the Proposed Rule

The proposed rule contains the same requirements as the EG/NSPS, plus SSM definition and reporting of deviations for out-of-range monitoring parameters. Also, the proposed rule requires compliance reporting every 6 months while the EG/NSPS requires annual reporting.

A. What Source Categories Are Affected by This Proposed Rule?

The proposed rule applies to all MSW landfills that are major sources or are co-located with a major source, and some landfills that are area sources. However, most requirements are proposed to take effect when landfills emit equal to or greater than 50 megagrams per year (Mg/year) nonmethane organic compounds (NMOC) and have a design capacity equal to or greater than 2.5 million Mg and 2.5 million cubic meters (m^3).

We estimate that all MSW landfills that are major sources of HAP have a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 and emit or will emit 50 Mg/yr or greater of NMOC. Therefore the requirements of the proposed rule would apply to all MSW landfill major sources. Several MSW landfill area sources would also be subject to the requirements of these proposed standards.

B. What Are the Primary Sources of Emissions and What Are the Emissions?

The majority of emissions of HAP at MSW landfills come from the natural anaerobic (without air) decomposition of municipal solid waste. Typical municipal solid waste contains household and commercial rubbish, paints, solvents, pesticides, and adhesives, which contain numerous organic compounds. During the decomposition process, landfill gas is generated. This gas is primarily composed of methane and carbon dioxide. The organic compounds in the decomposing waste are stripped from the waste by these gases and transported to the surface, or the organic compounds travel underground to other locations prior to their release.

A second but significantly lesser source of emissions of HAP comes from the collection, storage and treatment of landfill leachate. Landfill leachate is a liquid generated during the waste decomposition process. This liquid contains a much smaller concentration of the same HAP contained in landfill gas. During collection, storage and treatment, small amounts of HAP may volatilize to the air or may come in contact with groundwater.

Regardless of the emission pathway, it is the decomposition of organic-containing solid waste that is the source of the HAP. Landfills have been identified as the source of nearly 30 HAP, including but not limited to toluene, ethyl benzene, vinyl chloride and benzene. Estimated uncontrolled emissions from all landfills can be as high as 36,000 tpy.

C. What Is the Affected Source?

The affected source is the entire municipal solid waste landfill in a contiguous geographical space where household waste is placed in or on the land and consists of one or more cells that are under common ownership or control. The facility may receive household waste as well as other types of Resource Conservation and Recovery Act (RCRA) Subtitle D waste. The affected source may also include equipment for the collection and control of landfill gas or leachate.

D. What Would the Proposed Rule Require?

This proposed rule does not apply to landfills with a design capacity less than 2.5 million Mg or 2.5 million m^3 or that emit less than 50 Mg/yr of NMOC; these landfills continue to remain subject to the provisions of the EG/NSPS as applicable. Landfills with a design capacity of greater than or equal to 2.5 million Mg and 2.5 million m^3 and that emit at least 50 Mg/yr NMOC also would continue to be subject to the EG/NSPS as applicable, but there are additional requirements in this proposed rule that would apply. Listed below are the requirements of the proposed rule that are beyond the EG/NSPS requirements.

You would be required to meet the SSM requirements that are listed in the general provisions to 40 CFR part 63. You would develop and implement a written SSM plan that describes, in detail, the procedures for operating and maintaining the collection and control system and the continuous monitoring system (CMS) during periods of startup, shutdown, and malfunction (§ 63.6(e)(3)). There are also recordkeeping and reporting requirements for SSM incidents.

The proposed rule would also require you to operate the control device within the operating parameter boundaries as described in § 60.758(c)(1) and to continuously monitor control device operating parameters. Compliance with the operating limits is demonstrated when monitoring data show that the gas control devices are operating within the established operating parameter range. Compliance also occurs when data quality is sufficient to constitute a valid hour of data in a 3-hour block period.

For the proposed rule, deviations occur when a source's 3-hour average falls outside the established boundaries. A deviation also occurs when more than 1 hour in a 3-hour average is considered invalid. Monitoring data are insufficient to calculate a valid hourly average if measured values are unavailable for more than one 15-minute period within the hour. If such a deviation occurs, then the source may be in violation of operating conditions (that is, in violation of proper operation and maintenance of a control device). However, 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 SSM plan. 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). (It should be noted that the EG/NSPS limits the duration of startup, shutdown or malfunction. See § 60.755(e).)

With one exception, the proposed rule will also require you to submit the reports that are specified in 40 CFR part 60, subpart WWW, or in the Federal plan, the EPA-approved State plan, or the Tribal plan that implements 40 CFR part 60 subpart Cc, whichever is applicable. As an exception, the report required in § 60.757(f) would be submitted every 6 months rather than annually. This report pertains to the value and duration that control devices were operating in out-of-bounds conditions, the duration of periods

when the landfill gas stream was diverted from the control device(s), the location of areas that exceed the 500 parts per million methane concentration limit, and the dates of installation and location of each added well or collection system expansion.

E. When Would I Have To Begin Complying With the Proposed Rule?

If your landfill is a new affected source, you would need to comply with the proposed rule by [the effective date of the final rule] or at the time you begin operating, whichever occurs last. If your landfill is an existing affected source, you would need to comply with the proposed rule by 1 year after [the effective date of the final rule]. The compliance dates and time line for the EG/NSPS are unaffected by this proposed rule. It is important to note that to be in compliance with the proposed rule, you must follow the requirements of the EG/NSPS, and you must comply with the additional requirements included in proposed subpart AAAA.

F. Are New and Existing Sources Defined Differently for Purposes of the Proposed Rule Than for the EG/NSPS and What Is the Effect of This Difference?

Yes, there is a difference. For the proposed rule, a new affected source is one that commenced construction or reconstruction (defined in 40 CFR part 63, subpart A) after November 7, 2000. An existing affected source is any affected source that is not a new source, that is, any source that commenced construction on or before November 7, 2000 and accepted waste at anytime since November 8, 1987.

For purposes of the NSPS, a new source is each MSW landfill for which construction, modification, or reconstruction commenced on or after May 30, 1991. For purposes of the EG, an existing source is any MSW landfill that is not a new source and has accepted waste since November 8, 1987.

Because regulatory impacts can vary based on these different definitions, it is important for sources to know how they are defined and the regulatory implications for each rule that applies to them. The regulatory implications of new versus existing source determination for sources affected by the EG/NSPS are well understood, unaffected by this proposed rule, and, thus, will not be discussed further here. The regulatory implications of new versus existing source determination for sources affected by this proposed rule are limited to compliance timing. While new sources must comply with the proposed subpart by the publication date of the final rule or at the time they begin operating, existing sources must comply with the proposed subpart within 1 year of the publication of the final rule.

G. How Must I Demonstrate Compliance?

You must demonstrate compliance by meeting the requirements in the EG/NSPS and by maintaining monitoring parameters within acceptable ranges. In addition, you must submit reports every 6 months which must include any notifications of deviations from the monitoring parameter values. You must develop and implement a written SSM plan according to the provisions in § 63.6(e)(3). If you take action during a SSM event, you must keep records for that SSM event which demonstrate that you followed the procedures specified in the SSM plan. You must submit a report every 6 months if the action is consistent with the SSM plan. However, if the action is not consistent with the SSM plan, you must notify EPA within 2 days of the SSM event and must follow up with a letter within 7 days of the event (§ 63.10(d)(5)(ii)).

III. Rationale for the Proposed Rule

A. How Did EPA Select the Affected Source?

Selection of the affected source defines the boundary of the unit to which the proposed rule applies. This definition is used in combination with the term ''reconstruction'', defined in § 63.2, to determine when an ''existing source'' becomes a ''new source''.

The affected source can be narrowly or broadly defined. If narrowly defined, identification as a new source may occur sooner. By contrast, identification may be delayed or never occur if the affected source is broadly defined.

A change to new source status can result in the application of more stringent control requirements or a shorter time to comply. Since the reconstruction of an existing source may result in greater emissions of HAP, it may be desirable to require greater or earlier control.

During the development of the proposed rule, we considered the impact of a narrow and broad affected source definition. This evaluation took into consideration the nature of the source category, noting that landfills do not reconstruct in the same sense as defined in § 63.2. In addition, we noted that this proposal requires the same level of control for new and existing sources. Based on this evaluation, we decided to broadly define the affected source.

B. How Did EPA Determine the Basis and Level of the Proposed Rule for Existing and New Major Sources?

To determine the basis and level of control for existing and new major sources, we gathered readily available data on the physical, operational, and emission characteristics of landfills. In addition, we made site visits to 20 landfills in seven States to further characterize the source and the control technologies in use. From these data, we developed a database for MSW landfills.

1. How Did EPA Determine the MACT Floor?

To determine the MACT floor for existing sources, we used collected data to estimate emissions, determine major and area source status, and identify controls currently in use at landfills. We determined the source status for 9,539 landfills based on maximum uncontrolled emission estimates from landfill gas. We estimated 1,140 facilities are, or will be, major sources of HAP.

Similarly, we used maximum NMOC emission estimates and landfill capacity data to determine the number of landfills subject to the landfill gas collection and control requirements of the EG/NSPS. We identified 1,312 facilities subject to the EG/NSPS level of control. We determined that the 1,140 major sources are a subset of the EG/NSPS facilities. Since substantially greater than 12 percent of the existing major sources apply this level of control, we determined that the MACT floor for existing sources is the EG/NSPS level of control.

To determine the MACT floor for new sources, we tried to locate information identifying gas control technologies that are more effective than the controls required by the EG/NSPS. We were unable to locate any information identifying any landfill gas emissions control technologies that are more effective in reducing HAP emissions than the controls required under the EG/NSPS for MSW landfills. Because no better controls are available, the EG/NSPS is the emission control achieved in practice by the best controlled similar source and, therefore, is also the MACT floor for new sources.

The EG/NSPS do not address emissions from landfill wastewater. Landfill wastewater emissions were evaluated for the proposed rule because emissions of HAP are possible at any point in a landfill wastewater collection, storage, and treatment system that is

open to the atmosphere. However, we have found no information on the prevalence or effectiveness of any practices that may reduce air emissions from wastewater collection and treatment at landfills. As a result, we have been unable to identify a MACT floor for landfill wastewater emission points.

Limited data are available to characterize the potential emissions of HAP from landfill wastewater. However, the available data indicate that volatile concentrations of HAP in landfill wastewater are low. We developed emission estimates for HAP using several worst case assumptions, such as assuming that all HAP from landfill wastewater would volatilize and be released to the atmosphere, and using median reported HAP concentrations and maximum estimates of all wastewater produced at landfills. Even with these conservative assumptions, we estimate that total nationwide emissions from wastewater operations at all of the landfills in the United States are no more than 57 tpy of HAP. We expect that this estimate is high for the reasons stated. When considering that there are more than 10,000 landfills in the United States, the amount of HAP released from any one landfill's wastewater operations would be very small. We estimate that emissions from landfill wastewater represent no more than 0.4 percent of the combined landfill gas-wastewater emissions.

Metal HAP, including mercury, may be emitted from landfills and would not be controlled by the EG/NSPS control technologies. No controls for emissions of metal HAP have been demonstrated for landfill gas or landfill gas combustion technologies. Therefore, the MACT floor for metal HAP is no control.

2. How Did EPA Consider Beyond-the-Floor Options?

The EG/NSPS requirements for landfill gas collection and emissions reductions are the best available control for landfill gas. Therefore, there were no options to consider that were more stringent than the MACT floor for landfill gas control. The gas collection system required by the EG/NSPS (described in § 60.753) is designed to capture as much landfill gas as possible and requires several parameters to be monitored to ensure this, including pressure, nitrogen or oxygen concentration, temperature, and surface methane concentration. There are no data indicating that collection systems are in use that are more effective than those required by the EG/NSPS.

Similarly, there are no known technologies that can regularly achieve reduction efficiencies greater than those specified in the EG/NSPS. The EG/NSPS regulations require 98 percent reduction efficiency for NMOC, or a maximum outlet concentration of 20 parts per million by volume (ppmv) if an enclosed combustion device is used. These reduction efficiencies can be regularly achieved by several types of control technologies with proper operation.

Because there are no collection and control technologies more stringent than the EG/NSPS, MACT for both existing and new sources is the same as the MACT floor, that is the control level of the EG/NSPS.

We have been unable to identify a MACT floor for landfill wastewater because we have not found information on the prevalence of any practices that may reduce air emissions from wastewater collection and treatment. Therefore, we were unable to consider control options, and we propose that the MACT not include any control requirements or emission limits for these operations. As previously stated, emissions from landfill wastewater are expected to be minimal, no more than 0.4 percent of all landfill emissions.

The EG/NSPS do not require control of emissions of metal HAP, and no capture devices or controls for metals have been demonstrated for landfill gas or for landfill gas combustion technologies. For this reason, the MACT floor and the MACT for control of metal HAP at new and existing major source landfills are no control, and no other options were considered.

C. How Did EPA Determine the Standard for Area Sources?

The CAA requires control of area sources listed pursuant to section 112(c). Under section 112(k), we must consider regulation of any listed area source category and ultimately regulate enough such categories to account for 90 percent of the aggregate emissions of the identified HAP. We are proposing to regulate some area source landfills, but do not believe that all area source landfills warrant regulation to meet the requirements of section 112(k).

Area sources may be controlled using MACT or GACT. To determine control requirements for area sources, we reviewed the area sources and their emissions profile and are proposing to apply GACT to these sources. For MSW area source landfills that are 2.5 million Mg and 2.5 million m^3 or greater in design capacity, and that emit 50 Mg per year or more of NMOC (or approximately 5.9 Mg of HAP per year), EPA has selected GACT to be the same as MACT. The EG/NSPS already cover these sources, so requiring GACT does not impose additional control burdens on these sources. Additionally, as discussed in the previous section, there are no control options more stringent than those required by the EG/NSPS.

For MSW landfills smaller than 2.5 million Mg or 2.5 million m^3, or that emit less than 50 Mg per year of NMOC, this proposal requires no control for area sources. These landfills are costly to control, and they emit relatively little HAP. During the development of the EG/NSPS, we also made a decision not to control these smaller landfills. As discussed in the preamble to the EG/NSPS (61 FR 9916), the design capacity exemption of 2.5 million Mg or 2.5 million m^3 excludes those landfills that can least afford the cost of landfill gas collection and control systems, for example, small businesses and, particularly, municipalities. Furthermore, the analysis for the EG/NSPS found that a more stringent design capacity exemption level would increase the number of landfills required to apply control, while only achieving an additional 25 percent NMOC emissions reduction. The emission rate cutoff of 50 Mg per year of NMOC, in conjunction with the design capacity exemption, required control of less than 5 percent of all landfills (at the time of EG/NSPS promulgation), but reduced NMOC emissions by approximately 53 percent.

Other reasons for exempting the smaller area source landfills from control requirements exist. For example, many existing area source MSW landfills are closed (82 percent were closed as of January 1999). Landfill emissions are at their highest level within the year right after closure and then begin to decrease steadily. Thus, landfills are a unique emissions source, because they have naturally diminishing emissions over time. It makes little sense to require expensive controls for small, closed area source landfills when their emissions are low and will decrease over time. As emissions decrease, there would be a dramatic decrease in the average cost effectiveness per Mg of NMOC reduction achieved through control of small, closed area source landfills.

Most new landfills will be much larger than the design capacity cutoff of 2.5 million Mg and 2.5 million m^3. Economies-of-scale make it cheaper to operate larger facilities, thus encouraging companies and municipalities to build ever larger landfills that receive waste from larger areas. Whereas waste was previously moved not much farther than 15 miles from point-of-origin to the landfill, it

now moves an average of 45 miles, and the trend is increasing. The effect of this will be to ensure that future facilities will be very large to be cost competitive.

D. Why Is NMOC Used As a Surrogate for HAP?

The proposed rule would require the collection and control of landfill gas, which is the same pollutant regulated by the EG/NSPS. By volume, landfill gas is approximately 50 percent methane, 50 percent carbon dioxide, and less than 1 percent of many different NMOC. Nonmethane organic compounds include VOC, HAP, and odorous compounds. Therefore, by collecting and controlling landfill gas, HAP emitted by landfills are collected and controlled. To reduce the burden and complexity of measuring and monitoring the various HAP, NMOC is specified as a surrogate in the proposed rule for determining the applicability of collection and control of HAP emissions. Nonmethane organic compounds are an appropriate surrogate for HAP because all HAP are contained in the NMOC portion of landfill gas. Also, landfill owners and operators are already required to estimate NMOC under the EG/NSPS. It is not necessary to increase the burden by requiring specific HAP measurements.

E. How Did EPA Select the Format of the Standard?

Section 112(d) of the CAA requires that emission standards for control of HAP be prescribed unless, in the judgement of the Administrator, it is not feasible to prescribe or enforce emission standards. Section 112(h) identifies two conditions under which it is not considered feasible to prescribe or enforce emission standards: (1) If the HAP cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or (2) if the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitation. If it is not feasible to prescribe or enforce emission standards, then the Administrator may instead promulgate design, equipment, work practice, and operational standards, or a combination of these.

We concluded that the format used in the EG/NSPS was appropriate for the proposed rule for this source category for the same reasons the format was selected for the EG/NSPS. An emission standard is not appropriate for gas collection system design because it is not feasible to measure gas generated versus gas collected at a landfill, and then to determine what performance a collection system is achieving. Monitoring of surface concentration alone will not demonstrate the fraction of gas that is collected, nor will it determine whether the system is designed and performing optimally. However, monitoring surface concentrations will indicate when cover maintenance and well adjustments should be made, as well as when additional wells should be added to the collection system. Surface monitoring also provides a safeguard against uncertainties in determining the area of influence of the wells.

Because an emission standard is not feasible for gas collection, a design and operational standard was set under the EG/NSPS for gas collection systems. The specifications for active collection systems do not give prescriptive design specifications, but they do present criteria on which to base a collection system design plan. The EG/NSPS set an emission standard for the control devices because once gas is collected, the destruction efficiency of a control device can be established.

F. How Did EPA Determine the Requirements of the Proposed Rule?

To determine the requirements of the proposed rule, the EPA compared the two statutory authorities that regulate landfills. Landfills are already regulated in the EG/NSPS under authority of section 111 of the CAA. The proposed rule would regulate landfills as required under section 112. We compared the requirements of section 112, which requires regulations to control HAP, to the requirements of section 111, which regulates the emissions of landfill gas pursuant to the EG/NSPS. We determined that there are no better controls than the collection and control system required by the EG/NSPS. Therefore, the proposed rule incorporates the control requirements of the EG/NSPS as MACT. The next step was to determine if the rules promulgated under section 111 met all the section 112 rule requirements.

We compared the general provisions developed for regulations under these two CAA sections. The essential differences between the section 111 general provisions and the section 112 general provisions are the SSM provisions, continuous parameter monitoring data being a measure of compliance with the operating conditions, and reporting of deviations every 6 months as opposed to annual reporting. Therefore, the proposed rule contains the provisions of the EG/NSPS, plus the provisions discussed above from section 112.

G. What Is the Basis for the Startup, Shutdown, and Malfunction and Monitoring and Reporting Requirements?

In the proposed rule, we have included the recordkeeping requirements in the 40 CFR part 63 general provisions (59 FR 12408, March 16, 1994) requiring operators to develop a plan for how gas collection and control systems would be operated during SSM events, and how malfunctioning gas collection and control systems would be repaired. We believe that it is appropriate to require compliance on a continual basis for sources that emit HAP. We require a SSM plan because deviations occur during SSM events, that is, air pollution is emitted in quantities greater than anticipated by the applicable standards. The plan is a means to minimize the emissions to the extent possible.

Deviations from the requirements of the standards are typically direct indications of noncompliance with the emission standards, and, therefore, are directly enforceable. Therefore, an owner or operator must demonstrate that the SSM plan was followed during an SSM event that has caused the deviation to certify compliance with the emission standards.

You must keep records of all periods of SSM events of gas collection and control equipment and all measurements taken during these periods. This approach is consistent with the requirement that control systems be operated at all times, but it allows special situations to occur, such as unpredicted and reasonably unavoidable failures of air pollution control systems, when it is technically impossible to properly operate these systems.

Rules developed under section 112 of the CAA typically include monitoring strategies that incorporate the concepts of enhanced monitoring that were established in section 114(a)(3) of the CAA. This approach is designed to ensure that monitoring procedures developed for section 112 standards provide data that can be used to determine compliance with applicable standards, including emission standards.

For the proposed rule, continuous emissions monitoring systems (CEMS) are not appropriate. We considered use of CEM but found them to be infeasible due to the lack of CEM technology for landfill sources regulated by the proposed rule. Therefore, we established operating parameters that must be continuously monitored to determine a facility's compliance status.

To determine compliance status, parameters must be monitored with a frequency that will allow the source owner or operator to certify whether compliance is continuous or intermittent for each recordkeeping period associated with the applicable emission limitation or standard. For the proposed rule, control device operating parameters will be directly enforceable and will be used to determine a source's compliance status.

H. How Did EPA Determine Compliance Dates?

The compliance date for existing sources is required by section 112(i)(3) of the CAA to be as ''* * * expeditiously as practicable, but in no event later than 3 years after the effective date * * *.'' We are proposing a compliance date of 1 year after publication of the final rule for existing sources. One year was chosen because much of the effort required to comply with the proposed rule is already taken into account under compliance with the EG/NSPS. The only additional requirement under the proposed rule will be for a source to prepare a SSM plan and prepare to submit reports every 6 months rather than annually under the EG/NSPS. We consider 1 year sufficient time to make these adjustments. Also, the additional requirements do not go into effect until a landfill has met the collection control applicability criteria of the EG/NSPS (design capacity of equal to or greater than 2.5 million Mg and 2.5 million m^3 and emit equal to or greater than 50 Mg/yr of NMOC). This may result in certain sources having additional time to prepare for compliance with the proposed rule.

The compliance date for new sources must be the effective date of the final rule as required by section 112(i)(1) of the CAA. Section 112(d)(10) provides that regulations promulgated under section 112(d) are effective upon publication. However, although a new source must be in compliance by the effective date of the final rule, a majority of the provisions of the proposed rule will only apply to landfills with a design capacity of equal to or greater than 2.5 million Mg and 2.5 million m^3, and will not take effect until a source emits equal to or greater than 50 Mg/year of NMOC, and is required to install controls under the EG/NSPS.

Because of the large number of landfills, the nature of landfills history, and the fact that emissions steadily decrease after closure, we determined that an applicability date was needed to make the proposed rule manageable. November 8, 1987 was chosen as that date for the reasons outlined in the preamble of the proposed EG/NSPS (56 FR 24468, May 30, 1991).

I. What Are Some of the Special Issues Affecting MSW Landfills?

1. Petroleum Contaminated Soil

The majority of emissions of HAP at MSW landfills come from the biodegradation of the municipal solid waste in the landfill in the form of landfill gas emissions. However, some landfills may also emit HAP from volatilization of HAP contained in their surface covers if they use petroleum contaminated soils (PCS) as cover material.

Available information indicates several States allow the use of PCS as daily cover, but we do not know how many landfills actually use PCS. Also, most States impose some level of restriction on the use of PCS, such as limiting concentration of total petroleum hydrocarbons allowed in the soil, but those restrictions appear to be based on water quality concerns and vary by State, or sometimes on a case-by-case basis within a State.

Additionally, it appears that PCS used at landfills may be declining. It appears that most PCS used at landfills are obtained from the excavation and remediation of underground storage tanks. Available information indicates that the number of underground storage tanks that are being excavated for removal is declining and that, in many instances, States are simply allowing the excavated soil to be returned to the excavation site. Therefore, we believe that the amount of PCS available for use as cover material at landfills is declining. Finally, little is known about control of air emissions from PCS in use at landfills, but available information indicates that there is little or no control. An important consideration in this matter is one of overall emissions. Again, evidence indicates that the majority of air emissions from PCS may occur during excavation, storage, and transport prior to entering the boundaries of a landfill for use as cover material.

We are soliciting comment about the use of PCS at MSW landfills. Specifically, we are interested in any information regarding the amount of PCS used and the number of landfills using them, as well as levels of contamination (in terms of total petroleum hydrocarbon concentrations or total benzene, toluene, ethyl benzene, and xylene). On the basis of our current information on emissions and controls for landfilling PCS, we do not consider this a landfill issue. We plan to evaluate PCS in the context of a future MACT standard for site remediation activities.

2. Mercury Emissions From Landfills

We are also seeking information with respect to mercury emissions from landfills. Municipal solid waste landfills receive refuse that contains mercury in organic and inorganic forms. Common wastes that contain mercury that are routinely disposed of in landfills include thermometers, batteries, light switches, thermostats, and fluorescent lights. Mercury has been identified as one of the many HAP present in landfill gas. Furthermore, mercury has been identified in emissions from the working face of landfills, that is, it is emitted from waste being deposited at the surface of the landfill prior to burial. Mercury emissions have also been measured in trucks transporting waste to landfills and in waste transfer containers, such as dumpsters and curbside waste carts. Thus, it is clear that mercury is emitted from MSW prior to the waste entering landfills.

Insufficient data are available to us to adequately characterize the concentrations of mercury in landfill gas, the emissions of mercury in fugitive landfill gas, and in residuals from landfill gas combustion devices. Although we have concluded that the MACT floor for mercury control is no control, we are interested in characterizing mercury in landfill gas because of its bioaccumulative capacity and known health effects. We specifically request comment or data on mercury concentrations in landfill gas, mercury emissions from fugitive landfill gas, and from landfill gas control devices.

3. Bioreactor Operation of Landfills

Conventional MSW landfills currently practice ''dry tomb'' operations. Dry tomb operations means the infiltration of liquids into the solid waste stream is minimized. This can be accomplished by placement of bottom and side liners and by placement of a low permeability final cap over the waste. In addition, some sites install and operate systems to remove leachate produced during the natural biodegradation process. The rationale for using this method was minimization of groundwater contamination. The method also resulted in a slower biodegradation process and reduced landfill gas.

A newer concept, bioreactor operation, is gaining interest in the solid waste industry. In contrast to conventional landfilling, bioreactor operation attempts to maximize liquid infiltration of the solid waste stream by

leachate recirculation and in some cases by the introduction of other liquids. Bioreactor landfill operations can take one of two forms, aerobic or anaerobic, each with its own potential benefits and risks. In general, the rationale for using either or both of these methods is the potential achievement of improved environmental and economic benefits such as:

- More rapid biodegradation and earlier stabilization of waste;
- Extended use of current sites and reduced need for new sites;
- Improved quality of leachate and reduced risk of groundwater contamination; and
- Earlier and more rapid generation of landfill gas resulting in more economical energy recovery.

While we agree that some environmental benefits may result from either or both forms of bioreactor operation at landfills, we are concerned about the potential impact on public health and the environment.

The operation of a landfill as an aerobic bioreactor requires the injection of air along with the addition of liquids. This operation may result in the rapid decomposition of waste, the generation of large quantities of gases such as carbon dioxide, and increased internal landfill temperature. During this type of operation, there is potential for fugitive emissions of VOC and HAP unless aggressive steps are taken to collect and control these emissions. In addition, the combination of air in the waste stream and increased internal landfill temperature could increase the potential for a landfill fire. Once started, landfill fires are difficult to extinguish and potentially lead to increased release of dioxin/furan emissions from the combustion of municipal solid waste. Active prevention of landfill fires may need to include frequent monitoring of landfill temperatures, as well as the development of a contingency plan should a fire occur. If the potential for a fire is great enough, it may be inappropriate to allow aerobic bioreactor operation.

The operation of a landfill as an anaerobic bioreactor may result in generation of landfill gas, including methane, sooner after waste deposition and at a more rapid rate than with conventional landfilling. Current solid waste Federal rules, 40 CFR part 60, subparts Cc and WWW, do not require the collection and control of landfill gas unless the site is 2.5 million Mg in size and has estimated NMOC emissions of 50 Mg per year or more. The NMOC emissions estimate is based on a methane generation rate, k, derived from conventional landfilling data. The use of this ''k'' value may not be appropriate under bioreactor landfill operations since the methane generation rate is expected to be much greater under these conditions. A value greater than the current regulatory value, 0.05 per year, may be more appropriate. In addition, sites currently required to control landfill gas need not control it until the waste is 2 years old in closed cells or cells at final grade, or 5 years old in active cells. The timing of gas collection and control was based on conventional landfilling practices. This timing may not be appropriate under anaerobic bioreactor operations. To prevent increased emissions, it may be more appropriate to delay liquid addition until a final cap is in place or until gas collection and control has begun, regardless of the age of the waste in active or closed cells.

There are little data available on full scale anaerobic bioreactor landfill operations and even less data on aerobic bioreactor landfill operations. In addition, a great deal of uncertainty exists regarding the health and environmental impacts associated with each form of bioreactor operation. Current solid waste Federal rules may not adequately address the health and environmental impacts associated with either form of bioreactor operation. Therefore, EPA requests comment on amending the NSPS to require the application of collection and control systems to aerobic bioreactor cells, and require the use of a higher ''k'' value for anaerobic bioreactor cells which could result in the installation and operation of collection and control systems sooner after waste deposition in these cells.

IV. Summary of Environmental, Energy, and Economic Impacts

We foresee minimal economic impacts to major sources because all of these landfills are currently required to comply with the EG/NSPS. The proposed rule would only impose a requirement to prepare a SSM plan, the recordkeeping and reporting requirements for SSM events, and semiannual reports instead of annual reports. The expected annual cost to affected major source landfills is only $1,700 (1998 dollars), which represents less than 0.001 percent of the tipping fees collected by an average sized landfill. For more information on the economic impacts of the proposed standards, refer to the economic impact analysis in the docket.

We also foresee no environmental, energy, or economic impacts for collection and control of landfill gas to area source landfills. As with major source landfills, all area source landfills subject to the proposed rule are already required to implement the EG/NSPS. Area source landfills that are too small to trigger the EG/NSPS applicability are not subject to control under the proposed standards and, therefore, will not incur impacts.

The additional requirements for the SSM plan and the semiannual report are projected to affect approximately 1,309 MSW landfills in the first year. The estimated average annual burden for industry for the first 3 years after promulgation of the final rule would be 39,276 person-hours annually. There will be $13,128 of operation and maintenance costs associated with monitoring or recordkeeping during the first 3 years.

It is possible that a source exists that is major but is not subject to the collection and control requirements of the EG/NSPS. This could occur if a landfill does not meet the EG/NSPS collection and control applicability criteria, and the contribution of emissions of HAP from collocated operations causes the full source to emit at major source levels. We do not have any data to indicate that this situation exists, and we believe that this situation is unlikely to occur. Therefore, no impacts were assessed for this category of facilities.

V. 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 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.

Pursuant to the terms of Executive Order 12866, it has been determined

that the proposed rule is not a ''significant regulatory action'' because it will not have an annual effect on the economy of $100 million or more and it does not impose any additional control requirements above the 1996 EG/NSPS. The EPA considered the 1996 EG/NSPS to be ''significant'' because the 1996 EG/NSPS were expected to have an annual effect on the economy in excess of $100 million. The EPA submitted the 1996 EG/NSPS to OMB for review (61 FR 9905, March 12, 1996). However, the proposed rule is projected to have no significant impact above the 1996 EG/NSPS. Consequently, the proposed rule is not submitted to OMB for review under Executive Order 12866.

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'' are 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 EPA 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 the OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement. The federalism summary impact statement 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 EPA'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 its federalism official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed rule for MSW landfills 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 EPA has concluded that the proposed rule may create a mandate on a number of city and county governments, and the Federal government would not provide the funds necessary to pay the direct costs incurred by these city and county governments in complying with the mandate. However, the proposed rule does not impose any additional control costs or result in any additional control requirements above those considered during promulgation of the 1996 EG/NSPS. In developing the 1996 EG/NSPS, EPA consulted extensively with State and local governments to enable them to provide meaningful and timely input in the development of that rulemaking. Because the control requirements of the proposed rule are substantially the same as those developed in 1996, these previous consultations still apply. For a discussion of EPA's consultations with State and local governments, the nature of the governments' concerns, and EPA's position supporting the need for the specific control requirements included in both the EG/NSPS and the proposed rule, see the preamble to the 1996 EG/NSPS (60 FR 9918, March 12, 1996). Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities''.

The proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to the proposed rule.

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, 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 EPA.

The 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 Executive Order has the potential to influence the regulation.

The proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because it is based on technology performance and not on health and safety risks. Furthermore, as no alternative technologies exist that would provide greater stringency at a reasonable cost, the results of any children's health analysis would have no impact on the stringency decision.

E. Unfunded Mandates Reform Act of 1995

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 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.

The EPA has determined that the proposed 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 1 year. The maximum total annual cost of the proposed rule for any year has been estimated to be less than $2.2 million. Thus, the proposed rule is not subject to the requirements of section 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small government. Therefore, the proposed rule is not subject to the requirements of section 203 of the URMA.

F. 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 RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certified that the rule will not have a significant impact or a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of the proposed rule, small entities are defined as: (1) A small business that is primarily engaged in the collection and disposal of refuse in a landfill operation as defined by SIC codes 4953 and 5911 with annual receipts less than 6 million dollars; (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 impacts of the proposed rule for MSW landfills on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that small entities will experience little impact since this proposed rule will rely on the requirements specified in 40 CFR part 60, subparts Cc and WWW. Additional requirements for the proposed rule are limited to a slight increase in the reporting frequency of some reports and the development of a SSM plan. This increase in requirements leads to an increase in annual costs to each affected landfill of only $1,700 (1998 dollars), an increase of less than 0.001 percent of the tipping fees taken in by a landfill of average size nationally. Hence, the estimated impacts to small communities, organizations, and firms from the proposed rule should be insignificant. For more information on the economic impacts of the proposed rule, refer to the economic impact analysis in the docket.

Although the proposed rule for MSW landfills will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. To that end, we have evaluated the operational practices, collection systems and control systems required by 40 CFR part 60, subparts Cc and WWW, for co-control environmental benefits. Since the requirements in 40 CFR part 60, subparts Cc and WWW, adequately address the emissions of HAP while controlling landfill gas, we are using these same requirements with only a slight increase in reporting activity/frequency for this rulemaking. In addition to the reduction effort, we have performed a number of outreach activities to interact with small entities during the development of the proposed rule. We have held formal stakeholder meetings. We have presented rule related information at national conferences sponsored by the trade organizations for these entities, and we requested the establishment of an electronic link between the International City/County Management Association website and our rule development website. Through the efforts discussed above, small entities have been engaged in 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 or issues related to such impacts.

G. Paperwork Reduction Act

An Information Collection Request (ICR) document has been prepared for the proposed rule by EPA (ICR No. 1938.01) and submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* A copy may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

Comments are requested on the EPA'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, Office of Environmental Information, Collection Strategies Division, U.S. Environmental Protection Agency (2137), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA (ICR Tracking No. 1938.01)''. Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 7, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by December 7, 2000. The final rule will respond to any OMB or public comments on the information

collection requirements contained in the proposed rule.

The information would be used by the EPA to ensure that the requirements for the proposed rule are implemented properly and are complied with on a continuous basis. Records and reports are necessary to enable EPA to identify MSW landfills that may not be in compliance with this standard. Based on reported information, EPA would decide which landfills should be inspected and what records or processes should be inspected. The records that owners or operators of MSW landfills maintain would indicate to EPA whether personnel are operating and maintaining control equipment properly.

The proposed rule is projected to affect approximately 1,309 MSW landfills in the first year. The estimated average annual burden for industry for the first 3 years after promulgation of the proposed rule would be 39,276 person-hours annually. There will be $13,128 of operation and maintenance costs associated with monitoring or recordkeeping during the first 3 years. The estimated average annual burden, over the first 3 years, for the implementing agency would be 21,105 hours with a cost of $843,150 (including travel expenses) per year.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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.

H. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113), all Federal agencies are required to use voluntary consensus standards (VCS) in their 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 requires Federal agencies such as EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable VCS.

The proposed rule references 40 CFR part 60, subpart WWW—Standards of Performance for Municipal Solid Waste Landfills. Since there are no new standard requirements in the proposed rule, and there are no new technical standard requirements resulting from specifying subpart WWW in this proposal, EPA is not proposing/adopting any VCS in the proposed rule.

The EPA takes comment on proposed compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable VCS. Commenters should also explain why the proposed rule should adopt these VCS in lieu of EPA's standards. 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).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

Dated: October 31, 2000.

Carol M. Browner,

Administrator.

For the reasons cited 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.*

2. Part 63 is proposed to be amended by adding a new subpart AAAA to read as follows:

Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

Sec.

What This Subpart Covers

63.1930 What is the purpose of this subpart?
63.1935 Am I subject to this subpart?
63.1940 What parts of my facility does this subpart cover?
63.1945 When do I have to comply with this subpart?
63.1950 When am I no longer required to comply with this subpart?

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General and Continuing Compliance Requirements

63.1960 How is compliance determined?
63.1965 What is a deviation?
63.1970 Are there any deviations that are not considered out of compliance?
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Notifications, Reports and Records

63.1980 What records and reports must I keep and submit?

Other Requirements and Information

63.1985 Who enforces this subpart?
63.1990 What definitions apply to this subpart?

Tables

Table 1 of subpart AAAA—Part 63 General Provisions Applicable Paragraphs

What This Subpart Covers

§ 63.1930 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for existing and new municipal solid waste (MSW) landfills. This subpart requires all landfills to meet the requirements of 40 CFR part 60, subpart Cc or WWW. This subpart also requires landfills to meet the startup, shutdown, and malfunction (SSM) requirements of the general provisions of this part and provides that compliance with the operating conditions are demonstrated by parameter monitoring results that are within the specified ranges. It also includes additional reporting requirements.

§ 63.1935 Am I subject to this subpart?

Yes, if you own or operate a MSW landfill that is a major source, is co-located with a major source, or is an area source that meets the design capacity and control criteria specified in the 40 CFR Part 60 new source

performance standards (NSPS), you must collect and control landfill gas according to the requirements specified in the NSPS. In addition, each area source subject to this subpart is required to obtain a title V permit. Finally, most of the requirements of this subpart will not take effect until your landfill emits equal to or greater than 50 Mg/yr NMOC and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3.

§ 63.1940 What parts of my facility does this subpart cover?

(a) The affected source for this subpart is each new or existing MSW landfill that has accepted waste at anytime since November 8, 1987, or has additional design capacity available for future waste deposition.

(b) An affected source is a new source if you commenced construction or reconstruction after November 7, 2000. An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(c) An affected source is existing if it is not new.

§ 63.1945 When do I have to comply with this subpart?

(a) If your landfill is a new affected source, you must comply with this subpart by [DATE OF PUBLICATION OF FINAL RULE] or at the time you begin operating, whichever occurs last.

(b) If your landfill is an existing affected source, you must comply with the standards by [DATE ONE YEAR AFTER PUBLICATION OF THE FINAL RULE].

§ 63.1950 When am I no longer required to comply with this subpart?

You are no longer required to comply with the requirements of this subpart when you are no longer required to apply controls as specified in § 60.752(b)(2)(v) of 40 CFR part 60, subpart WWW, or the Federal plan or EPA-approved and effective State plan or Tribal plan that implements 40 CFR part 60, subpart Cc, whichever is applicable.

Standards

§ 63.1955 What requirements must I meet?

(a) You must fulfill one of the requirements in paragraph (a)(1) or (2) of this section, whichever is applicable:

(1) Comply with the requirements of 40 CFR part 60, subpart WWW.

(2) Comply with the requirements of the Federal plan or EPA-approved and effective State plan or Tribal plan that implements 40 CFR part 60, subpart Cc.

(b) If you are required by § 60.752(b)(2) of 40 CFR part 60, subpart WWW, the Federal plan, EPA approved State or Tribal plan, to install a collection and control system, you must comply with the general provisions specified in Table 1 of this subpart.

General and Continuing Compliance Requirements

§ 63.1960 How is compliance determined?

Compliance is determined in the same way it is determined for 40 CFR part 60, subpart WWW, including performance testing, monitoring of the collection system, and continuous parameter monitoring. In addition, continuous parameter monitoring data, collected under § 60.756(b)(1), (c)(1), and (d), of 40 CFR part 60, are used to demonstrate compliance with the operating conditions for control systems. If a deviation occurs, you have failed to meet the control device operating conditions described in this subpart and have deviated from the requirements of this subpart. Finally, you must develop and implement a written SSM plan according to the provisions in § 63.6(e)(3). A copy of the SSM plan must be maintained on site. Failure to write, implement, or maintain a copy of the SSM plan is a deviation from the requirements of this subpart.

§ 63.1965 What is a deviation?

(a) A deviation occurs when the control device operating parameter boundaries described in 40 CFR 60.758(c)(1) are exceeded.

(b) A deviation occurs when 1 hour or more of the hours during the 3-hour block averaging period does not constitute a valid hour of data due to insufficient monitoring data. An hour of monitoring data are insufficient if measured values are unavailable for more than one 15-minute period within the hour.

(c) A deviation occurs when a SSM plan is not developed, implemented, or maintained on site.

§ 63.1970 Are there any deviations that are not considered out of compliance?

Yes, consistent with 40 CFR 60.755(e), §§ 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 SSM plan. 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).

§ 63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

Averages are calculated in the same way as they are calculated in 40 CFR part 60, subpart WWW, except that the data collected during the events listed in paragraphs (a), (b), (c), and (d) of this section are not to be included in any average computed under this subpart:

(a) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments.

(b) Startups.

(c) Shutdowns.

(d) Malfunctions.

Notifications, Records, and Reports

§ 63.1980 What records and reports must I keep and submit?

(a) Keep records and reports as specified in 40 CFR part 60, subpart WWW, or in the Federal plan, EPA-approved State plan or Tribal plan that implements 40 CFR part 60, subpart Cc, whichever is applicable with one exception. You must submit the annual report described in 40 CFR 60.757(f) every 6 months.

(b) You must also keep records and reports as specified in the general provisions of 40 CFR part 60 and this part as shown in Table 1 of this subpart. Applicable records in the general provisions include items such as SSM plans and the SSM reports.

Other Requirements and Information

§ 63.1985 Who enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency as well as the U.S. EPA has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, 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 as follows. Approval of alternatives to the standards in § 63.1955. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

§ 63.1990 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, 40 CFR part 60, subparts A, Cc, and WWW; 40 CFR part 62, subpart GGG, and subpart A of this part, and this section as follows:

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 emission limitation (including any operating limit) or work practice standard;

(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 emission limitation (including any operating limit), or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, operating limit, or visible emission limit.

EPA-approved State plan means a State plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B, to implement and enforce 40 CFR part 60, subpart Cc. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Federal plan means the EPA plan to implement 40 CFR part 60, subpart Cc, for existing municipal solid waste landfills located in States and Indian country where State plans or Tribal plans are not currently in effect. On the effective date of an EPA-approved State or Tribal plan, the Federal plan no longer applies. The Federal plan is found at 40 CFR part 62, subpart GGG.

Modification means as increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.

Municipal solid waste landfill means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes (see § 257.2 of this chapter) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads. A municipal solid waste landfill may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion.

Tribal plan means a plan submitted by a tribal authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 to implement and enforce 40 CFR part 60, subpart Cc.

Work practice standard 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 1 OF SUBPART AAAA—PART 63 GENERAL PROVISIONS APPLICABLE PARAGRAPHS

[As stated in § 63.1955(b), you must comply with the General Provisions requirements according to the following table]

Part 63 citation	Description	Explanation
63.1(a) except (a)(7)	Applicability: general applicability of NESHAP in this part.	Affected sources are already subject to the provisions of paragraphs (a)(10)–(12) of this section through the same provisions under 40 CFR part 60, subpart A.
63.1(b)	Applicability determination for stationary sources.	Affected sources are already subject to the provisions of paragraph (b)(2) of this section through the same provisions under 40 CFR part 60, subpart A.
63.1(e)	Applicability of permit program before a relevant standard has been set under this part.	
63.2	Definitions	
63.4	Prohibited activities and circumvention	Affected sources are already subject to the provisions of paragraph (b) of this section through the same provisions under 40 CFR part 60, subpart A.
63.5(b)	Requirements for existing, newly constructed, and reconstructed sources.	Affected sources are already subject to the provisions of paragraph (b)(2) of this section through the same provisions under 40 CFR part 60, subpart A.
63.6(e)	Operation and maintenance requirements, SSM provisions.	Affected sources are already subject to the provisions of paragraph (e)(2) of this section through the same provisions under 40 CFR part 60, subpart A.
63.6(f)	Compliance with nonopacity emission standards.	Affected sources are already subject to the provisions of paragraphs (f)(1) and (2)(i) of this section through the same provisions under 40 CFR part 60, subpart A.
63.10(b)(2)(i)–(v)	General recordkeeping requirements	
63.10(d)(5)	If actions taken during a SSM are consistent with the procedures in the SSM plan, this information shall be included in a semi-annual SSM report. Any time an action taken during a SSM is not consistent with the SSM plan, the source shall report actions taken within 2 working days after commencing such actions, followed by a letter 7 days after the event.	

TABLE 1 OF SUBPART AAAA—PART 63 GENERAL PROVISIONS APPLICABLE PARAGRAPHS—Continued

[As stated in § 63.1955(b), you must comply with the General Provisions requirements according to the following table]

Part 63 citation	Description	Explanation
63.12(a)	These provisions do not preclude the State from adopting and enforcing any standard, limitation, etc., requiring permits, or requiring emissions reductions in excess of those specified.	
63.15	Availability of information and confidentiality ...	

[FR Doc. 00–28415 Filed 11–6–00; 8:45 am]

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Notices

Federal Register
Vol. 65, No. 216
Tuesday, November 7, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 2, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Marketing Order Regulations the Handling of Spearmint Oil Produced in the Far West, MO 985.

OMB Control Number: 0581–0065.

Summary of Collection: The marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area to work together to solve marketing problems that cannot be solved individually. The Far West spearmint marketing order regulates the handling of spearmint oil produced in the Washington, Idaho, Oregon, and designated parts of Nevada and Utah. The order authorizes the issuance of allotment provisions for producers and regulates the quantities of spearmint oil handled and has the authority for research and development. Under the Agriculture Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), industries enter into marketing order programs. Agricultural Marketing Service (AMS) may act as the Secretary's agent to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

Need and Use of the Information: The Committee has the authorization to require producers, handlers, and processors submit certain information as provided by the order, rules and regulations. Various forms relating to spearmint supplies, shipments, and dispositions, and used and required to effectively carry out the purpose of the Act and order. The committee periodically reviews reports and forms to ensure that they are understandable, easy to fill out, and only the minimum of information necessary is reported. The information collected is used by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and employees of the Committee. Timing and frequency of the various reports has evolved to meet the needs of the industry and minimize the burden on the reporting public. Collecting data less frequently would eliminate data needed to keep the spearmint oil industry and the Secretary abreast of changes at the state and local level.

Description of Respondents: Business of other for-profit; Farms, Federal Government, State, Local or Tribal Government.

Number of Respondents: 217.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annual; Biennially.

Total Burden Hours: 162.

Farm Service Agency

Title: 7 CFR 1941–A, Operating Loan Policies, procedures and Authorizations.

OMB Control Number: 0560–0162.

Summary of Collection: The Consolidated Farm and Rural Development Act (7 U.S.C. 1941) (CONACT) authorizes the Secretary of Agricultural and Farm Service Agency (FSA) to make and ensure loans to farmers and ranchers and to administer the provision of the CONACT applicable to the Farm Loan Program. The information is require to ensure that the agency provides assistance to applicants who have reasonable prospectus of repaying the government and meet statutory eligibility requirements. This assistance enables family farm operators to use their land, labor, and other resources and to improve their living and financial conditions so that they can eventually obtain credit elsewhere.

Need and Use of the Information: The information is needed for FSA loan approval officials to evaluate an applicant's eligibility, and to determine if the operation is economically feasible and the security offered in support of the loan is adequate. FSA relies on current information to carry out the business of the program as intended and to protect the government's interest. A variety of forms will be used to collect the information. If the information were not collected, or collected less frequently, the Agency would be: (1) Unable to make an accurate eligibility and financial feasibility determination on respondent's request for new loans as required by the CONTACT; and (2) unable to meet the Congressionally mandated mission of loan program.

Description of Respondents: Farms; Business or other for-profit; Federal Government; Individuals or households.

Number of Respondents: 49,492.

Frequency of Responses: Reporting; Other: As needed.

Total Burden Hours: 6,014.

Farm Service Agency

Title: Loan Deficiency Payments.

OMB Control Number: 0560–0129.

Summary of Collection: The Federal Agriculture Improvement and Reform Act of 1996 provide authorization for loan deficiency payments that are implemented by the following regulations (1) 7 CFR Part 147, for upland cotton loan deficiency payments; (2) 7 CFR Part 1421 for rice, oilseeds, wheat, and feed grain loan deficiency payments; (3) 7 CFR Part 1425 for Commodity Credit Corporation (CCC) approved cooperative marketing associations. The Farm Service Agency (FSA), administers the marketing assistance loan and loan deficiency payment programs. Loan deficiency payment provisions are intended to reduce quantities of loan collateral delivered to CCC and are made available when the loan rate for the commodity is greater than the announced repayment rate or world market price.

Need and Use of the Information: County FSA Committees are responsible for approving and disapproving loan deficiency payment requests. Producers provide the necessary information applicable to the request and must meet certain eligibility requirements in accordance with the regulations. Potential applicants may use the approved OMB forms for FSA that will be posted on Internet Forms Website along with instructions for completing the forms. The information collected is needed to determine loan deficiency payment quantities and payment amounts, verify producer and commodity eligibility, and to ensure that only eligible producers receive loan deficiency payments. If the data were collected less frequently, the statutes could not be implemented as authorized.

Description of Respondents: Farm; Business or other for-profit; Individuals or households.

Number of Respondents: 2,035,000.

Frequency of Responses: Reporting: Other (per request).

Total Burden Hours: 3,825,000.

Farm Service Agency

Title: Certified Mediation Program.

OMB Control Number: 0560–0165.

Summary of Collection: The Farm Service Agency (FSA) is amending its Agricultural Loan Mediation (AMP) regulations to implement the requirements of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the 1994 Act). P.L. 103–354, October 13, 1994, amended Section 501 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101) by striking ''an agricultural loan mediation program'' and inserting ''a mediation program''. The regulation provides a mechanism to States to apply for and obtain matching funds grants from USDA. The grant funds help States supplement administrative operating funds needed to administer their agricultural mediation programs. FSA will collect information by mail, phone, fax, and in person.

Need and Use of the Information: FSA will collect information to ensure matching grant funds are used only to pay for eligible costs necessary for the operation and administration of the State mediation programs, consistent with the the statutory purposes of the program. If information were not collected, this would result in improper administration and appropriation of Federal grant funds.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 25.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 775.

Foreign Agricultural Service

Title: Foreign Donation of Agricultural Commodities.

OMB Control Number: 0551–0035.

Summary of Collection: The Federal Agriculture Improvement and Reform Act of 1996, Section 416(b) of the Agriculture Act of 1949, and the Food for Progress Act of 1985 require reporting on food aid programs. The Department of Agriculture programs provide American food assistance to needy people overseas. Assistance may be provided through U.S. Private Voluntary Organizations, agricultural trade organizations, cooperatives, eligible foreign governments, intergovernments organizations, and private entities. The Cooperating Sponsors who elect to participate in food aid programs are required to submit a plan of operation and initial budget to receive approval. Once approval, the Foreign Agricultural Service (FAS) enters into an agreement with the Cooperating Sponsor. Cooperating Sponsors may submit information to FAS in hard copy, electronically (on diskette or through the Internet), or via fax.

Need and Use of the Information: FAS will collect information to determine whether the Cooperating Sponsor has complied with the agreement and to assess the value of the programs. The information allows FAS to make a determination whether future programming should be implemented with Cooperating Sponsors. If the information were not collected it would be more difficult to determine the accountability and compliance of the Cooperating Sponsors.

Description of Respondents: Not for-profit institutions; Business or other for-profit.

Number of Respondents: 241.

Frequency of Responses: Recordkeeping; Reporting: Semi-annually.

Total Burden Hours: 38,827.

Rural Housing Service

Title: Farm Labor Housing Technical Assistance Grants.

OMB Control Number: 0575–0181.

Summary of Collection: The Housing Act of 1949 gives the Rural Housing Service (RHS) the authority to make loans for the construction of farm labor housing (Section 514) and the authority to provide financial assistance (grants) to eligible private and public nonprofit agencies (Section 516). RHS will award three grants one from each geographic region, Eastern, Central and Western Regions. Eligibility for grants is limited to private and pubic nonprofit agencies. These grants will be awarded based on the qualifications of the applicants and their formal application.

Need and Use of the Information: RHS staff in the National Office and Rural Development field offices will collect information from applicants and grant recipients to determine their eligibility for a grant, project feasibility, to select grant proposals for funding, and to monitor performance after grants have been awarded. The Three respondents, who are awarded grants, are required to provide RHS with quarterly performance reports throughout the 3-year grant period. The respondents are not required to retain records for more than three years. Failure to collect this information could result in the improper use of Federal funds; difficulties in determining eligibility and selections of qualified applicants; and monitoring performance during the grant period.

Description of Respondents: Not-for-profit institutions; State, Local, and Tribal Government.

Number of Respondents: 12.

Frequency of Responses: Recordkeeping; Reporting: Annually and Quarterly.

Total Burden Hours: 303.

National Agricultural Statistics Service

Title: Supplemental Qualifications Statement.

OMB Control Number: 0535–0209.

Summary of Collection: The Department of Agriculture has an Interagency Agreement with the Office of Personnel which provides the National Agricultural Statistics Service (NASS) with the authority to examine, rate, and certify applications for

agricultural statistician positions. Accordingly, in addition to resumes, curriculum vitae, and the standard Optional Application for Federal Employment, NASS has created a Supplemental Qualifications Statement (SQS) for agricultural statistician and mathematical statistician positions. The SQS allows applicants the opportunity to describe their achievements or accomplishments as they relate to the required knowledge, skills, and abilities.

Need and Use of the Information: The SQS provides applicants with information related to how they will be measured for a position and what kinds of information will be used to evaluate those abilities. NASS personnel specialist will use the information on the SQS to evaluate and rate the applicant's accomplishments or achievements. Ultimately, the information is used by the selecting official as one of the criteria in the selection process.

Description of Respondents: Individuals or households.

Number of Respondents: 50.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 150.

Farm Service Agency

Title: Facsimile Signature Authorization and Verification.

OMB Control Number: 0560–0203.

Summary of Collection: U.S. Department of Agriculture (USDA), Farm Service Agency (FSA) is seeking alternative service delivery processed that will reduce the necessity for USDA Service Center customers to travel to a Service Center to provide information and sign documents. One of the alternatives being implemented is to accept information provided via telefacsimile. Each of the USDA Service Center agencies (Farm Service Agency, Natural Resources Conservation Service, and Rural Development Agencies) will share the signature on the FSA–237 (Facsimile Signature Authorization and Verification) forms to eliminate redundant collection of the same data. FSA will collect information using form FSA–237.

Need and Use of the Information: FSA will collect the name and signature and identification number from Service Center customers. The information collected will be used to verify the authenticity of signatures on documents provided to USDA service centers via telefacsimile. Failure to collect and maintain the original signature will limit USDA's ability to offer the telefacsimile alternative to its Service Center customers.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 866,089.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 17,322.

Rural Development Services

Title: 7 CFR 1956–B, Debt Settlement—Farm Programs and Multiple Family Housing.

OMB Control Number: 0575–0118.

Summary of Collection: The Farm Service Agency's Farm Loan Program provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. The Rural Housing Service (RHS) provides supervised credit in the form of Multi-Family Housing (Housing Act of 1949) loans to provide eligible persons with economically designed and constructed rental or cooperative housing and related facilities suited to the living requirements. This regulation defines the requirements for debt settlement and the factors the agency considers in approving or rejecting the offer submitted by the borrowers.

Need and Use of the Information: The information submitted by the borrowers is used to determine if acceptance of the settlement offers on debts owed is in the best interest of the Government. If the information were not collected, outdated and inaccurate information would cause increased losses to the government.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 2,900.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 24,650.

Rural Utilities Service

Title: 7 CFR 1792, Subpart C—Seismic Safety of New Building Construction.

OMB Control Number: 0572–0099.

Summary of Collection: Seismic hazards present a serious threat to people and their surroundings. These hazards exist in most of the United States, not just on the West Coast. Unlike hurricanes, times and location of earthquake cannot be predicted. Most earthquake strike without warning and, if of substantial strength, strike with great destructive forces. To reduce risks to life and property from earthquake, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Public Law 95–124, 42 U.S.C. 7701 *et seq.*) and directed the establishment and maintenance of an effective earthquake reduction program. As a result, the National Earthquake Hazards Reduction Program (NEHRP) was established. The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model building codes. 7 CFR part 1792, subpart C, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utilities Service (RUS) or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB.

Need and Use of the Information: RUS will collect information on the project designation and owners' name; name of architectural/engineering firm; name and registration number (for the State in which the building project is located) of the certifying architect or engineer; purpose and location of the facility; seismic factor for the building location; the code identity and date of the model code used for the design and construction of the building project(s); total square footage of the building project; total cost of the building project; and estimated cost of the structural systems affected by the requirements of 7 CFR part 1792, Subpart C.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 525.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 00–28542 Filed 11–6–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2:00 p.m., Thursday, November 16, 2000.

PLACE: Room 0204, South Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.

2. Status of PBO planning.

3. Contracts for financial and legal advisors to the Privatization Committee.

4. Allowance for loan losses reserve.

5. Schedule for stockholders' meeting in year 2001.

6. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9:00 a.m., Friday, November 17, 2000.

PLACE: Room 104–A, The Williamsburg Room, Department of Agriculture, 12th Jefferson Drive, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.

2. Report on board election results.

3. Oath of office.

4. Election of board officers: Chairperson, Vice Chair, Secretary, and Treasurer.

5. Action on Minutes of the August 4, 2000, board meeting.

6. Report on loans approved in FY 2000.

7. Report on financial activity for FY 2000.

8. Report on the allowance for loan losses reserve.

9. Privatization Committee report.

10. Consideration of resolution to reestablish the Privatization Committee.

11. Consideration of resolution to approve Anthony Haynes to serve as the Deputy Governor of the Bank.

12. Establish date and location of next board meeting.

13. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: November 2, 2000.

Anthony C. Haynes,

Acting Governor, Rural Telephone Bank.

[FR Doc. 00–28662 Filed 11–3–00; 2:43 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Information for Certification Under FAQ 6 of the Safe Harbor Privacy Principles

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 35068 (2)(A)).

DATES: Written comments must be submitted on or before January 8, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Jeff Rohlmeier, Trade Development, Room 2011, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–1614 and fax number: (202) 501–2548.

SUPPLEMENTARY INFORMATION:

I. Abstract

In response to the European Commission Directive on Data Protection that restricts transfers of personal information from Europe to countries whose privacy practices are not deemed ''adequate,'' the U.S. Department of Commerce has developed a ''safe harbor'' framework that will allow U.S. organizations to satisfy the European Directive's requirements and ensure that personal data flows to the United States are not interrupted. In this process, the Department of Commerce repeatedly consulted with U.S. organizations affected by the European directive and interested non-government organizations.

On July 27, 2000, the European Commission issued its decision, in accordance with Article 25.6 of the Directive, that the Safe Harbor Privacy Principles provide adequate privacy protection. The safe harbor framework bridges the differences between the European Union (EU) and U.S. approaches to privacy protection. Under the safe harbor privacy framework, information is being collected in order to create a list of the organizations that have self-certified to the Principles.

Organizations that have signed up to this list are deemed ''adequate'' under the Directive and do not have to provide further documentation to European officials. This list will be used by European Union organizations to determine whether further information and contracts will be needed for a U.S. organization to receive personally identifiable information. The decision to enter the safe harbor is entirely voluntary. Organizations that decide to participate in the safe harbor must comply with the safe harbor's requirements and publicly declare that they do so.

To be assured of safe harbor benefits, an organization needs to self certify annually to the Department of Commerce, in writing, that it agrees to adhere to the safe harbor's requirements, which includes elements such as notice, choice, access, and enforcement. It must also state in its published privacy policy statement that it adheres to the safe harbor.

This list will be used by European Union organizations to determine whether further information and contracts will be needed by a U.S. organization to receive personally identifiable information. It will be used by the European Data Protection Authorities to determine whether a company is providing ''adequate'' protection, and whether a company has requested to cooperate with the Data Protection Authority.

The list will also be accessed when there is a complaint logged in the EU against a U.S. organization, and used by the Federal Trade Commission and the Department of Transportation to determine whether a company is part of the safe harbor. It will be accessed if a company is practicing ''unfair and deceptive'' practices and has misrepresented itself to the public. In addition, the list will be used by the Department of Commerce and the European Commission to determine if organizations are signing up to the list on a regular basis.

II. Method of Collection

The information collection form will be provided via the Internet at *http://www.export.gov/SafeHarbor* and by mail to requesting U.S. firms.

III. Data

OMB Number: 0625–0239.

Form Number: N/A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time Per Response: 20 minutes—website; and 40 minutes—letter.

Estimated Total Annual Burden Hours: 550 hours.

Estimated Total Annual Costs to Public: $19,0250.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 1, 2000.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–28474 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice from Brazil; Amended Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0656.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Amendment to Final Results

In accordance with section 751(a) of the Act, on October 11, 2000, the Department published the final results of the 1998–1999 administrative review on frozen concentrated orange juice (FCOJ) from Brazil, in which we determined that U.S. sales of FCOJ from Brazil were made at less than normal value (65 FR 60406). On October 12, 2000, we received an allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from the respondent, Citrovita Agro Industrial Ltda./Cambuhy MC Industrial Ltda./Cambuhy Citrus Comercial e Exportadora (collectively ''Citrovita''), that the Department made a ministerial error in its final results. We received comments on this allegation from the petitioners on October 18, 2000.

After analyzing Citrovita's submission and the petitioners' comments, we have determined, in accordance with 19 CFR 351.224, that a ministerial error was made in our final margin calculations for Citrovita. Specifically, we find that we failed to apply the proper U.S. dollar/Brazilian real exchange rate from January 13, 1999, through April 2, 1999, as outlined in the Concurrence Memorandum dated May 30, 2000. For a detailed discussion of the ministerial error, as well as the Department's analysis, see the memorandum to Louis Apple from the Team, dated October 31, 2000.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final results of the 1998–1999 antidumping duty administrative review on FCOJ from Brazil. The revised dumping margin is as follows:

Exporter/manufacturer	Original final margin percentage	Revised final margin percentage
Citrovita Agro Industrial Ltda./Cambuhy MC Industrial Ltda./Cambuhy Citrus Comercial e Exportadora	25.87	14.77

Scope of the Review

The merchandise covered by this review is FCOJ from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and for customs purposes. The Department's written description of the scope of this proceeding remains dispositive.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 31, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28565 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Preliminary Partial Recission of Antidumping Duty Administrative Reviews and Notice of Intent Not To Revoke in Part

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

ACTION: Notice of Preliminary Results and Preliminary Partial Recission of Antidumping Duty Administrative Reviews and Notice of Intent Not To Revoke in Part of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China.

SUMMARY: The Department of Commerce (''the Department'') has preliminarily determined that sales by the respondents in these reviews covering the period February 1, 1999 through January 31, 2000, have been made below normal value (''NV''). If these preliminary results are adopted in our final results of reviews, we will instruct the U.S. Customs Service (''Customs'') to assess antidumping duties on all appropriate entries.

The Department invites interested parties to comment on these preliminary results.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International

Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4793, and 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR Part 351 (1999).

Period of Review

The period of review (''POR'') is February 1, 1999 through January 31, 2000.

Background

On February 19, 1991, the Department published in the **Federal Register** (56 FR 6622) the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles (''certain heavy forged hand tools'' or ''HFHTs''), from the People's Republic of China (''PRC''). On February 14, 2000, the Department published in the **Federal Register** (65 FR 7348) a notice of opportunity to request administrative reviews of these antidumping duty orders. On February 28, 2000, four exporters of the subject merchandise requested that the Department conduct administrative reviews of their exports of the subject merchandise. Specifically, Tianjin Machinery Import & Export Corporation (''TMC'') requested that the Department conduct administrative reviews of its exports of HFHTs within the axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks classes or kinds of merchandise. Shandong Huarong General Group Corporation (''Shandong Huarong'') requested that the Department conduct an administrative review of its exports of HFHTs within the bars/wedges class or kind of merchandise. Liaoning Machinery Import & Export Corporation (''LMC'') requested that the Department conduct an administrative review of its exports of HFHTs within the bars/wedges class or kind of merchandise. Shandong Machinery Import & Export Corporation (''SMC'') requested that the Department conduct administrative reviews of its exports of HFHTs within the axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks classes or kinds of merchandise.

In addition, on February 29, 2000, the petitioner, O. Ames Co., requested that the Department conduct administrative reviews of exports within all four classes of subject merchandise by TMC, Fujian Machinery & Equipment Import & Export Corp. (''FMEC''), Shandong Huarong, LMC, and SMC. The Department published a notice of initiation of these reviews on March 30, 2000 (65 FR 16875).

The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Partial Recission

In its June 12, 2000, Section A questionnaire response, Shandong Huarong stated that during the POR, it sold only subject merchandise within the bars/wedges and axes/adzes classes or kinds of merchandise. Therefore, Shandong Huarong requested that it be excluded from the review of the hammers/sledges and picks/mattocks classes or kinds of merchandise. Based on our review of U.S. import data obtained from Customs indicating no shipments of hammers/sledges and picks/mattocks, we are preliminarily rescinding our review of Shandong Huarong with respect to sales within these classes or kinds of merchandise.

Furthermore, in its June 12, 2000, Section A questionnaire response, LMC noted that during the POR it sold only HFHTs within the bars/wedges class or kind of merchandise. Based upon our review of U.S. import data obtained from Customs indicating no shipments of axes/adzes, hammers/sledges and picks/mattocks, we are preliminarily rescinding our review of LMC with respect to sales within these classes or kinds of merchandise.

Scope of Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule (''HTS'') subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders is dispositive.

Intent Not To Revoke

In their February 28, 2000 requests for review, TMC, Shandong Huarong, and LMC submitted timely requests that the Department revoke the order on certain classes or kinds of HFHTs with respect to their sales of this merchandise. Specifically, TMC requested that we revoke the orders with respect to its sales of hammers/sledges and picks/mattocks, Shandong Huarong requested that we revoke the order with respect to its sales of bars/wedges, and LMC requested that we revoke the order with respect to its sales of bars/wedges.

Section 351.222(b)(2) of the Department's regulations notes that the Secretary may revoke an antidumping order in part if the Secretary concludes, inter alia, that one or more exporters or producers covered by the order have sold the merchandise at not less than NV for a period of at least three consecutive years. Thus, in determining whether a requesting party is entitled to a revocation inquiry, the Department must determine that the party received zero or *de minimis* margins for three years forming the basis for the request. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands,* 65 FR 742, 743 (January 6, 2000). *See* also the preamble of the Department's latest revision of the revocation regulation stating: ''The threshold requirement for revocation continues to be that respondent not sell at less than normal value for at least three consecutive years . . .'' The respondents provided certifications pursuant to 19 CFR 351.222(e) indicating that they based their revocation requests on the results of the instant reviews and the preceding two administrative reviews. However, with

respect to the classes or kinds of merchandise for which they requested revocation, none of these respondents received zero or *de minimis* margins in each of the reviews upon which they based their revocation request. *See, e.g., Heavy Forged Hand Tools From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews,* 65 FR 50499 (August 18, 2000). Consequently, we preliminarily find that TMC, Shandong Huarong and LMC do not qualify for partial revocation of the orders based upon section 351.222(b) of the Department's regulations.

Verification

Following the publication of these preliminary results, we intend to verify, as provided in section 782(i) of the Act, sales and cost information submitted by respondents, as appropriate. At that verification, we will use standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original source documentation containing relevant information. We plan to prepare verification reports outlining our verification results and place these reports on file in the Central Records Unit, room B099 of the main Commerce building (''CRU-Public File'').

Duty Absorption

On February 29, 2000, petitioner requested that the Department conduct a duty absorption inquiry in order to determine whether antidumping duties had been absorbed by a foreign producer or exporter subject to the order. However, the Department's invitation for such requests only applies to certain administrative reviews of orders that were in effect before January 1995. For transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.,* orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's antidumping regulations provides that the Department will make a duty-absorption determination, if requested, for any administrative review initiated in 1996 or 1998. This approach ensures that interested parties will have the opportunity to request a duty-absorption determination prior to the time for sunset review of the order under section 751(c) on entries for which the second and fourth years following an order have already passed. Because the antidumping duty orders on HFHTs from the PRC have been in effect since 1991, they are ''transition orders'' in accordance with section 751(c)(6)(C) of the Tariff Act. However, since this administrative review was not initiated in 1996 or 1998, the Department will not make a duty absorption determination.

Separate Rates Determination

To establish whether a company operating in a non-market economy (''NME'') is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) *(''Sparklers''),* as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) *(''Silicon Carbide'').* Under this test, NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587 and *Sparklers* 56 FR at 20589.

In the final results of the 1998–1999 reviews of HFHTs, the Department granted separate rates to Shandong Huarong, SMC, LMC, and TMC. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China,* 65 FR 43290 (July 13, 2000) *(''Hand Tools'').* While these four companies received separate rates in previous segments of these proceedings, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of any separate rate the respondent received in the past. *See Manganese Metal From the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 12441 (March 13, 1998). In the instant reviews, these companies submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in these reviews by Shandong Huarong, SMC, LMC, and TMC includes government laws and regulations on corporate ownership, business licences, and narrative information regarding the companies' operations and selection of management. This evidence is consistent with the Department's findings in previous reviews and supports a finding that control of companies in the PRC has been decentralized and that the respondent companies' operations are, in fact, autonomous from the PRC government. We therefore preliminarily determine that these companies continue to be entitled to separate rates.

With respect to FMEC, since it has not provided any information on the record in this review, we preliminarily determine that FMEC did not establish its entitlement to a separate rate.

Facts Available

(1) Separate Rates Facts Available

In the instant review, SMC, FMEC, and Shandong Huarong failed to provide certain information requested by the Department. SMC failed to provide sales and factor of production information regarding its sales of axes/adzes, bars/wedges and picks/mattocks. FMEC failed to respond to the Department's questionnaire at all. Shandong Huarong failed to provide sales and factor of production information regarding its sales of axes/adzes. In accordance with section 776(b) of the Act, the Department has determined that the use of adverse facts available is appropriate for purposes of determining the preliminary dumping margins for the classes or kinds of subject merchandise for which SMC and Shandong Huarong failed to provide information.

Section 776(a)(2) of the Act provides that:

> if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information

but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Moreover, section 776(b) of the Act provides that:

> if the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.

Consistent with section 776(a)(2)(B) of the Act, where SMC (axes/adzes, bars/wedges and picks/mattocks) and Shandong Huarong (axes/adzes) failed to provide requested information, we based the preliminary margins on facts available. In the instant case, SMC chose not to provide certain information requested by the Department.[1] Section 782(c)(1) of the Act is not applicable for SMC because it did not notify the Department that it could not respond and did not suggest an alternative form by which to respond. Section 782(e) of the Act is not applicable because no information was ever provided. Therefore, we have determined for SMC for axes/adzes, bars/wedges and picks/mattocks that use of the facts available is appropriate.

In the instant case, Shandong Huarong did not respond to the Department's questionnaire regarding axes/adzes. In its June 12, 2000 questionnaire response, Shandong Huarong stated that it did not have access to the required information to participate in the review on axes/adzes. We informed Shandong Huarong, in our August 31, 2000 supplemental questionnaire, that if it did not report its sales of axes/adzes, then these sales would be subject to the facts available for purposes of determining a dumping margin for the preliminary results. In its September 18, 2000 supplemental response, Shandong Huarong claimed that its supplier factory refused to provide the information on axes/adzes. *See* Shandong Huarong's September 18, 2000 questionnaire response at page 1. Section 782(c)(1) of the Act is not applicable for Shandong Huarong because it did not suggest an alternative form by which to respond. Regarding Shandong Huarong's supplier, because factors data for Shandong Huarong's U.S. sales were not provided by its supplier with regard to axes/adzes, we preliminarily determine that such party did not demonstrate that it cooperated to the best of its ability. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Notice of Intent To Revoke Order in Part,* 65 FR 41944, 41946–41947 (July 7, 2000). Section 782(e) of the Act is not applicable because no information was ever provided. Therefore, we have determined for Shandong Huarong's sales of axes/adzes that use of the facts available is appropriate. We intend to issue further supplemental requests for information regarding the factory's refusal to provide information on axes/adzes after the preliminary results.

Pursuant to section 776(b) of the Act, we have determined that SMC and the supplier of Shandong Huarong have failed to cooperate to the best of their ability with respect to the classes or kinds of merchandise discussed above. Accordingly, we have used an adverse inference in selecting facts available separate rate margin for the classes or kinds of merchandise for which SMC and Shandong Huarong failed to provide information and have not cooperated to the best of their ability. As outlined in section 776(b) of the Act, adverse facts available may include reliance on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review under section 751 of the Act or determination under section 753 of the Act; or (4) any other information placed on the record. Specifically, we based SMC's preliminary margin for bars/wedges, axes/adzes, and picks/mattocks, and Shandong Huarong's preliminary margin for axes/adzes on the highest margin for each respective class or kind of merchandise from this or any prior segment of this proceeding— 1998–1999 POR: axes/adzes (70.15 percent), bars/wedges (139.31 percent), picks/mattocks (98.77 percent) and 1999–2000 POR: hammers/sledges (72.04 percent). *See Ferro Union* v. *United States* 44 F. Supp. 2 1310 (CIT 1999) (''*Ferro Union*''). With respect to FMEC, we preliminarily determine that FMEC is not entitled to a separate rate and will be subject to the PRC country-wide rates, which are based on adverse facts available. *See Separate Rates Determination* above; and *Country-Wide Rates Facts Available* below.

(2) Country-Wide Rates Facts Available

The Department has determined that the use of facts available is appropriate for purposes of establishing the country-wide rate for these preliminary results of reviews, pursuant to section 776(a)(2)(B) of the Act. The Act provides that the administering authority shall use facts otherwise available when an interested party ''fails to provide such information by the deadlines for the submission of the information or in the form and manner requested.'' On June 1, 2000, the Department sent a questionnaire to the Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') in order to collect information relevant to the calculation of the PRC-wide rate. MOFTEC did not respond to our questionnaire.

Section 776(b) of the Act authorizes the Department to use adverse facts available whenever it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Because MOFTEC did not respond to our questionnaire or direct us to send the questionnaire to any other party, and because FMEC failed to respond to the Department's questionnaire, we preliminarily determine that these entities did not act to the best of their ability to comply with our requests. Therefore, pursuant to section 776(b) of the Act, we are relying on adverse facts available to determine the margins for the PRC-wide entity. When applicable, for adverse facts available for the PRC-wide rates we have applied the PRC-wide rates as follows—1998–1999 POR: axes/adzes (70.15 percent), bars/wedges (139.31 percent), picks/mattocks (98.77 percent) and 1999–2000 POR: hammers/sledges (72.04 percent)—because they are the highest rates from any segment of these proceedings with respect to each class or kind of merchandise.

Corroboration

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (''SAA'') (H.R. Doc. 103–316 (2nd Sess. 1994) states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at *870.* To corroborate secondary information, the Department will, to the extent

[1] SMC noted in its supplemental questionnaire response that it has chosen to participate in this review only with respect to sales of hammers/sledges and that it understands that its sales of subject merchandise other than hammers/sledges will be subject to the Department's use of facts available.

practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See Grain-Oriented Electrical Steel From Italy; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review,* 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. Accordingly, for each class or kind of HFHTs for which we have resorted to adverse facts available, we have used the highest margin from this or any prior segment of the proceeding as the margin for these preliminary results because there is no evidence on the record indicating that such margins are not appropriate as adverse facts available.

Classification of U.S. Sales as Export Price (''EP'') vs. Constructed Export Price (''CEP'')

For respondents SMC, LMC, and Shandong Huarong, we calculated an EP for sales to the United States because the first sale was made before the date of importation and the use of CEP was not otherwise warranted. Sales classification (EP vs. CEP) is an issue that requires further analysis for one respondent, TMC, because its affiliate in the United States, CMC T.M., performs some selling functions in the United States for TMC's sales. Specifically, CMC T.M. finds new U.S. customers, transmits purchase orders from U.S. customers to TMC, receives and processes warranty claims, and provides technical service. However, the sales documentation on the record in these reviews indicates that the material terms of TMC's U.S. sales were established in the PRC between TMC and the unaffiliated U.S. purchaser. Specifically, we have found the following facts from analyzing TMC's questionnaire responses: (1) First contact with a U.S. customer may be made either by TMC or CMC T.M., (2) all contracts are signed by TMC in the PRC, (3) TMC arranges for shipping and other services in the PRC, (4) TMC issues the invoice directly from the PRC to the U.S. customer, (5) title passes from TMC to the U.S. customer upon shipment from the PRC, and (6) TMC accepts payment from the U.S. customer. Given these facts, we preliminarily determine that these sales were made in the PRC by TMC and, thus, should be treated as EP transactions.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an EP for sales to the United States for all respondents because the first sale was made before the date of importation and the use of CEP was not otherwise warranted. When appropriate, we made deductions from the selling price to unaffiliated parties for ocean freight, marine insurance and foreign inland freight. Each of these services, with one exception, was either provided by a NME vendor or paid for using a NME currency. Thus, we based the deduction for these movement charges on surrogate values. *See Normal Value* section of this notice. The one exception referred to above concerns ocean freight. Each respondent reported that a market economy vendor provided ocean freight for a portion of their U.S. sales and that they paid for this service using a market economy currency. Therefore, for all sales, we applied the reported market economy ocean freight expense in calculating EP.

We valued marine insurance using the rate in effect in India which was reported in the public version of the questionnaire response placed on the record in *Stainless Steel Wire Rod From India; Final Results of Administrative Review,* 63 FR 48184 (September 9, 1998) (''*India Wire Rod*''). We valued foreign brokerage and handling using the rate reported in the questionnaire response in *India Wire Rod.* The sources used to value foreign inland freight are identified below in the *Normal Value* section of this notice.

To account for inflation or deflation between the time period that the freight, brokerage, and insurance rates were in effect and the POR, we adjusted the rates using the wholesale price indices (''WPI'') for India as published in the International Monetary Fund's (''IMF'') publication, *International Financial Statistics. See Memorandum From Frank Thomson Regarding Surrogate Values Used for the Preliminary Results of the Ninth Administrative Reviews of Certain Heavy Forged Hand Tools From the People's Republic of China,* (October 31, 2000), (''*Surrogate Value Memorandum*''), which is on file in the CRU-Public File.

Normal Value

For exports from NMEs, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production (''FOP'') methodology if (1) the subject merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value. Section 351.408 of the Department's regulations sets forth the Department's methodology for calculating the NV of merchandise from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as an NME. Since none of the parties to these proceedings contested such treatment in these reviews, we calculated NV in accordance with section 773(c) of the Act and section 351.408 of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOP utilized in producing HFHTs include, but are not limited to: (A) Hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the costs of the FOP in a market economy that is (A) at a level of economic development comparable to the PRC, and (B) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product, the growth rate in per capita income, and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. *See Memorandum From*

Jeff May, Director, Office of Policy, to Thomas Futtner, Acting Office Director, AD/CVD Enforcement Group II, dated August 31, 2000, which is on file in the CRU-Public File.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value FOP using surrogate values that were in effect during the POR. However, this data was not available. Therefore, we utilized surrogate values that were in effect during periods prior to the POR, and adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices for India that were reported in the IMF's publication, *International Financial Statistics.* We valued the FOP as follows:

(1) We valued direct materials used to produce HFHTs (i.e., steel, steel scrap, paint, wood handles, resin glue, fibreglass handles and anti-rust oil) and the steel scrap generated from the production of HFHTs (except as noted below) using the rupee per metric ton or rupee per kilogram value of imports that entered India during the period February 1998 through January 1999 as published in the *Monthly Statistics of the Foreign Trade of India,* Volume II—Imports (''*Indian Import Statistics*''). We valued steel for SMC using the company's average reported purchase price because it purchased steel from a market economy vendor using a market economy currency. For wood handles, resin glue and fibreglass handles, we used the rupee per metric ton or rupee per kilogram value of imports that entered India during the period February 1998 through July 1998 as published in the *Indian Import Statistics.*

(2) We valued labor using a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's web site (*See* http://ia.ita.doc.gov/wages/).

(3) We derived ratios for factory overhead, selling, general and administrative (''SG&A'') expenses, and profit using information reported for 1992–1993 in the January 1997 *Reserve Bank of India Bulletin.* From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(4) We valued packing materials, including cartons, pallets, iron straps, anti-damp paper, anti-rust paper, plastic strips, iron knots, plastic bags, iron wire, and metal clips, using the rupee per metric ton or rupee per kilogram value of imports that entered India during the period February 1998 through January 1999 as published in *Indian Import Statistics.* We valued hessian cloth (a packing material) using the rupee per kilogram value of imports that entered India during the period April 1998 through January 1999 as published in *Indian Import Statistics.*

(5) We valued coal using the price of steam coal in India in 1996 as reported in the International Energy Agency's publication, *Energy Prices and Taxes,* Second Quarter 1999 (''*EPT*'').

(6) We valued electricity using the 1997 Indian electricity prices for industrial use as reported in *EPT.*

(7) We used the following sources to value truck and rail freight services incurred to transport direct materials, packing materials, and coal from the suppliers of the inputs to the factories producing HFHTs:

Truck Freight: If a respondent used its own trucks to transport material or subject merchandise, we valued freight services using the average cost of operating a truck, which we calculated from information published in *The Times of India* on April 24, 1994. If a respondent did not use its own trucks or the respondent did not state that it used its own trucks, we valued freight services using the rates reported in an August 1993 cable from the U.S. Embassy in India to the Department. *See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China,* 58 FR 48833 (September 20, 1993).

Rail Freight: We valued rail freight services using the April 1995 rates published by the Indian Railway Conference Association. These rates were used in *Brake Drums and Brake Rotors.* For further discussion of the surrogate values used in these reviews, *see Surrogate Value Memorandum,* dated October 31, 2000, which is on file in the CRU-Public File.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist for the period February 1, 1999 through January 31, 2000:

Manufacturer/exporter	Margin (percent)
Shandong Huarong General Group Corporation:	
Axes/Adzes	70.15
Bars/Wedges	0.44
Liaoning Machinery Import & Export Corporation:	
Bars/Wedges	0.01
Tianjin Machinery Import & Export Corporation:	
Axes/Adzes	31.11
Bars/Wedges	0.84
Picks/Mattocks	3.48
Hammers/Sledges	72.04
Shandong Machinery Import & Export Corporation:	
Axes/Adzes	70.15
Bars/Wedges	139.31
Picks/Mattocks	98.77
Hammers/Sledges	2.84
PRC-wide rates:	
Axes/Adzes	70.15
Bars/Wedges	139.31
Picks/Mattocks	98.77
Hammers/Sledges	72.04

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of these preliminary results. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). We will issue a memorandum detailing the dates of a hearing, if any, and deadlines for submission of case briefs/written comments and rebuttal briefs or rebuttals to written comments, limited to issues raised in such briefs or comments, after verification. Parties who submit arguments are requested to submit with the argument (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. The Department will issue the final results of these administrative reviews, which will include the results of its analysis of issues raised in interested party comments, within 120 days of publication of these preliminary results.

The final results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise covered by these reviews and for future deposits of estimated duties.

Duty Assessment Rates

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we

have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. For those respondents or classes or kinds of merchandise with margins based on facts available, we based the importer-specific assessment rates on the facts available margin percentages. These importer-specific rates will be assessed uniformly on all entries of each importer that were made during the POR. In accordance with 19 CFR 351.106 (c)(2), we will instruct Customs to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis, i.e.,* less than 0.5 percent. The Department will issue appraisement instructions directly to Customs.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above which have separate rates (Shandong Huarong, LMC, SMC and TMC) will be the rates for those firms established in the final results of these administrative reviews for the classes or kinds of merchandise listed above; (2) for any previously reviewed PRC or non-PRC exporter with a separate rate not covered in these reviews, the cash deposit rates will be the company-specific rates established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of these reviews; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: October 31, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28571 Filed 11–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–840]

Manganese Metal From the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Administrative Review

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

ACTION: Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China.

SUMMARY: The Department of Commerce is currently conducting an administrative review of the antidumping duty order on manganese metal from the People's Republic of China. The period of review is February 1, 1999 through January 31, 2000. This review covers imports of subject merchandise from four producers/exporters.

We have preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the U.S. price and normal value.

We have also determined that the review of China National Electronics Import & Export Hunan Company should be rescinded.

We invite interested parties to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Suresh Maniam, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2239 or (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department of Commerce's (Department's) regulations are to 19 CFR Part 351 (April 1999).

Background

On February 14, 2000, the Department published in the **Federal Register** an *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 65 FR 7348 (February 14, 2000).

In accordance with 19 CFR 351.213(b)(2), on February 29, 2000, the petitioner, Eramet Marietta Inc., requested that we conduct an administrative review of this order covering China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation (CMIECHN/CNIECHN), Minmetals Precious and Rare Minerals Import & Export Company (Minmetals), London & Scandinavian Metallurgical Co. Ltd./Shieldalloy Metallurgical Corporation (LSM/SMC),[1] Sumitomo Canada, Ltd. (SCL), and China National Electronics Import & Export Hunan Company (CEIEC). On February 29, 2000, the co-petitioner, Kerr-McGee Chemical, LLC (Kerr-McGee), likewise requested that we conduct an administrative review of this order covering CMIECHN/CNIECHN, Minmetals, CEIEC, LSM, and SCL.

On March 30, 2000, we published a notice of initiation of this antidumping duty administrative review of the companies named by the petitioners. *See Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 65 FR at 16875. On June 9, 2000, we issued questionnaires to the companies. On June 19, 2000, SCL informed the

[1] SMC is the affiliated U.S. importer of manganese metal from the U.K. reseller LSM.

Department that, given the small volume of merchandise it entered during the period of review (POR), SCL would not participate in this review. CEIEC made a submission on June 23, 2000, certifying that it did not sell or ship subject merchandise to the United States during the POR. CMIECHN/CNIECHN and Minmetals submitted their questionnaire responses by July 24, 2000, and their supplemental responses by September 19, 2000. LSM/SMC submitted its questionnaire responses by July 24, 2000, and their supplemental responses by September 12, 2000. On August 29, 2000, Eramet Marietta informed the Department that, because it intended to close its manganese metal operations by year-end, it was withdrawing as a domestic interested party in this case.

Preliminary Rescission of Review in Part

As stated above in the *Background* section, CEIEC notified the Department that it had not made any U.S. sales of subject merchandise during the POR. Entry data provided by the U.S. Customs Service (Customs) confirms that there were no POR entries from CEIEC of manganese metal.[2] Therefore, consistent with the Department's regulations and practice,[3] we are preliminarily rescinding this review with respect to CEIEC.

Scope of Review

The merchandise covered by this review is manganese metal, which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this administrative review, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

[2] *See Memorandum to the Case File; Confirmation of No Shipment by CEIEC* (October 31, 2000).

[3] *See* 19 CFR 351.213(d)(3); *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review,* 61 FR 46763 (September 5, 1996).

Separate Rates

It is the Department's standard policy to assign all exporters of the merchandise subject to review in nonmarket economy (NME) countries a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589. A *de facto* analysis of absence of government control over exports is based on four factors—whether the respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

In the *Notice of Amended Final Determination and Antidumping Duty Order; Manganese Metal from the People's Republic of China* 61 FR 4415 (February 6, 1996) (*LTFV Investigation*), we determined that there was *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-specific dumping margin. For the POR, CMIECHN/CNIECHN and Minmetals responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final determination in the *LTFV Investigation* and both CMIECHN/CNIECHN and Minmetals continue to demonstrate an absence of government control, both in law and in fact, with respect to their companies' exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.*

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that if an interested party: (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form requested, (3) significantly impedes a proceeding under the antidumping statute, or (4) provides information that cannot be verified, the Department shall use, subject to section 782(d), facts available in reaching the applicable determination.

1. Application of Facts Available

On June 19, 2000, SCL informed the Department that, given the small volume of merchandise it entered during the POR, SCL would not participate in this review. We preliminarily determine that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of facts otherwise available is appropriate for SCL because it did not submit a response to our questionnaire issued to it on June 9, 2000.

2. Use of Adverse Facts Available

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action* (SAA), H.R. Doc. 103–316 at 870 (1994). To examine whether the respondent ''cooperated'' by ''acting to the best of its ability'' under section 776(b) of the Act, the Department considers, *inter alia,* the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–53820 (October 16, 1997).

As discussed above, SCL failed to respond to the Department's questionnaire. Thus, we have determined that SCL withheld information that we requested and significantly impeded the antidumping proceeding. Without information from SCL, the Department is unable to review SCL's entries and calculate an assessment rate for those entries. We therefore find that SCL has not acted to the best of its ability to comply with our

requests for information. Accordingly, consistent with section 776(b) of the Act, we have applied adverse facts available to this company.

3. Corroboration of Secondary Information

In this review, we are using as adverse facts available the PRC-wide rate (143.32 percent) determined for non-responding exporters involved in the *LTFV Investigation*. This margin, which is the highest rate determined in any segment of this proceeding, represents the highest margin in the petition, as modified by the Department for the purposes of initiation. *See Initiation of Antidumping Duty Investigation: Manganese Metal from the People's Republic of China*, 59 FR 61869 (December 2, 1994) (*LTFV Initiation*). It is also the rate currently applicable to all PRC exporters that do not have separate rates.

Information derived from the petition constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA at 870, however, states further that ''the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference.'' In addition, the SAA at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

The PRC-wide rate being used in this proceeding as adverse facts available was previously corroborated. *See Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 64 FR 49447 (September 13, 1999). We have no new information that would lead us to reconsider that decision.

Export Price

For U.S. sales made by CMIECHN/CNIECHN and Minmetals we calculated an export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States.

For these sales, we calculated export price based on the price to unaffiliated purchasers. We deducted an amount, where appropriate, for foreign inland freight, ocean freight, and marine insurance.

For U.S. sales made by LSM/SMC, we calculated a constructed export price (CEP), in accordance with section 772(c) of the Act, because the subject merchandise was sold by an affiliated importer in the United States after importation into the United States. We calculated CEP based on the packed, ex-warehouse prices from the U.S. subsidiary to unaffiliated customers. We made deductions, where appropriate, from the starting price for CEP for international freight from the United Kingdom to the United States, U.K. inland freight, marine insurance, U.S. customs duties, U.S. brokerage, U.S. inland freight, and U.S. freight to the unaffiliated purchaser. In accordance with section 772(d)(1) of the Act, we made further deductions from the starting price for CEP for the following selling expenses that related to economic activity in the United States: credit expenses and indirect selling expenses, including inventory carrying costs. In accordance with section 772(d)(3) of the Act, we have also deducted from the starting price an amount for profit. Finally, since the sales made by SMC to the unaffiliated purchaser were further manufactured products, we further deducted, in accordance with section 772(d)(2), the following costs associated with the further manufacturing: material, labor, overhead, packing, general and administrative expenses, and interest expense.

Normal Value

1. Nonmarket-Economy Status

For the calculation of dumping margins for merchandise originating in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(c)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Furthermore, available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV for the two PRC exporters CMIECHN/CNIECHN and Minmetals by valuing the factors of production in a comparable market-economy country which is a significant producer of comparable merchandise.

With regard to NV for LSM/SMC's sales, the statute directs that,

> Where the subject merchandise is exported to the United States from an intermediate country, normal value shall be determined in the intermediate country, except that normal value may be determined in the country of origin if—
>
> (A) the producer knew at the time of the sale that the subject merchandise was destined for exportation;
>
> (B) the subject merchandise is merely transshipped through the intermediate country;
>
> (C) sales of the foreign like product in the intermediate country do not satisfy the conditions of paragraph (1)(c); or
>
> (D) the foreign like product is not produced in the intermediate country.

See Section 773(a)(3) of the Act.

Information from the petition and on the record of prior administrative reviews has established the United Kingdom does not produce the foreign like product. Parties to this review have submitted no evidence suggesting that this situation has changed. Thus, at least one of the above statutory criteria (*i.e.*, criterion D) has been met. Therefore, to determine whether LSM/SMC's sales were sold at prices below NV, we have determined NV in the PRC, the country of origin. Furthermore, because the country of origin is the PRC, consistent with section 773(c)(1) of the Act we have constructed a NV based on PRC factors of production. As a result, the NV for LSM/SMC is the same as the NV for CMIECHN/CNIECHN.[4]

2. Surrogate-Country Selection

In accordance with section 773(c)(4) of the Act and section 351.408(b) of our regulations, we preliminarily determine that India is comparable in terms of economic development to the PRC.[5] In addition, India is a significant producer of comparable merchandise. Therefore, for this review, we have selected India as the surrogate country and have used publicly available information relating

[4] For a more in-depth discussion of these issues, *see Memorandum to Richard W. Moreland; Third-County Resellers and Treatment of SG&A and Movement Expenses* (October 25, 2000).

[5] *See Memorandum to Susan Kuhbach from Jeff May; Non-Market-Economy Status and Surrogate Country Selection* (June 12, 2000), a public copy of which is available in the Central Records Unit.

to India, unless otherwise noted, to value the various factors of production.

3. Factors-of-Production Valuation

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include but are not limited to the following elements: (1) hours of labor required; (2) quantities of raw materials used; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining potential surrogate values, we selected, where possible, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices within the POR or closest in time to the POR; (3) product-specific; and (4) tax-exclusive. Where we could not obtain a POR-representative price for an appropriate surrogate value, we selected a value in accordance with the remaining criteria mentioned above which was the closest in time to the POR. In accordance with this methodology, we have valued the factors as follows.[6]

We valued manganese Ore 1 using a POR price quotation for carbonate manganese ore submitted by the petitioner. We valued Ore 2 using an average of two POR price quotations from Indian manganese ore producers. We adjusted these prices for Ore 1 and Ore 2 to account for the reported manganese content of the ore used in the PRC manufacture of the subject merchandise and to account for the differences in transportation distances.

To value various process chemicals used in the production of manganese metal, we used prices obtained from the following Indian sources: *Indian Chemical Weekly* (February 1999 through January 2000), the *Monthly Statistics of Foreign Trade of India, Volume II—Imports* (April 1998 through August 1998) (*Import Statistics*), as well as price quotations from various Indian chemicals producers. Where necessary, we adjusted these values to reflect inflation up through the POR using an Indian wholesale price index (WPI) published by the International Monetary Fund (IMF). Additionally, we adjusted these values, where appropriate, to account for differences in chemical content and to account for freight costs incurred between the suppliers and manganese metal producers.

We have derived a surrogate value for electricity based on electricity price data published by the Center for Monitoring Indian Economy (CMIE) and on an electricity-specific price index published by the Reserve Bank of India.

To value the labor input, consistent with 19 CFR 351.408(c)(3), we used the regression-based estimated wage rate for the PRC as calculated by the Department.[7]

We have derived ratios for selling, general, and administrative expenses (SG&A), factory overhead, and profit based on aggregated financial data published by the CMIE for the Indian nonferrous metals industry.

For most packing materials values, we used per-unit values based on data from the *Import Statistics.* For metal drums, however, we used a price quote from an Indian drum manufacturer. We made further adjustments, where necessary, to these packing material values to account for freight costs incurred between the PRC supplier and manganese metal producers.

To value rail freight, we relied on rate tables published by the Indian Railway Conference Association. To value truck freight, we used a price quotation from an Indian freight provider. With regard to ocean freight, where a company had reported that it incurred ocean freight expenses in market economy currency, from a market economy provider through a market economy agent, we used the reported expenses to value all ocean freight costs reported by that company.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period February 1, 1999, through January 31, 2000:

Manufacturer/exporter	Margin
CMIECHN/CNIECHN	27.18
Minmetals	19.70
LSM/SMC	13.33
SCL	143.32

Because we are rescinding the review with respect to CEIEC, the company-specific rate for that company remains unchanged.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held approximately 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Cash Deposit Requirements

To calculate the cash-deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of manganese metal entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for CMIECHN/CNIECHN, Minmetals, LSM/SMC, and

[6] For a more detailed explanation of the methodology used in calculating various surrogate values, *see Memorandum to the File from Case Team; Calculations for the Preliminary Results* (October 31, 2000).

[7] *See* the ITA website at *http://ia.ita.doc.gov/wages/*

SCL will be the rates established in the final results of this administrative review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for CEIEC, which we determined to be entitled to a separate rate in the *LTFV Investigation* but which did not have shipments or entries to the United States during the POR, the rate will continue to be the currently-applicable rate of 11.77 percent, (3) for non-PRC exporters of subject merchandise from the PRC not specifically listed above, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter; [8] and (4) for all other PRC exporters, the cash deposit rate will be 143.32 percent.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: October 31, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28569 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See e.g., Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 64 FR 49447 (September 13, 1999); *Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 23758, 23760 (May 1, 1997); *Sparklers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 39630, 39631 (July 30, 1996).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–810; A–475–816; A–588–835; A–580–825]

Final Results of Expedited Sunset Reviews: Oil Country Tubular Goods From Argentina, Italy, Japan, and Korea

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

ACTION: Notice of Final Results of Expedited Sunset Reviews: Oil Country Tubular Goods from Argentina, Italy, Japan, and Korea.

SUMMARY: On July 3, 2000, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on oil country tubular goods from Argentina, Italy, Japan, and Korea (65 FR 41053) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of notices of intent to participate and adequate substantive responses filed on behalf of U.S. Steel Group, a unit of USX Corporation, IPSCO Tubulars, Inc., Lone Star Steel Company, Maverick Tube Corporation, Newport Steel and Koppel Steel Divisions of NS Group, Grant-Prideco, and North Star Steel Ohio (collectively, ''domestic interested parties''), and inadequate responses (in the Italy, Japan, and Korea cases, no responses) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Reviews* section of this notice.

FOR FURTHER INFORMATION CONTACT: John P. Maloney, Jr. or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1503 or (202) 482–3330, respectively.

EFFECTIVE DATE: November 7, 2000.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*''Sunset Regulations''*), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Background

On July 3, 2000, the Department initiated sunset reviews of the antidumping duty orders on oil country tubular goods (''OCTG'') from Argentina, Italy, Japan, and Korea (65 FR 41053), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of U.S. Steel group, a unit of USX Corporation, IPSCO Tubulars, Inc., Lone Star Steel Company, Maverick Tube Corporation, Newport Steel and Koppel Steel Divisions of NS Group, Grant-Prideco, and North Star Steel Ohio (collectively, ''domestic interested parties''), within the applicable deadline (July 18, 2000) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as manufacturers, producers, or wholesalers in the United States of a domestic like product.

On August 2, 2000, we received substantive responses on behalf of domestic interested parties and, in the Argentina case, on behalf of Siderca SAIC (''Siderca''). Siderca is an interested party pursuant to section 771(9)(A) of the Act as a foreign producer and exporter of the subject merchandise.

On August 7, 2000, we received rebuttal comments on behalf of domestic interested parties in response to Siderca's comments.

Scope of Review of Oil Country Tubular Goods From Argentina

Oil country tubular goods are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited-service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this review are currently classified in the following Harmonized Tariff

Schedule of the United States (HTSUS) subheadings: 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.80, 7304.39.00, 7304.51.50, 7304.20.70, 7304.59.60, 7304.59.80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50, 7306.50.50, 7306.60.70, 7306.90.10. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

Scope of Review of Oil Country Tubular Goods From Italy

Oil country tubular goods are hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this review are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

Scope of Review of Oil Country Tubular Goods From Japan

Oil country tubular goods are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited-service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this review are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

Scope of Review of Oil Country Tubular Goods From Korea

Oil country tubular goods are hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this review are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

History of the Orders

In the original investigations, covering the period January 1, 1994, through June 30, 1994, the Department determined the following dumping margins: 1.36 percent for Siderca, the Argentine respondent, and 1.36 percent for ''all others'' (60 FR 33539); 49.78 percent for Dalmine S.p.A. (''Dalmine''), Acciaierie Tubificio Arvedi S.p.A., and General Sider Europa S.p.A., the Italian respondents, and 49.78 percent for ''all others'' (60 FR 33558); 44.20 percent for Nippon Steel Corporation and Sumitomo Metal Industries, Ltd. (''Sumitomo''), the Japanese respondents, and 44.20 percent for ''all others'' (60 FR 33560); and 12.17 percent for Union Steel Manufacturing Company, one of the Korean respondents,[1] and 12.17 percent for ''all others'' (60 FR 33561).

The Department has not conducted an administrative review of the orders on OCTG from Argentina or Italy since the issuance of these orders. However, there have been two administrative reviews of the order on OCTG from Japan. In the first, covering the period February 2, 1995, though July 31, 1996, NKK

[1] Hyundai Steel Pipe Company, Ltd., the other respondent, was excluded from the antidumping duty order. *See Antidumping Duty Order: Oil Country Tubular goods from Korea.* 61 FR 41057, 41058 (August 11, 1995).

Corporation of Japan was assigned a margin of 44.20 percent. In the second, covering the period August 1, 1997, through July 31, 1998, Sumitomo was assigned a margin of 0.00 percent. In addition, there have been two administrative reviews of the order on OCTG from Korea. In the first, covering the period August 1, 1996, through July 31, 1997, SeAH Steel Corporation (''SeAH'') was assigned a margin of 2.93 percent. In the second, covering the period August 1, 1997, through July 31, 1998, SeAH was assigned a margin of 15.02 percent.

Analysis of Comments Received

All issues raised by parties to these sunset reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, dated October 31, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http:/ia.ita.doc.gov/frn, under the heading ''October 2000.'' The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on oil country tubular goods from Argentina, Italy, Japan, and Korea would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Country	Manufacturer/exporter	Margin (percent)
Argentina	Siderca SAIC	1.36
	All Others	1.36
Italy	Dalmine S.p.A.	49.78
	Acciaierie Tubificio Arvedi S.p.A.	49.78
	General Sider Europa S.p.A.	49.78
	All Others	49.78
Japan	Nippon Steel Corporation	44.20
	Sumitomo Metal Industries, Ltd.	44.20
	All Others	44.20
Korea	Union Steel Manufacturing Co.	12.17
	All Others [2]	12.17

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year (''sunset'') reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 31, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28566 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS –P

[2] Hyundai Steel Pipe Company, Ltd., a respondent in the investigation, was excluded from the antidumping duty order. *See Antidumping Duty Order: Oil Country Tubular Goods from Korea,* 61 FR 41057, 41058 (August 11, 1995).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Preliminary Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China

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

SUMMARY: In response to a timely request from two manufacturer/exporters and the petitioners,[1] on March 30, 2000, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China with respect to China Processed Food Import & Export Co., Gerber Food (Yunnan) Co., Ltd., Mei Wei Food Industry Co., Ltd., and Tak Fat Trading Co. The periods of review are August 5, 1998, through January 31, 2000, for China Processed Food Import & Export Co. and Gerber Food (Yunnan) Co., Ltd., and May 7, 1998, through January 31, 2000, for Mei Wei Food Industry Co., Ltd. and Tak Fat Trading Co.[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 65 FR 16875 (March 30, 2000).

As a result of these reviews, the Department of Commerce has preliminarily determined that dumping margins exist for exports of the subject merchandise for the covered periods.

On March 31, 2000, the Department of Commerce published a notice of initiation of a new shipper antidumping duty review of Raoping Xingyu Foods Co., Ltd. covering the period August 5, 1998, through January 31, 2000. On June 30, and August 17, 2000, the Department of Commerce published the preliminary and final results, respectively, for exports by Mei Wei Food Industry Co., Ltd. and Tak Fat Trading Co. on an expedited basis. Therefore, this notice constitutes a preliminary results of administrative

[1] The petitioners are the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

[2] Because of an affirmative critical circumstance finding, liquidation was suspended 90 days prior to publication of the preliminary less-than-fair-value investigation for these companies.

review for China Processed Food Import & Export Co. and Gerber Food (Yunnan) Co., Ltd. and a preliminary results of new shipper review for Raoping Xingyu Foods Co., Ltd.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with their arguments (1) a statement of the issues and (2) a brief summary of the arguments.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

SUPPLEMENTARY INFORMATION: For the three respondents that submitted full responses to the antidumping questionnaire for these reviews and have been found preliminarily to be entitled to a separate rate, we have preliminarily determined that U.S. sales have been made below normal value. If these preliminary results are adopted in our final results of these reviews, we will instruct the Customs Service to assess antidumping duties on all appropriate entries on an importer-specific or entry-specific basis, as applicable (*see* ''Assessment Rates'' section of this notice for further discussion).

Background

On February 19, 1999, the Department published in the **Federal Register** (64 FR 8308) an antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC). On February 14, 2000, the Department published in the **Federal Register** (65 FR 7348) a notice of opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC covering the period August 5, 1998, through January 31, 2000. On February 22, 2000, the Department received a timely request from Raoping Xingyu Foods Co., Ltd. (Raoping), in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of this antidumping duty order. On February 29, 2000, the petitioners requested, in accordance with 19 CFR 351.213, that we conduct an administrative review of exports of certain preserved mushrooms from the PRC to the United States by China Processed Food Import & Export Co. (CPF), Gerber Food (Yunnan) Co. (Gerber), Mei Wei Food Industry Co., Ltd. (Mei Wei), and Tak Fat Trading Co. (Tak Fat). CPF and Gerber also requested on February 28, 2000, that we conduct administrative reviews of their respective exports. On March 17, 2000, Raoping agreed to waive the time limits in order that the Department, pursuant to 19 C.F.R 351.214(j)(3), may conduct this review concurrently with the first annual administrative review of this order.

On March 29, 2000, the Department issued the antidumping questionnaire to CPF, Gerber, Raoping, Mei Wei, and Tak Fat. On March 30, 2000, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC (65 FR 16875). On March 31, the Department published a notice of initiation of a new shipper antidumping duty review with respect to Raoping (65 FR 17257). We received responses to the antidumping questionnaire during April and May 2000.

On May 10, 2000, the Department provided the parties an opportunity to submit publicly available information (PAI) for consideration in these preliminary results.

On June 30, 2000, we published separate preliminary results on an expedited basis for Mei Wei and Tak Fat who did not respond to the Department's questionnaire (65 FR 40609). On August 17, 2000, the Department published the final results for exports by Mei Wei and Tak Fat (65 FR 50183), on an expedited basis.

The Department issued supplemental questionnaires to the respondents during June and July 2000. In July and August 2000, the Department received supplemental questionnaire responses from the respondents.

On August 7, 2000, the petitioner requested that the Department rescind the instant review as to CPF claiming that, at this stage of the administrative review, substantial record evidence establishes that CPF had no entries of subject merchandise in the United States during the period of review (POR). On September 19, 2000, CPF argued that rescission is unwarranted because the Department's regulations do not make rescission mandatory under these circumstances and the Department has already spent substantial resources investigating CPF. The Department has not rescinded this review with respect to CPF because the sale by CPF to the United States was made during the POR and the entry information for this sale is part of the record of this review. *See* ''Rescission Request'' section below for further discussion.

During the period August 31 through September 6, 2000, we conducted verifications of Raoping, Raoping's producer, Raoping Yucun Canned Foods Factory (Raoping Yucun), and Gerber. We issued verification reports on September 29, 2000, for the Raoping companies, and on October 2, 2000, for Gerber.

The Department is conducting these reviews in accordance with section 751 of the Act.

Rescission Request

Under section 351.213(e) of the Department's regulations, an administrative review normally will cover, as appropriate, sales, exports, *or* entries of the subject merchandise made during the particular period under review. There is no requirement that both the sale and the entry corresponding to the particular sale both occur within the POR in order to review that sale/entry; however, we must be able to assess antidumping duties on entries, rather than sales, as a result of that review. Under section 351.213(d)(3) of the Department's regulations, the Department may rescind an administrative review, in whole or only with respect to a particular producer or exporter, if it concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be. *See e.g.,* Certain Preserved Mushrooms from Chile: Final Rescission of Antidumping Duty Administrative Review, *63 FR 43292, 43292–43293 (July 13, 2000), where the Department rescinded the entire review because at least one respondent reported that it did not export the subject merchandise during the POR and U.S. Customs import statistics confirmed that there were no U.S. imports/entries of such merchandise by respondents or any other company during the POR. See Manganese Metal from the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Administrative Review,* 64 FR 10986, 10986–10987 (March 8, 1999) (in which case the Department rescinded a review with respect to two exporters, one of

which reported it made one sale during the previous POR which it believed was to be entered into the United States during the POR, but the Department could not establish, for duty assessment purposes, that it in fact was subsequently entered into the United States). In this case, CPF sold and exported the subject merchandise during the POR and placed information on the record indicating that the corresponding entry into the U.S. Customs territory was made shortly after the POR. Therefore, this case is properly distinguished from those cited above, and we do not find that recission of this administrative review with respect to CPF is appropriate in this instance. As stated in the ''Assessment Rates'' section of this notice, we intend to issue entry-specific liquidation instructions for each respondent (CPF and Raoping) whose sale and entry occurred in different PORs.

Scope of Review

The products covered by this review are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this review are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this review are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this review are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[3]

The merchandise subject to this review is classifiable under subheadings 2003.1000.27, 2003.1000.31, 2003.1000.37, 2003.1000.43, 2003.1000.47, 2003.1000.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. In this case, each respondent has requested a separate company-specific rate. Both Gerber and Raoping are either wholly or majority foreign-owned companies; therefore, we determined that no further separate rate analysis is required for these companies. CPF is wholly owned by China National Cereals, Oils, & Foodstuffs Import & Export Corp., which in turn is owned by ''all the people.'' In the less-than-fair-value (LTFV) investigation we determined that CPF was eligible for a separate rate. As stated in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*) and in the *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of the company by ''all the people'' does not require the application of a single rate. Accordingly, CPF is eligible for consideration of a separate rate.

The Department's separate rate test to determine whether the exporters are independent from government control is not concerned, in general, with macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) and amplified in *Silicon Carbide.* Under the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents have placed on the record a number of documents to demonstrate absence of de jure control, including the ''Foreign Trade Law of the People's Republic of China'' and the ''Company Law of the People's Republic of China.''

In prior cases, the Department has analyzed these laws and found that they establish an absence of *de jure* control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 54472 (October 24, 1995); *see also Furfuryl Alcohol.* We have no new information in this proceeding which would cause us to reconsider this determination.

Accordingly, we preliminarily determine that, within the preserved mushroom industry, there is an absence of *de jure* government control over exporting pricing and marketing decisions of firms.

2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol.* Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to

[3] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order.

negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* and *Furfuryl Alcohol.*

CPF asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and obtain loans. Additionally, CPF's questionnaire responses indicate that company-specific pricing during the POR does not suggest coordination among exporters. Furthermore, our analysis of CPF's questionnaire responses reveals no other information indicating government control. This information supports a preliminary finding that there is an absence of *de facto* governmental control of CPF's export functions. Consequently, we preliminarily determine that CPF has met the criteria for the application of a separate rate.

Fair Value Comparisons

To determine whether sales of the subject merchandise by each respondent to the United States were made at LTFV, we compared the export price to the normal value, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

We used export price methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price methodology was not otherwise indicated.

1. CPF, Gerber, and Raoping

We calculated export price based on packed, free on board (FOB) foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in a NME currency, we based those charges on surrogate rates from India (*see* ''Surrogate Country'' section below). To value foreign inland trucking charges and foreign brokerage and handling expenses, we used November 1999 Indian freight companies' and freight forwarders' price quotes, respectively, obtained by the Department in other antidumping duty proceedings.

The petitioners claim that Raoping's sale is not a *bona fide* transaction due to the circumstances surrounding the sale which are described in the Department's September 29, 2000, sales verification report. In prior cases the Department has considered factors such as timing, sale price, transportation costs, other expenses borne by the importer, and whether the merchandise was resold by the importer at a loss to determine whether a sale was a *bona fide* transaction. *See Certain Cut-to-Length Carbon Steel Plate from Romania,* 63 FR 47232 (September 4, 1998) and *American Silicon Technologies* v. *United States,* CIT Slip Op. 00–84 (July 17, 2000).

While we verified that the price for the sale under review is higher than that of certain subsequent sales of the same merchandise to the same customer, there is no evidence on the record to support a conclusion that the price for the reviewed sale is not commercially reasonable or was not a result of arm's-length bargaining, nor is there any record evidence that the importer resold the merchandise at a loss. Furthermore, the transportation costs and other expenses borne by the importer based on the respondent's reported terms of sale are consistent with those incurred by other importers of the subject merchandise in this administrative review and the LTFV investigation. In addition, while the sale occurred shortly before the end of the POR, the timing of the transaction is not a basis in and of itself to render the transaction not *bona fide.* Therefore, absent evidence to the contrary, we have determined Raoping's sale to be a *bona fide* transaction for purposes of this review.

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development and are significant producers of the subject merchandise (*see* Memorandum dated April 19, 2000). According to the available information on the record, we have determined that India meets the statutory requirements for an appropriate surrogate country for the PRC. Accordingly, we have calculated NV using Indian values for the PRC producers' factors of production, except, as noted below, in certain instances where an input was sourced from a market economy and paid for in a market economy currency. We have obtained and relied upon PAI wherever possible.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which produced mushrooms for the exporters which sold mushrooms to the United States during the POR. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian values, where possible.

Where appropriate, we recalculated the reported mushroom consumption factor for purchased brined mushrooms to an amount equivalent to consumption of fresh mushrooms. Specifically, for Gerber, we made this adjustment based on the fresh mushroom consumption used in its own production of brined mushrooms. For Raoping, which only consumed purchased brined mushrooms in its production of the subject merchandise, as facts available, we applied an estimated adjustment factor based on information obtained from the U.S. industry. As in the LTFV investigation, we made these adjustments because we were unable to identify a surrogate value for brined mushrooms (*see* below).

We made the following additional adjustments to the reported factors of production:

China Processed

1. We adjusted all factors of production reported by China

Processed's supplier, Yu Xing Fruit and Vegetable Development Co., Ltd. (Yu Xing), to reflect a drained-weight basis, using data in China Processed's questionnaire responses.

2. We recalculated Yu Xing's reported tin plate consumption (used to make cans) by dividing total reported POR tin plate consumption by the POR preserved mushrooms production amount. We made this adjustment in order to reflect a drained-weight mushroom basis, and to insure that all tin plate consumed, including waste, was accounted for.

Gerber

1. We incorporated Gerber's pre-verification revisions and our verification findings.

2. We added an additional amount of electricity consumption to account for production-related electricity not included in Gerber's factor reporting, based on our verification findings. *See* Memorandum entitled *Gerber Preliminary Results Margin Calculation,* dated October 31, 2000.

Raoping reported that it purchased cans from a market-economy supplier (*i.e.,* a Hong Kong trading company) and paid for them in U.S. dollars. The petitioners point out that Raoping did not demonstrate that the cans were actually manufactured in a market economy. However, Raoping did show that the material was obtained from a market-economy supplier and that it paid for the material in a market-economy currency. Further, we found no evidence at verification to indicate that the cans were not actually produced in a market economy. Accordingly, we have valued Raoping's consumption of cans and lids based on the U.S. dollar prices it paid for them to the Hong Kong supplier. As appropriate, for these imported materials, we calculated PRC brokerage and inland freight from the port to the factory using surrogate rates from India. We valued the remaining factors using PAI from India, except where noted below. Where a producer did not report the distance between the material supplier and the factory, as facts available, we used either the distance to the nearest seaport (if an import value was used as the surrogate value for the factor) or the farthest distance reported for a supplier of any agricultural or chemical input, as appropriate.

The selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. Wherever possible and appropriate, we used non-producer specific prices in accordance with the preamble to the Department's regulations at 62 FR 27296, 27366 (May 19, 1997). As appropriate, we adjusted input prices to reflect delivered values. For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics. A complete analysis of the surrogate values may be found in the Preliminary Determination Valuation Memorandum from the Team to the File (Preliminary Determination Valuation Memorandum), dated October 31, 2000.

We valued the major material inputs used in the production of the subject merchandise using the following sources. For fresh and brined mushrooms, we used the simple average of the fresh mushrooms prices quoted in the Indian publication *The Economic Times* during the POR. We valued cans for Gerber using the weighted-average per-piece value derived from the notes to the Indian producer Agro Dutch Industries, Ltd.''s 1998–1999 and 1999–2000 financial statements. We valued tin plate for CPF using the Commodity Trade Statistics published by the United Nations Statistics Division (United Nations Statistics).

For other raw materials and packing materials, such as growing inputs, chemicals, and cardboard cartons, we derived unit values from Indian preserved mushroom producers' financial statements, the *Monthly Trade Statistics of Foreign Trade of India, Volume II—Imports* (Indian Import Statistics), or the Indian publication *Chemical Weekly.*

We valued calcium super phosphate and calcium phosphate using the U.S. price quoted in the U.S. publication *Chemical Marketing Reporter* because it was the only information on the record for these inputs.

For certain materials reportedly consumed in small quantities, such as cotton wadding, HCHO, and single super phosphate, we were unable to identify appropriate surrogate values. Therefore, we have not included these factors in our preliminary results normal value calculation.

Raoping claimed that it resold scrap can material but failed to provide documentation at verification to demonstrate that the scrap material was actually resold. Therefore, we have not made an offset deduction to the surrogate cost of production for can scrap because Raoping has not met the burden under 19 CFR 351.401(b) to demonstrate its entitlement to the offset.

We valued labor based on a regression-based wage rate in accordance with 19 CFR 351.408(c)(3).

To value electricity, we used the average rupees/kilowatt hour derived from four Indian preserved-mushroom producing companies' annual reports for April 1998 through March 1999. In certain recent cases (*e.g., Notice of Final Results of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China,* 65 FR 30067, 30067–8 (May 10, 2000)), the Department has used publicly available information based on an aggregate of Indian state and regional electricity rates in order to fulfill the regulatory preference for valuing electricity. In the instant review, we preliminarily determined it appropriate to use an alternative methodology based on the contemporaneity and specificity of the data employed as well as other factors. *See* Preliminary Determination Valuation Memorandum for further discussion. We based the value of coal on the average of the rupees/metric ton rate of ''Coal (for steam raising)'' from Polychem, Ltd.''s annual report for April 1998 through March 1999 and the United Nations Statistics. We did not value water separately because it appeared to be included in factory overhead.

We based our calculation of factory overhead (including water), SG&A expenses, and profit on the simple average of the corresponding data of three Indian preserved mushroom producers whose production and sales activity is mostly preserved mushrooms and other food products who were profitable during the POR.

To value truck freight rates, we used November 1999 Indian freight companies' price quotes discussed in the ''Export Price'' section above. With regard to rail freight, we based our calculation on information from the *Indian Railway Conference Association.*

The United States Court of Appeals for the Federal Circuit's (CAFC's) decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (CAFC 1997) requires that we revise our calculation of source-to-factory surrogate freight for those material inputs that are based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory or from the domestic supplier to the factory on an import-specific basis.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the August 5, 1998, through January 31, 2000 POR are as follows:

Manufacturer/producer/exporter	Margin percent
Gerber Food (Yunnan) Co., Ltd.	99.69
China Processed Food Import & Export Co.	0.00
Raoping Xingyu Foods Co., Ltd.	42.77

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. See 19 CFR 351.310(c). Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 35 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of these administrative reviews, including the results of its analysis of issues raised in any written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit additional publicly available information to value the factors of production for the final results of these reviews until 20 days after publication of these results, unless a written request for an extension is received and granted.

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews. The final results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). For assessment purposes, we intend to calculate entry-specific *ad valorem* duty assessment rates (for CPF and Raoping whose sale and entry occurred in different PORs) or importer-specific *ad valorem* duty assessment rates (for Gerber) based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative and new shipper reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each reviewed company will be that established in the final results of these reviews, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC manufacturers or exporters will continue to be 198.63 percent, the ''PRC-Wide'' rate made effective by the LTFV investigation; and (4) for all non-PRC exporters, the cash deposit rate will continue to be 198.63 percent, the ''PRC-Wide'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

These administrative and new shipper reviews and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28568 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–809; A–351–826; A–428–820; A–475–814]

Final Results of Expedited Sunset Reviews: Seamless Pipe From Argentina, Brazil, Germany, and Italy

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

ACTION: Notice of final results of expedited sunset reviews: seamless pipe from Argentina, Brazil, Germany, and Italy

SUMMARY: On July 3, 2000, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on seamless pipe from Argentina, Brazil, Germany, and Italy (65 FR 41053), pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of notices of intent to participate and adequate substantive responses filed on behalf of U.S. Steel Group, a unit of USX Corporation and Vision Metals, Inc., domestic interested parties, and inadequate response (in the Argentina, Brazil, and Germany cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Becky J. Hagen or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1277 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) (''Sunset Regulations''), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

Background

On July 3, 2000, the Department initiated sunset reviews of the antidumping duty orders on Seamless Pipe from Argentina, Brazil, Germany, and Italy (65 FR 41053), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of U.S. Steel group, a unit of USX Corporation, and Vision Metals, Inc. (collectively, ''domestic interested parties''), within the applicable deadline (July 19, 2000) specified in section 351.218(d)(1)(i) of the Sunset Regulations. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as manufacturers, producers, or wholesalers in the United States of a domestic like product.

On August 2, 2000, we received substantive responses on behalf of domestic interested parties and Dalmine S.p.A. (''Dalmine''). Dalmine is an interested party in the Italian case pursuant to section 771(9)(A) of the Act as a foreign producer and exporter of the subject merchandise. We also received a statement of waiver of participation from the sole respondent in the German case, Mannesmannrohren-Werke AG and Mannesmann Pipe & Steel Corporation (collectively ''Mannesmann'') on August 2, 2000.

On August 7, 2000, we received rebuttal comments on behalf of domestic interested parties in response to Dalmine's substantive response. On August 10, 2000, we accepted additional comments.

Scope of Reviews of Seamless Pipe from Argentina, Germany, and Italy

The sunset reviews on imports from Argentina, Germany, and Italy cover small diameter seamless carbon and alloy standard, line, and pressure pipes (''seamless pipes'') produced to the ASTM A–335, ASTM A–106, ASTM A–53, and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these reviews also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. For purposes of these reviews, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe, or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes. The seamless pipes subject to these reviews are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS). The following information further defines the scope of these reviews, which covers pipes meeting the physical parameters described above: Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of these reviews includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this

review. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A-333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from these reviews are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5l specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of these reviews, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from these reviews are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Scope of Review on Brazil

The sunset review on imports from Brazil covers small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification.

For purposes of this review, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to this review are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS. The following information further defines the scope of this review, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1,000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard. Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers. The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications. The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this review. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this review. Specifically excluded from this review are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this review, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG review, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this review are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review (amended as indicated below) is dispositive. Excluded from the review, as a result of a changed circumstances review (63 FR 37338 (July 10, 1998)) are the following: shipments of seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness or manufacturing process (hot-finished or cold-drawn) that (1) has been cut into lengths of six to 120 inches, (2) has had the inside bore ground to a smooth surface, (3) has had multiple layers of specially formulated corrosion resistant glass permanently baked on at temperatures of 1,440 to 1,700 degrees Fahrenheit in thicknesses from 0.032 to 0.085 inch (40 to 80 mils), and (4) has flanges or other forged stub ends welded on both ends of the pipe. The special corrosion resistant glass referred to in this definition may be glass containing by weight (1) 70 to 80 percent of an oxide of silicone, zirconium, titanium or cerium (Oxide Group RO sub2), (2) 10 to 15 percent of an oxide of sodium, potassium, or lithium (Oxide Group RO), (3) from a trace amount to 5 percent of an oxide of either aluminum, cobalt, iron, vanadium, or boron (Oxide Group R sub2 O sub3 , or (4) from a trace amount to 5 percent of a fluorine compound in which fluorine replaces the oxygen in any one of the previously listed oxide groups. These glass-lined pressure pipes are commonly manufactured for use in glass-lined equipment systems for processing corrosive or reactive chemicals, including acrylates, alkanolamines, herbicides, pesticides, pharmaceuticals and solvents. The glass-lined pressure pipes subject to the changed circumstances review are currently classifiable under subheadings 7304.39.0020, 7304.39.0024 and 7304.39.0028 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and U.S. Customs' purposes only. The written description of the excluded products remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these sunset reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated October 31, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading ''October 2000.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on Seamless Pipe from Argentina, Brazil, Germany, and Italy would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Country	Manufacturer/exporter	Margin (percent)
Argentina	Siderca S.A.I.C.	108.13
	All Others	108.13
Brazil	Mannesmann S.A.	124.94
	All Others	124.94
Germany	Mannesmannrohren-Werke AG	57.72
	All Others	57.72
Italy	Dalmine	1.27
	All Others	1.27

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year (''sunset'') reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 31, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28567 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054; A–588–604]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Reviews.

SUMMARY: In response to requests by the petitioner and two respondents, the

Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A–588–604), and of the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A–588–054). The review of the A–588–054 finding covers two manufacturers/exporters of the subject merchandise to the United States during the period October 1, 1998, through September 30, 1999. The review of the A–588–604 order covers three manufacturers/exporters and the period October 1, 1998, through September 30, 1999.

We preliminarily determine that sales of TRBs have been made below the normal value (NV) for all respondents. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between United States price and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah Scott (NTN or NSK), Patricia Tran (Koyo Seiko), or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone : (202) 482–2657, (202) 482–2704, or (202) 482–0649, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Rounds Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1, 2000).

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1976 the Treasury Department published in the **Federal Register** (41 FR 34974) the antidumping finding on TRBs from Japan (the A–588–054 case), and on October 6, 1987 the Department published the antidumping duty order on TRBs from Japan (the A–588–604 case) (52 FR 37352). On October 20, 1999, the Department published the notice of ''Opportunity to Request Administrative Review'' for both TRB cases covering the period October 1, 1998 through September 30, 1999 (64 FR 56485).

In accordance with 19 CFR 351.213 (b)(1), the petitioner, the Timken Company (Timken), requested that we conduct a review of Koyo Seiko Co., Ltd. (Koyo) and NSK Ltd. (NSK) in both the A–588–054 and A–588–604 cases. Timken also requested that we conduct a review of NTN Corporation (NTN) in the A–588–604 TRB case. In addition, NTN requested that the Department conduct a review in the A–588–604 case and NSK requested that the Department conduct a review in both the A–588–604 and A–588–054 cases. On December 3, 1999, we published in the **Federal Register** a notice of initiation of these antidumping duty administrative reviews covering the period October 1, 1998 through September 30, 1999 (64 FR 67846).

Because it was not practicable to complete these reviews within the normal time frame, on May 26, 2000, we published in the **Federal Register** our notice of the extension of the time limits for both the A–588–054 and A–588–604 reviews (65 FR 34148). This extension established the deadline for these preliminary results of October 31, 2000.

Scope of the Reviews

Imports covered by the A–588–054 finding are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.15.

Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of this order, except those manufactured by NTN. This merchandise is currently classifiable under HTS item numbers 8482.20.00, 8482.91.00, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.80. The HTS item numbers listed above for both the A–588–054 finding and the A–588–604 order are provided for convenience and Customs purposes. The written description remains dispositive.

The period for each 1998–99 review is October 1, 1998, through September 30, 1999. The review of the A–588–054 finding covers TRB sales by two manufacturers/exporters (Koyo and NSK). The review of the A–588–604 order covers TRBs sales by three manufacturers/exporters (Koyo, NTN, and NSK).

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by NTN and Koyo, using standard verification procedures, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, on file in Room B–099 in the main Commerce building.

Use of Facts Available

In accordance with section 776(a)(2)(B) of the Tariff Act, in these preliminary results we find it necessary to use partial facts available in those instances where a respondent did not provide us with certain information necessary to conduct our analysis. This occurred with respect to certain sales and cost information Koyo failed to report for its sales of U.S. further-manufactured merchandise subject to the A–588–604 order.

On February 11, 2000, Koyo requested that it not be required to submit a response to Section E of our questionnaire regarding its U.S. further-manufactured sales. We informed Koyo on April 11, 2000 that it was required to supply further-manufacturing data by responding to section E of the Department's questionnaire by May 2, 2000. Koyo did not provide section E data, as requested by our questionnaire. Therefore, as in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part,* 65 FR 11767 (March 6, 2000) (1997–98 TRB Final), we have preliminarily determined that, pursuant to section 776(a)(2)(B) and 776(b) of the Tariff Act, it is appropriate to make an inference adverse to the interests of Koyo because it failed to cooperate by not responding to the Department's request for information.

Section 776(a)(2)(b) of the Tariff Act provides that the Department will,

subject to section 782(d), use the facts otherwise available in reaching a determination if a respondent fails to provide necessary information ''by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782'' [of the Tariff Act]. Despite requests for information related to further processing in both our original and supplemental questionnaires, Koyo neglected to submit this information in the form and manner requested by the Department. Section 782(c)(1) of the Tariff Act does not apply in this instance since Koyo did not provide a full explanation of why it was not able to submit the further processing information requested in section E, nor did it suggest an alternative form in which it could submit section E data. Moreover, pursuant to section 782(d), Koyo was specifically informed that it was required to submit section E, yet it failed to do so and failed to provide any explanation of this deficiency. Finally, under section 782(e) the Department concludes that Koyo's information, absent section E, is too incomplete to serve as a reliable basis for this determination, and that Koyo has not acted to the best of its ability (see discussion below). Because we did not receive the further processing data we requested either in the form and manner outlined in section E or in an acceptable alternative format by our established deadline, we determine that the use of facts available is appropriate in this case for Koyo.

The Department is authorized, under section 776(b) of the Tariff Act, to use an inference that is adverse to the interest of a party if the Department finds that the party has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. We examined whether Koyo had acted to the best of its ability in responding to our requests for information. We took into consideration the fact that, as an experienced respondent in reviews of the TRB orders as well as the separate order covering antifriction bearings, it can reasonably be expected to know which types of information we request in each review. Because Koyo has submitted to the Department in previous TRB reviews complete further-manufacturing responses, we have determined that it failed to act to the best of its ability in providing the data we requested and that adverse inferences are warranted. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of the Antidumping Duty Administrative Reviews and Termination in Part,* 61 FR 25200 (May 20, 1996). As a result, we have used the highest rate determined for Koyo from any prior segment of the A–588–604 proceedings as partial adverse facts available, which is secondary information within the meaning of section 776(c) of the Tariff Act. See 19 CFR 351.308(c)(1)(iii).

Section 776(c) of the Tariff Act provides that the Department shall, to the extent practicable, corroborate secondary information used as facts available from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (see H.R. Doc. 103–316, Vol. 1, at 870 (1994); 19 CFR 351.308(d)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 49567 (February 22, 1996), where we disregarded the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin).

For these preliminary results, we have examined the history of the A–588–604 case and have determined that 41.04 percent, the rate we calculated for Koyo in the 1993–94 A–588–604 review, is the highest rate for this firm in any prior segment of the A–588–604 order. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Administrative Review and Termination in Part,* 63 FR 20585 (April 27, 1998). In the absence of information on the administrative record that application of this 41.04 percent rate would be inappropriate, that the margin is not relevant, or that leads us to re-examine this rate as adverse facts available in the instant review, we find the margin reliable and relevant. As a result, for these preliminary results we have applied as adverse facts available, a margin of 41.04 percent to Koyo's further-manufactured U.S. sales.

Export Price and Constructed Export Price

Because all of Koyo's and NSK's sales and certain of NTN's sales of subject merchandise were first sold to unaffiliated purchasers after importation into the United States, in calculating U.S. price for these sales we used constructed export price (CEP) as defined in section 772(b) of the Tariff Act. We based CEP on the packed, delivered price to unaffiliated purchasers in the United States. We made deductions, where appropriate, for discounts, billing adjustments, freight allowances, and rebates. Pursuant to section 772(c)(2)(A) of the Tariff Act, we reduced this price for movement expenses (Japanese pre-sale inland freight, Japanese post-sale inland freight, international air and/or ocean freight, marine insurance, Japanese brokerage and handling, U.S. inland freight from the port to the warehouse, U.S. inland freight from the warehouse to the customer, U.S. duty, post-sale warehousing, pre-sale warehousing, and U.S. brokerage and handling). We also reduced the price, where applicable, by an amount for the following expenses incurred in the selling of the merchandise in the United States pursuant to section 772(d)(1) of the Tariff Act: commissions to unaffiliated parties, U.S. credit, payments to third parties, U.S. repacking expenses, and indirect selling expenses (which included, where applicable, inventory carrying costs, indirect advertising expenses, and indirect technical services expenses). Finally, pursuant to section 772(d)(3) of the Tariff Act, we further reduced U.S. price by an amount for profit to arrive at CEP.

In the instant review NTN claimed an offsetting adjustment to its U.S. indirect

selling expenses to account for ''the interest expense incurred financing antidumping duty deposits.'' See NTN's April 28, 2000 Supplemental Questionnaire Response at C–6 and C–7. Because we have long maintained, and continue to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that we should remove from U.S. indirect selling expenses, we have continued to deny such an adjustment. See, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 63860, 63865 (November 17, 1998) (1996–97 TRB Final).

Because certain of NTN's sales of subject merchandise were made to unaffiliated purchasers in the United States prior to importation into the United States and the CEP methodology was not indicated by the facts of record, in accordance with section 772(a) of the Tariff Act we used export price (EP) for these sales. We calculated EP as the packed, delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Tariff Act, we reduced this price, where applicable, by Japanese pre-sale inland freight, Japanese post-sale inland freight, international air and/or ocean freight, marine insurance, Japanese brokerage and handling, U.S. brokerage and handling, U.S. duty, and U.S. inland freight.

Where appropriate, in accordance with section 772(d)(2) of the Tariff Act, the Department also deducts from CEP the cost of any further manufacture or assembly in the United States, except where the special rule provided in section 772(e) of the Tariff Act is applicable. Section 772(e) of the Tariff Act provides that, where the subject merchandise is imported by a person affiliated with the exporter or producer and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, and if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold by the exporter or producer to an unaffiliated person. If there is not a sufficient quantity of such sales to provide a reasonable basis for comparison, or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine CEP. See sections 772(e)(1) and (2) of the Tariff Act. In judging whether the use of identical or other subject merchandise is appropriate, the Department must consider several factors, including whether it is more appropriate to use another ''reasonable basis.'' Under some circumstances, we may use the standard methodology as a reasonable alternative to the methods described in sections 772(e)(1) and (2) of the Tariff Act. In deciding whether it is more appropriate to use the standard methodology, we have considered and weighed the burden on the Department in applying the standard methodology as a reasonable alternative and the extent to which application of the standard methodology will lead to more accurate results. The burden on the Department of using the standard methodology may vary from case to case depending on factors such as the nature of the further-manufacturing process and the finished products. The increased accuracy gained by applying the standard methodology will vary significantly from case to case, depending upon such factors as the amount of value added in the United States and the proportion of total U.S. sales that involve further manufacturing. In cases where the burden on the Department is high, it is more likely that the Department will determine that potential gains in accuracy do not outweigh the burden of applying the standard methodology. Thus, the Department likely will determine that application of the standard methodology is not more appropriate than application of the methods described in paragraphs 772(e)(1) and (2), or some other reasonable alternate methodology. By contrast, if the burden is relatively low and there is reason to believe the standard methodology is likely to be more accurate, the Department is more likely to determine that it is not appropriate to apply the methods described in paragraphs 772(e)(1) or (2) of the Tariff Act in lieu of the standard methodology. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews,* 62 FR 47452, 47455 (September 9, 1997) (1995–96 TRB Prelim).

NTN imported subject merchandise (TRB parts) which was further processed in the United States. NTN further manufactured the imported scope merchandise into merchandise of the same class or kind as merchandise within the scope of the A–588–604 order. Based on information provided by NTN in its January 10, 2000 and January 14, 2000 letters to the Department, we first determined whether the value added in the United States was likely to exceed substantially the value of the subject merchandise. We estimated the value added based on the differences between the averages of the prices charged to the first unaffiliated U.S. customer for the final merchandise sold (finished TRBs) and the averages of the prices paid by the affiliated party for the subject merchandise (imported TRB parts), and determined that the value added was likely to exceed substantially the value of the imported TRB parts.

We then examined whether it would be appropriate to use sales of identical or other subject merchandise to unaffiliated persons as a basis for comparison, as stated under paragraphs 772(e)(1) and (2) of the Tariff Act. Based on the information provided by NTN in Exhibit A–1 of its February 11, 2000 questionnaire response and its January 10, 2000 and January 14, 2000 letters, we determined that sales of identical or other subject merchandise to unaffiliated persons were in sufficient quantity for the purpose of determining dumping margins for NTN's imported TRBs which were further manufactured in the United States prior to resale. Furthermore, the proportion of NTN's further-manufactured merchandise to its total imports of subject merchandise was relatively low. In NTN's case, any potential gains in accuracy obtained by examining NTN's further-manufactured sales are outweighed by the burden of the applying the standard methodology. Accordingly, it would be appropriate to apply one of the methodologies specified in the statute with respect to NTN's imported TRB parts. Therefore, we have used the weighted-average dumping margins we calculated on NTN's sales of identical or similar subject merchandise to unaffiliated persons in the United States. See 19 CFR 351.402(c).

With respect to Koyo, while we determined that the value added to the United States was likely to exceed the value of the imported products, we have determined that the use of either of the two proxies specified in the statute is not appropriate. *See* Facts Available section for further information.

No other adjustments were claimed or allowed.

Normal Value

A. Viability

Based on (1) the fact that each company's quantity of sales in the home market was greater than five percent of its sales to the U.S. market and (2) the absence of any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of the foreign like product for all respondents sold in the exporting country was sufficient to permit a proper comparison with the sales of subject merchandise to the United States, pursuant to section 773(a) of the Tariff Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Tariff Act, we based NV on the prices at which the foreign like products were first sold for consumption in Japan.

B. Arm's-Length Sales

For all respondents we have excluded from our analysis those sales made to affiliated customers in the home market which were not at arm's length. We determined the arm's-length nature of home market sales to affiliated parties by means of our 99.5 percent arm's-length test in which we calculated, for each model, the percentage difference between the weighted-average prices to the affiliated customer and all unaffiliated customers and then calculated, for each affiliated customer, the overall weighted-average percentage difference in prices for all models purchased by the customer. If the overall weighted-average price ratio for the affiliated customer was equal to or greater than 99.5 percent, we determined that all sales to this affiliated customer were at arm's length. Conversely, if the ratio for a customer was less than 99.5 percent, we determined that all sales to the affiliated customer were not at arm's length because, on average, the customer paid less than unaffiliated customers for the same merchandise. Therefore, we excluded all sales to the customer from our analysis. Where we were unable to calculate an affiliated customer ratio because identical merchandise was not sold to both affiliated and unaffiliated customers, we were unable to determine if these sales were at arm's length and, therefore, excluded them from our analysis (*see Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 63 FR 30185 (June 3, 1998)).

C. Cost of Production Analysis

Because we disregarded sales made at prices below the cost of production (COP) in our last completed A–588–054 review for Koyo and NSK, and in our last completed A–588–604 review for NTN, Koyo, and NSK, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for these companies may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act (*see 1997–98 TRB Final*). Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by NTN for the A–588–604 case and by Koyo and NSK for both TRB cases.

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information provided by Koyo, NTN, and NSK except in those instances where the data was not appropriately quantified or valued (see company-specific preliminary results analysis memoranda).

After calculating COP, we tested whether home market sales of TRBs were made at prices below COP within an extended period of time in substantial quantities and whether such prices permit the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, or rebates.

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

The results of our cost test for Koyo, NTN, and NSK indicated that for certain home market models less than 20 percent of the sales of the model were at prices below COP. We therefore retained all sales of these home market models in our analysis and used them as the basis for determining NV. Our cost test for these respondents also indicated that within an extended period of time (one year, in accordance with section 773(b)(2)(B) of the Tariff Act), for certain home market models, more than 20 percent of the home market sales were sold at prices below COP. In accordance with section 773(b)(1) of the Tariff Act, we therefore excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Product Comparisons

For all respondents we compared U.S. sales with contemporaneous sales of the foreign like product in the home market. We considered bearings identical on the basis of nomenclature and determined most similar TRBs using our sum-of-the-deviations model-match methodology which compares TRBs according to the following five physical criteria: inside diameter, outside diameter, width, load rating, and Y2 factor. We used a 20 percent difference-in-merchandise (difmer) cost deviation cap as the maximum difference in cost allowable for similar merchandise, which we calculated as the absolute value of the difference between the U.S. and home market variable costs of manufacturing divided by the total cost of manufacturing of the U.S. product.

E. Level of Trade

To the extent practicable, we determined NV for sales at the same level of trade as the U.S. sales (either EP or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home market sales at a different level of trade. The NV level of trade is that of the starting-price sales in the home market. When NV is based on constructed value (CV), the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether home market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales were at a different level of trade and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction,

we made a level-of-trade adjustment under section 773(a)(7)(A) of the Tariff Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We determined that for respondents Koyo and NSK, there were two home market levels of trade and one U.S. level of trade (CEP). Because there was no home market level of trade equivalent to the U.S. level(s) of trade for Koyo and NSK, and because NV for these firms represented a price more remote from the factory than CEP, we made a CEP offset adjustment to NV. For NTN we found that there were three home market levels of trade and two (EP and CEP) levels of trade in the U.S. Because there were no home market levels of trade equivalent to NTN's CEP level of trade, and because NV for NTN represented a price more remote from the factory than CEP, we made a CEP offset adjustment to NV in our CEP comparisons. We also determined that NTN's EP level of trade was equivalent to one of NTN's home market levels of trade. Because we determined that there was a pattern of consistent price differences due to differences in levels of trade, we made a level of trade adjustment to NV for NTN in our EP comparisons where the U.S. EP sale matched to a home market sale at a different level of trade. For more detailed company-specific descriptions of our level-of-trade analyses for these preliminary results, see the preliminary results analysis memoranda to Robert James, on file in Import Administration's Central Records Unit, Room B–099 of the main Commerce building.

F. Home Market Price

We based home market prices on the packed, ex-factory or delivered prices to affiliated purchasers (where an arm's-length relationship was demonstrated) and unaffiliated purchasers in the home market. We made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act, and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. For comparison to EP we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments to NV by deducting home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP calculations. No other adjustments were claimed or allowed.

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a contemporaneous home market match for the U.S. sale. We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with 772(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses. To the extent possible, we calculated CV by level of trade, using the selling expenses and profit determined for each level of trade in the comparison market. Where appropriate, we made COS and level of trade adjustments to CV in accordance with section 773(a)(8) of the Tariff Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset commissions in EP and CEP comparisons.

Preliminary Results of Review

As a result of our reviews, we preliminarily determine the following weighted-average dumping margins exist for the period October 1, 1998, through September 30, 1999, to be as follows:

Manufacturer/ Exporter	Margin (percent)
For the A–588–054 Case:	
Koyo Seiko	14.86
NSK	16.60
For the A–588–604 Case:	
Koyo Seiko	17.94
NTN	12.96
NSK	7.75

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of these administrative reviews, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of TRBs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash-deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall not require a deposit of estimated antidumping duties;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be 18.07 percent for the A–588–054 case, and 36.52 percent for the A–588–604 case (*see Preliminary Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan and Tapered Roller Bearings, Four Inches or less in Outside Diameter, and Components Thereof, From Japan*, 58 FR 51061 (September 30, 1993)).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: October 30, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–28570 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Florida, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–021. *Applicant:* University of Florida, Gainesville, FL 32611–6400. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 65 FR 58046, September 27, 2000. *Order Date:* February 11, 2000.

Docket Number: 00–028. *Applicant:* Ernest Orlando Lawrence Berkeley National Laboratory, Berkeley, CA 94720. *Instrument:* Electron Microscope, Model JEM–3010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 65 FR 58046, September 27, 2000. *Order Date:* May 8, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–28572 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program; Announcement of a Public Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a Regional Meeting to learn more about the Advanced Technology Program (ATP). ATP partners with industry on high-risk, high technology research in technologies ranging from advanced manufacturing to medicine and from advanced materials to microelectronics. The Regional Meeting will provide an opportunity for participants to share ideas on the program with ATP staff.

DATES: The Conference will be held on November 13, 2000, from 1 to 5:30 p.m. The Regional Meeting will continue on November 14, 2000, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Wyndham Baltimore Inner Harbor Hotel, 101 West Lafayette Street, Baltimore, Maryland 21201. The hotel can be reached at (410) 752–1100.

FOR FURTHER INFORMATION CONTACT: For further information, you may telephone Linda Engelmeier at (301) 975–6026 or e-mail: LindaEngelmeier@nist.gov.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 278n), amended by the American Technology Preeminence Act of 1991 (Pub. L. 102–245), directed the establishment of ATP. The purpose of the ATP is to assist United States businesses to carry out research and development on high risk, high pay-off, emerging and enabling technologies.

The Regional Meeting will open with a Conference detailing the new application process for receiving cost-sharing funds. Additionally, the Conference will include a session on ''Research Policy on Human and Animal Subjects'' and the requirements that must be met should funding be provided by ATP for projects that impact humans or animals.

The second day of the Regional Meeting will include a number of workshops related to funding. They are: (1) Federal R&D Funding Opportunities where five federal agencies will provide an overview of their programs; (2) a State/University Panel will discuss strategic investments and the availability of state matching funds; (3) a dialogue with previous ATP awardees will take place that provides insights into how to successfully apply; and (4) a venture capital panel. Participants will be able to share issues and ask questions during these sessions. There will also be two scientific panels in which an overview of nanotechnology and therapeutic biotechnology will be provided by experts.

Information on the meeting agenda and the registration requirements can be found at the ATP website at: www.atp.nist.gov/regionalmeeting. There is no fee for the Conference on November 13, 2000. There is a registration fee of $100.00 on November 14, 2000 to cover costs of meals and materials.

Dated: October 31, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–28578 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101300A]

Marine Mammals; File No. 984-1587-00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Terrie Williams, Department of Biology, EMS-A316, University of California at Santa Cruz, Santa Cruz, California 95064, has been issued a permit to maintain Atlantic bottlenose dolphins (*Tursiops truncatus*) and California sea lions (*Zalophus californianus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 (562/980-4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Simona Roberts, 301/713-2289.

SUPPLEMENTARY INFORMATION: On September 6, 2000, notice was published in the **Federal Register** (65 FR 53988) that a request for a scientific research permit had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: November 1, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–28576 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Brazil and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Aggregate Limit	
200–227, 237, 239pt.[1], 300–326, 331–348, 350–352, 359pt.[2], 360–363, 369–D[3], 369pt.[4], 400–431, 433–438, 440–448, 459pt.[5], 464, 469pt.[6], 600–629, 631, 633–652, 659pt.[7], 666, 669–P[8], 669pt.[9] and 670, as a group.	643,018,626 square meters equivalent.
Sublevels within the aggregate	
218	7,990,249 square meters.
219	29,171,510 square meters.
225	13,982,938 square meters.
300/301	10,836,617 kilograms.
313	67,103,910 square meters.
314	10,986,596 square meters.
315	32,959,787 square meters.
317/326	29,963,440 square meters.
334/335	215,015 dozen.
336	119,455 dozen.
338/339/638/639	2,150,160 dozen.
342/642	633,101 dozen.
347/348	1,552,893 dozen.
350	240,917 dozen.
361	1,624,564 numbers.
363	34,672,119 numbers.
369–D	774,394 kilograms.
410/624	15,980,502 square meters of which not more than 2,815,508 square meters shall be in Category 410.
433	19,544 dozen.
445/446	76,564 dozen.
604	758,563 kilograms of which not more than 579,760 kilograms shall be in Category 604–A[10].
607	7,043,803 kilograms.
647/648	716,721 dozen.

Category	Twelve-month restraint limit
669–P	2,581,318 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 359pt.: all HTS numbers except 6406.99.1550.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369pt.: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[7] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[8] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[9] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[10] Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 21, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factor for merged Categories 338/339/638/639 is 10 (square meters equivalent/category unit).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28553 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bulgaria and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Bulgaria and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month limit
410/624	3,285,088 square meters of which not more than 877,262 square meters shall be in Category 410.
433	13,939 dozen.
435	25,094 dozen.
442	16,261 dozen.
444	76,108 numbers.
448	28,721 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated September 13, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28554 Filed 11–06–00 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Colombia and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following restraint limits:

Category	Twelve-month limit
315	31,133,065 square meters.
443	133,983 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 21, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28555 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

October 26, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Czech Republic and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1998). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following limits:

Category	Twelve-month restraint limit
410	1,667,875 square meters.

Category	Twelve-month restraint limit
433	6,550 dozen.
435	4,309 dozen.
443	79,852 numbers.
624	2,775,300 square meters.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28556 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 8, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50495, published on September 17, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 8, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
433	25,129 dozen.
443	153,683 numbers.
444	74,797 numbers.
633	173,013 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28558 Filed 11–00–06; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

October 26, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Egypt and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Fabric Group	
218–220, 224–227, 313–O [1], 314–O [2], 315–O [3], 317–O [4] and 326–O [5], as a group.	143,846,941 square meters.
Sublevels within Fabric Group	
218	2,508,000 square meters.
219	33,843,975 square meters.
220	33,843,975 square meters.
224	33,843,975 square meters.
225	33,843,975 square meters.
226	33,843,975 square meters.
227	33,843,975 square meters.
313–O	62,147,235 square meters.
314–O	33,843,975 square meters.
315–O	39,743,284 square meters.
317–O	33,843,975 square meters.
326–O	2,508,000 square meters.
Levels not in a group	
300/301	13,392,305 kilograms of which not more than 4,200,297 kilograms shall be in Category 301.
338/339	3,754,030 dozen.
340/640	1,555,242 dozen.
369–S [6]	1,969,419 kilograms.
448	20,076 dozen.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 21, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28557 Filed 11–06–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Egypt

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The limit for Categories 338/339 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 57867, published on October 27, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 21, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 7, 2000, you are directed to increase the limit for Categories 338/339 to 3,784,857 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28559 Filed 11–06–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and

[1] The limit has not been adjusted to account for any imports exported after December 31, 1999.

Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hungary and exported during the period January 1, 2001 through December 31, 2001 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2001 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
351/651	348,589 dozen.
410	981,177 square meters.
433	18,607 dozen.
434	15,788 dozen.
435	27,289 dozen.
443	174,791 numbers.
444	56,385 numbers.
448	24,117 dozen.
604	1,725,323 kilograms.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28548 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kuwait

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Kuwait and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2001 period. The 2001 level for Category 361 is zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kuwait and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	357,527 dozen.
341/641	196,640 dozen.
361	–0–

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative

arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 10, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28549 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of November 7, 1997, as amended and extended by exchange of notes on June 22, 2000 and July 5, 2000, between the Governments of the United States and the Former Yugoslav Republic of Macedonia establishes limits for certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period January 1, 2001 through December 31, 2001.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the notice and letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (see 64 FR 69746).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of November 7, 1997, as amended and extended by exchange of notes on June 22, 2000 and July 5, 2000, between the Governments of the United States and the Former Yugoslav Republic of Macedonia, you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month limit
433	21,861 dozen.
434	10,930 dozen.
435	29,835 dozen.
443	183,854 numbers.
448	65,582 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia. These limits do not apply to products entered under the Outward Processing Program.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 14, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the letter to the Commissioner of Customs, dated December 8, 1999 (see 64 FR 69746).

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28550 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Levels for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

October 26, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing levels under the North America Free Trade Agreement.

EFFECTIVE DATE: January 1, 2001

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In order to implement Annex 300–B of the North American Free Trade Agreement (NAFTA), restrictions and consultation levels for certain cotton, wool and man-made fiber textile products from Mexico are being established for the period beginning on January 1, 2001 and extending through December 31, 2001.

These restrictions and consultation levels do not apply to NAFTA originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the NAFTA. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under Harmonized Tariff Schedule of the United States item 9802.00.90.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to implement levels for the 2001 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the North American Free Trade Agreement (NAFTA), between the Governments of the United States, the United Mexican States and Canada, you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels:

Category	Twelve-month limit
410	397,160 square meters.
433	11,000 dozen.
443	197,390 numbers.
611	1,267,710 square meters.

The levels set forth above are subject to adjustment pursuant to the provisions of Annex 300–B of the NAFTA.

Products in the above categories exported during 2000 shall be charged to the applicable category levels for that year (see directive dated October 6, 1999) to the extent of any unfilled balances. In the event the levels established for that period have been exhausted by previous entries, such products shall be charged to the levels set forth in this directive.

The foregoing levels do not apply to NAFTA originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the NAFTA. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under Harmonized Tariff Schedule of the United States item 9802.00.90.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28551 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 8, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 338 and 339 are being increased for special shift, reducing the limit for Categories 638/639 to account for the special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68335, published on December 7, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, as amended on June 30, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1,

2000 and extends through December 31, 2000.

Effective on November 8, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Specific limits	
338	6,712,797 dozen.
339	2,052,852 dozen.
638/639	348,638 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28560 Filed 11–06–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

October 26, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Poland and exported during the period January 1, 2001 through December 31, 2001 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2001 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 26, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
335	261,115 dozen.
338/339	2,812,017 dozen.
410	2,819,220 square meters.
433	19,909 dozen.
434	10,859 dozen.
435	14,210 dozen.
443	236,815 numbers.
611	8,037,351 square meters.
645/646	411,760 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28552 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Qatar and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2001 period.

A description of the textile and apparel categories in terms of HTS

numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	572,874 dozen.
341/641	264,404 dozen.
347/348	652,195 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 10, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28543 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Singapore and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
222	647,036 kilograms.
237	331,861 dozen.
239pt.[1]	223,410 kilograms.
331	589,417 dozen pairs.
334	85,126 dozen.
335	256,060 dozen.
338/339	1,710,196 dozen of which not more than 999,454 dozen shall be in Category 338 and not more than 1,111,269 dozen shall be in Category 339.
340	1,196,883 dozen.
341	300,957 dozen.
342	185,203 dozen.
347/348	1,198,311 dozen of which not more than 748,943 dozen shall be in Category 347 and not more than 582,513 dozen shall be in Category 348.
435	7,217 dozen.
604	1,071,991 kilograms.
631	694,517 dozen pairs.
634	324,996 dozen.
635	332,581 dozen.
638	1,193,658 dozen.
639	3,872,566 dozen.
640	255,165 dozen.
641	416,201 dozen.
642	425,468 dozen.
645/646	183,077 dozen.
647	744,765 dozen.
648	1,620,471 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

The limits set forth above are subject to adjustment pursuant to the provisions of the

ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28544 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Slovak Republic and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001 in excess of the following limits:

Category	Twelve-month restraint limit
410	435,557 square meters.
433	12,165 dozen.
435	18,375 dozen.
443	101,630 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated September 21, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28545 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Thailand and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits. Carryforward used will be charged to the 2001 limits as it is used.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended, and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001.

Category	Twelve-month restraint limit
Level not in a Group	
239pt. [1]	2,338,152 kilograms.
Levels in Group I	
200	1,526,022 kilograms.
218	23,503,767 square meters.
219	8,138,793 square meters.
300	6,104,095 kilograms.
301–P [2]	6,104,095 kilograms.
301–O [3]	1,220,821 kilograms.
313–O [4]	28,485,773 square meters.
314–O [5]	65,110,336 square meters.
315–O [6]	40,693,959 square meters.
317–O/326–O [7]	17,083,718 square meters.
363	26,451,074 numbers.
369–D [8]	290,963 kilograms.
369–S [9]	406,939 kilograms.
604	952,100 kilograms of which not more than 610,409 kilograms shall be in Category 604–A [10].
607	4,069,393 kilograms.
611–O [11]	13,557,514 square meters.
613/614/615	61,501,381 square meters of which not more than 35,810,685 square meters shall be in Categories 613/615 and not more than 35,810,685 square meters shall be in Category 614.
617	22,208,831 square meters.
619	9,156,140 square meters.
620	9,156,140 square meters.
625/626/627/628/629	17,937,902 square meters of which not more than 14,242,886 square meters shall be in Category 625.
669–P [12]	8,582,688 kilograms.
Group II	
237, 331–348, 350–352, 359–H [13], 359pt. [14], 431, 433–438, 440, 442–448, 459pt. [15], 631, 633–652, 659–H [16], 659pt. [17], 831, 833–838, 840–858 and 859pt. [18], as a group.	373,347,279 square meters equivalent.
Sublevels in Group II	
331/631	2,221,105 dozen pairs.
334/634	793,533 dozen.
335/635/835	630,756 dozen.
336/636	406,939 dozen.
338/339	2,260,810 dozen.
340	366,246 dozen.
341/641	864,747 dozen.
342/642	752,839 dozen.
345	386,593 dozen.
347/348/847	1,063,128 dozen.
351/651	305,204 dozen.
359–H/659–H	1,785,277 kilograms.
433	10,068 dozen.
434	12,428 dozen.
435	56,472 dozen.
438	18,641 dozen.
442	21,647 dozen.
638/639	2,664,526 dozen.
640	671,449 dozen.
645/646	406,939 dozen.
647/648	1,448,705 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[4] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[5] Category 314–O: all HTS numbers except 5209.51.6015.

[6] Category 315–O: all HTS numbers except 5208.52.4055.

[7] Category 317–O: all HTS numbers except 5208.59.2085; Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[8] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[9] Category 369–S: only HTS number 6307.10.2005.

[10] Category 604–A: only HTS number 5509.32.0000.

[11] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[12] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[13] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[14] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.90.2060 (Category 359–H); and 6406.99.1550.

[15] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[16] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[17] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540.

[18] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directives dated December 1, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors for merged Categories 359–H/659–H and 638/639 are 11.5 and 12.96, respectively.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28546 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

November 2, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 7, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously for carryforward, carryforward used, carryover, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68336, published on December 7, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on November 7, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
300	5,596,806 kilograms.
363	26,344,301 numbers.
369–D [2]	297,912 kilograms.
611–O [3]	12,184,476 square meters.
613/614/615	55,897,655 square meters of which not more than 32,944,512 square meters shall be in Categories 613/615 and not more than 32,944,512 square meters shall be in Category 614.
619	9,161,425 square meters.
620	9,518,343 square meters.
669–P [4]	8,764,290 kilograms.
Group II	
237, 331–348, 350–352, 359–H [5], 359pt. [6], 431, 433–438, 440, 442–448, 459pt. [7], 631, 633–652, 659–H [8], 659pt. [9], 831, 833–838, 840–858 and 859pt. [10], as a group.	371,312,509 square meters equivalent.
Sublevels in Group II	
331/631	2,268,102 dozen pairs.
334/634	717,945 dozen.
335/635/835	592,348 dozen.
338/339	2,653,046 dozen.
340	389,802 dozen.
341/641	938,731 dozen.
347/348/847	1,077,944 dozen.
351/651	323,226 dozen.
435	64,571 dozen.
438	21,315 dozen.
442	24,752 dozen.
638/639	2,564,025 dozen.
640	593,719 dozen.
647/648	1,457,982 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[4] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[5] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[6] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.90.2060 (Category 359–H); and 6406.99.1550.

[7] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540.

[10] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28561 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

October 27, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Turkey and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits. The limits for certain categories have been reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the period January 1, 2001 through December 31, 2001, in excess of the following levels of restraint:

Category	Restraint limit
Fabric Group	
219, 313–O [1], 314–O [2], 315–O [3], 317–O [4], 326–O [5], 617, 625/626/627/628/629, as a group.	225,851,478 square meters of which not more than 51,611,668 square meters shall be in Category 219; not more than 63,080,926 square meters shall be in Category 313–O; not more than 36,701,630 square meters shall be in Category 314–O; not more than 49,317,818 square meters shall be in Category 315–O; not more than 51,611,668 square meters shall be in Category 317–O; not more than 5,734,628 square meters shall be in Category 326–O, and not more than 34,407,781 square meters shall be in Category 617.
Sublevel in Fabric Group	
625/626/627/628/629	23,233,855 square meters of which not more than 9,293,541 square meters shall be in Category 625; not more than 9,293,541 square meters shall be in Category 626; not more than 9,293,541 square meters shall be in Category 627; not more than 9,293,541 square meters shall be in Category 628; and not more than 9,293,541 square meters shall be in Category 629.
Limits not in a group	
200	2,177,696 kilograms.
300/301	10,017,781 kilograms.
335	457,807 dozen.
336/636	1,078,390 dozen.
338/339/638/639	6,343,877 dozen of which not more than 5,709,490 dozen shall be in Categories 338–S/339–S/638–S/639–S [6].
340/640	1,857,095 dozen of which not more than 528,181 dozen shall be in Categories 340–Y/640–Y [7].
341/641	1,833,968 dozen of which not more than 641,889 dozen shall be in Categories 341–Y/641–Y [8].
342/642	1,200,472 dozen.
347/348	6,531,380 dozen of which not more than 2,271,897 dozen shall be in Categories 347–T/348–T [9].
350	643,270 dozen.
351/651	1,028,478 dozen.
352/652	3,724,660 dozen.
361	2,162,686 numbers.
369–S [10]	2,245,602 kilograms.
410/624	1,152,389 square meters of which not more than 806,673 square meters shall be in Category 410.
448	39,542 dozen.
604	2,731,552 kilograms.
611	68,334,865 square meters.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[7] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[8] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[9] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[10] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated November 9, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–28547 Filed 11–6–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of Proposed Funding Priorities for Fiscal Years 2001–2002 for a National Center on Accessible Education-Based Information Technology, the Disability and Business Technical Assistance Centers, and a Traumatic Brain Injury Data Collection Center.

SUMMARY: We propose funding priorities for a National Center on Accessible Education-Based Information Technology, the Disability and Business Technical Assistance Centers (DBTACs), and a Traumatic Brain Injury (TBI) Data Collection Center under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years (FY) 2001–2002. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities. This notice contains proposed priorities under the Americans with Disabilities Act (ADA) Technical Assistance Projects and the Disability and Rehabilitation Research Projects and Centers Program.

DATES: We must receive your comments on or before December 7, 2000.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3414, Switzer Building, Washington, DC. 20202–2645. Comments may also be sent through the Internet: donna__nangle@ed.gov

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 3414, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance To Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed priorities would address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The authority for the programs to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764). Regulations governing these programs are found in 34 CFR part 350.

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute.

The proposed priorities refer to NIDRR's Long Range Plan (the Plan). The Plan can be accessed on the World Wide Web at: *http://www.ed.gov/legislation/FedRegister/other/1999–12/68576.html.*

Priorities on the ADA and Accessible Education-Based Information Technology (IT)

Public Law 101–336, the Americans with Disability Act (ADA), enacted on July 26, 1990, prohibits discrimination against individuals with disabilities in employment, public accommodations,

transportation, State and local government, and telecommunications. In October 1991, and again in October 1996, NIDRR awarded five-year grants to establish 10 regional Disability and Business Technical Assistance Centers (DBTACs). These centers provide technical assistance and training on all of the requirements of the ADA to covered entities and individuals with responsibilities and rights under the ADA. Currently, there is one DBTAC in each of the 10 Department of Education regions. For FY 2001 NIDRR is proposing to fund 10 new DBTACs that will maintain the current level of effort on providing information and technical assistance on the ADA as well as add a special emphasis in the area of education-based information technology (IT). The purpose of this special emphasis is to assist covered educational entities in providing children, youth, and adults with disabilities with access to IT.

NIDRR is proposing two priorities toward this end. The first establishes a national center on accessible education-based IT that will operate in collaboration with the DBTACs and will provide support and guidance on education-based accessible IT technical assistance activities. The second proposed priority establishes 10 new DBTACs and delineates the technical assistance and training activities required of them to promote the successful implementation of the ADA, including those activities related to the special emphasis on educational institutions and accessible IT.

For the purposes of these priorities, and consistent with the Clinger-Cohen Act of 1996, information technology is defined to include any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. It includes computer hardware, software, networks, and peripherals as well as many electronic and communications devices commonly used in offices. Education-based IT refers to any IT that is used by either students or employees of educational entities, including, but not limited to, teachers, administrators, and administrative staff.

Proposed Priority 1: National Center on Accessible Education-based IT

Background

IT plays a critical role in all educational settings. Regardless of their age, students who cannot access IT are operating at a significant disadvantage to their peers who can. Recent reports suggests that, regardless of age, educators and students with disabilities face significant IT accessibility issues (''Computer and Internet Use Among People with Disabilities,'' Dr. Stephen Kaye, Disability Statistics Center, University of California-San Francisco, published by NIDRR, U.S. Department of Education, March 2000; and ''What are the Barriers to Use of Advanced Telecommunications for Students with Disabilities in Public Schools,'' Issue Brief published by the National Center for Education Statistics, U.S. Department of Education, NCES 2000–42, January 2000). These issues can be broken down into two types: legal and technological.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability in any program or activity of recipients of Federal financial assistance. Virtually all school districts receive Federal funds and have been required to comply with section 504 for many years. The ADA extends this prohibition to a wider range of educational entities; however, with some exceptions, the ADA does not impose any major new requirements on school districts and other educational entities that receive Federal funds and are covered by section 504.

The ADA requires virtually all educational entities to ensure that persons with disabilities are not excluded from participation in, or denied the benefits of, its services, programs, and activities. This includes all aspects of the instructional environment, employment relationships, and services carried out by contractors. When IT is part of the programs, services, or activities provided by the educational entity, those entities have an obligation to ensure that the hardware and software that make up those technologies are accessible to all users. In some instances, educational entities may be unaware of their legal obligation to provide accessible IT to persons with disabilities who enroll or seek to enroll in their programs. Similarly, persons with disabilities may be unaware that they are entitled under the ADA to access the IT of the educational entity.

It may also be the case that educational entities do not have the information they need to either purchase accessible IT, or adapt the IT they have so that it is accessible to students or employees with disabilities. Both the responsible party within the educational entity (*e.g.,* the procurement officer, related services personnel, the teacher, or the computer lab director) and the student, or employee with a disability, may be unaware that accessible IT exists and can be purchased, or that adaptations may be made to the existing IT to provide accessibility. When a student or employee with a disability uses assistive technology (*e.g.,* an augmentative communication device), the technological problem may involve identifying the proper interface between the educational entity's IT and the student or employee's assistive technology. In these instances, information and technical assistance can aid the educational entity to provide accessible IT.

Some educational entities may also be required to comply with the standards for accessible technology to be issued by the Access Board, as required by Section 508 of the Rehabilitation Act. Section 508 requires Federal agencies and departments to ensure equal access to electronic and information technology for individuals with disabilities comparable to those who do not have disabilities, unless such a requirement would cause an undue burden. The Assistive Technology Act (AT Act) requires that States receiving assistance, including sub-recipients of AT Act funds, under the AT State Grants program comply with the requirements of section 508, including the standards developed by the Access Board. Each State must determine whether entities such as colleges and universities or local and intermediate school districts are considered part of the State and therefore, must comply with Section 508 and the standards as published by the Access Board.

Proposed Priority

We propose to establish a National Center on Accessible Education-Based IT to assist educational entities in providing persons with disabilities with accessible IT. The Center must:

(1) Develop new materials and reformat or reprint existing materials to assist educational entities to understand and fulfill their legal obligations to provide accessible IT. These materials may include, but are not limited to, the ADA self-evaluation guide for schools, section 504 and ADA guidance for educational entities, technical materials on IT access, consumers guide to accessible IT, and technical IT standards;

(2) Conduct a national information dissemination campaign to raise awareness on accessible education-based IT and inform target audiences on the availability of technical assistance from the DBTACs and others. This campaign may include, but is not

limited to, print and electronic ads, newsletters, presentations at national conferences, and regular electronic communication with national organizations to update them on legal and technological developments;

(3) Promote the procurement by educational entities of accessible information technology that meets the standards for section 508 or universal design principles;

(4) Coordinate with and provide training, materials, and technical assistance to the DBTACs in support of their technical assistance efforts to educational entities on accessible IT;

(5) Provide training, materials, and technical assistance to the U.S. Department of Education's various IT initiatives including, but not limited to, the Regional Technology in Education Consortia, Comprehensive Regional Assistance Centers, the Technology Literacy Challenge Fund, Community Technology Centers, and the Preparing Tomorrow's Teachers to Use Technology Programs in order to promote accessibility by persons with disabilities; and

In carrying out these activities, the National Center on Accessible Education-based IT must:

- Include in its primary target audience elementary and secondary institutions, and postsecondary educational entities including, but not limited to, institutions of higher education, proprietary schools (particularly those offering IT training), and adult education programs;
- Coordinate with NIDRR's Rehabilitation Engineering Research Centers (RERCs) on Information Technology Access and Telecommunications Access, and also with NIDRR's Information Technology Technical Assistance and Training Center;
- Coordinate with relevant Federal agencies responsible for the administration of public laws that address access to and usability of education-based IT for persons with disabilities including, but not limited, to the General Services Administration, the Access Board, the Federal Communications Commission, the Department of Justice, and offices within the Department of Education including the Rehabilitation Services Administration, the Office of Special Education Programs, and the Office for Civil Rights;
- Develop and maintain a web site to assist educational entities to understand and fulfill their legal obligations related to accessible IT; and
- Provide information and technical assistance consistent with other IT accessibility laws, including, but not limited to, section 508 of the Rehabilitation Act.

Proposed Priority 2: Disability and Business Technical Assistance Centers

Background

Covered entities and individuals with responsibilities and rights under the ADA continue to need technical assistance on the ADA. The demand for technical assistance services from the DBTACs has remained high since 1992 (see Table 1), a trend that will likely continue indefinitely.

TABLE 1.—SUMMARY OF SELECTED DBTAC TECHNICAL ASSISTANCE AND TRAINING ACTIVITIES FROM FY 1992 THROUGH FY 1999

Fiscal year	Number of 800 line calls	Number of people trained	Number of technical assistance efforts	Number of hard copy materials disseminated
1992	20,000	30,759	40,313	188,842
1993	61,000	63,341	79,964	539,511
1994	75,700	56,800	127,736	698,040
1995	90,400	64,870	152,395	901,878
1996	88,500	64,502	135,000	1,800,000
1997	91,534	70,000	180,909	785,695
1998	92,312	86,000	157,126	1,082,294
1999	90,839	74,500	170,865	1,014,057

Source: Annual Reports of NIDRR's ADA Technical Assistance Grantees FY 1992–FY 1999

In many instances, the nature of the technical assistance that the DBTACs provide today is more complex than the technical assistance they provided in the years shortly after the passage of the ADA. This is a result of covered entities seeking to stay current with the growing body of legal precedents as well as standards and policy guidance issued by responsible Federal agencies. However, there are still many covered entities that need information on the most fundamental requirements of the law. Subsequently, DBTACs must continue to provide basic information about the ADA as well as respond to more complex requests for technical assistance and training.

In order to be effective, it is virtually imperative that the DBTACs exploit the benefits of IT and stay current with new developments in the field. For example, the DBTACs use web-based programs to carry out distance learning activities in order to increase access to and participation in their information dissemination efforts. In FY 1999 the DBTACs and the ADA Program Assistance Coordinator's web sites received over 870,001 visits. While there will always be a need to distribute hard copies of materials, the DBTACs receive increasing numbers of requests for electronic copies of these same materials. They also respond to technical questions, provide training, and participate in cooperative efforts related to ADA technical assistance activities using electronic media. To carry out a wide variety of electronic and web-based technical assistance and training activities, the DBTACs' staffs must have a sufficiently high level of expertise on IT.

The DBTACs provide a wide range of technical assistance services such as referrals, consultation, and information dissemination. They also issue newsletters and information briefs, and participate in discussion groups on the Internet. The DBTACs address the needs of non-English populations by distributing materials that have been translated into other languages and employing bilingual information specialists when appropriate. Table 2 indicates the recipient groups of the DBTACs technical assistance, training, and materials distribution activities in FY 1999.

TABLE 2.—SUMMARY OF PERCENTAGE OF TECHNICAL ASSISTANCE, TRAINING, AND MATERIALS DISTRIBUTED TO TARGET AUDIENCE BY DBTACS IN FY 1999

Target Audience	Technical assistance (percent)	Training (percent)	Materials distribution (percent)
Disability Entities	50	44	45
Businesses	31	24	30
Public Entities	14	23	18
Other	5	9	7

Source: Annual Report of NIDRR's ADA Technical Assistance Grantees FY 1999.

In addition, the DBTACs carry out public awareness activities on the ADA and the services provided by the DBTACs through a variety of means including, but not limited to, radio and television appearances, presentations at conferences, and the production of materials for newspaper and magazine articles. When it enhances their technical assistance activities, the DBTACs also disseminate ADA research findings generated by NIDRR-sponsored grantees and others.

In order to tailor their efforts to State and local needs and maximize their resources, DBTACs also work to increase the capacity of State and local organizations to provide technical assistance, disseminate information, provide training, and promote awareness of the ADA. The DBTACs have established at least one affiliate in every State. These affiliates carry out their activities in collaboration with coalitions of organizations interested in promoting the implementation of the ADA. In addition, the DBTACs support and collaborate with Centers for Independent Living (CILs) to assist them in implementing the ADA through the provision of technical assistance and training.

The DBTACs rely, to the maximum extent possible, on existing Federally-approved materials and, through a systematic process of quality control, ensure the legal sufficiency and accuracy of the information disseminated by the Centers and their affiliates. DBTAC services and activities are accessible to all individuals with disabilities, and all of the materials they distribute are available in alternate formats. The DBTACs also share a national toll-free telephone number that automatically connects the caller with the DBTAC serving the caller's area code. Further, the DBTACs meet semi-annually to coordinate their activities and receive briefings from Federal agencies with responsibilities under the ADA. They also evaluate their technical assistance efforts using the ADA Impact Measurement System (AIMS). AIMS uses a follow-up telephone survey and a postcard survey to measure the impact that the DBTACs' technical assistance has had on its customers and their level of satisfaction with the services that the DBTACs provided. AIMS is currently maintained by one of the DBTACs. The proposed priority includes an optional activity authorizing a DBTAC to maintain AIMS over the proposed project period. From among those DBTAC applicants who propose to maintain AIMS over the project period, the application evaluation process will select one successful applicant to carry out this activity.

Since 1991, the DBTACs have provided technical assistance and training to educational entities on their responsibilities under the ADA. In 1994, NIDRR funded a training project on the ADA for schools and supported the U.S. Department of Education Office for Civil Rights' development and publication of an ADA self-evaluation guide for public elementary and secondary schools. A toll-free ADA hotline specifically for school systems, that originated with the schools training project, is still in operation through the Region I DBTAC. The special emphasis that is being placed on the DBTACs to provide technical assistance on accessible IT to educational entities represents an expansion of their technical assistance efforts. In those instances where the requisite assistance is a matter of helping the entity to understand its legal obligation, NIDRR expects the DBTACs to provide accurate information to the educational entity on the requirements of the ADA. In those instances where the requisite assistance is technical and involves assisting the entity to procure, create, adapt, maintain or evaluate the accessibility of their IT, NIDRR expects the DBTACs to possess the requisite technical expertise or develop partnerships with agencies and organizations who have the necessary technical expertise.

The DBTACs routinely receive inquiries that involve disability-related laws or disability rights laws other than the ADA. In some of these instances, the inquiry concerns the interaction between the ADA and disability-related laws such as the Family and Medical Leave Act or the Worker's Compensation Act. In other instances, individuals with a disability may believe that their civil rights have been violated, but are not sure of the controlling authority. For example, individuals with a disability may want to know about their landlord's responsibility to make their apartment accessible. In this case, in order to provide appropriate technical assistance, the DBTAC must be sufficiently familiar with not only the ADA, but also the Fair Housing Act. Thus to respond directly or to refer the inquirer to an expert source of technical assistance, the DBTACs must be knowledgeable about a wide array of disability-related or disability rights laws.

Proposed Priority

We propose to establish a Regional DBTAC in each of the Department of Education 10 regions to facilitate implementation of the ADA. Each center must:

(1) Provide technical assistance and training and disseminate information to individuals and entities with responsibilities and rights under the ADA on the ADA's requirements as well as developments in case law, policy, and implementation;

(2) Increase the capacity of organizations, at the State and local level, including CILs, to provide technical assistance and training on, disseminate information on, and promote awareness of the ADA;

(3) Promote awareness of the ADA and the availability of services provided by the DBTACs, other NIDRR-sponsored ADA grantees, and other Federal information sources on the ADA;

(4) Provide technical assistance and training and disseminate information on legal obligations of educational entities to provide accessible IT to students and employees;

(5) Provide technical assistance to educational entities to enable them to

conduct self-evaluations on the accessibility of their IT;

(6) Provide technical assistance, either directly or through referral, on how to make existing IT accessible and ensure that new IT acquisitions are accessible;

(7) Promote ''best practices'' by encouraging educational entities to purchase IT consistent with the standards issued by the Access Board under Section 508 or universal design principles, regardless of whether they have a legal obligation to do so;

(8) Provide information to CILs, Parent Training Information Centers, and the Regional Resource Centers on accessible education-based IT; and

(9) Form regional partnerships among Assistive Technology Act grantees, RERCs, Office of Special Education Programs' technology grantees, and other pertinent educational organizations and agencies to guide, coordinate, and if appropriate, carry out technical assistance activities in each region.

In carrying out these activities each DBTAC must:

- Involve individuals with disabilities, parents or other family members of individuals with disabilities, in all phases of the design and operation of the DBTAC to the maximum extent possible;
- Be knowledgeable about a wide array of disability-related or disability rights laws including, but not limited to, sections 504 and 508 of the Rehabilitation Act, the Individuals with Disabilities Education Act, the Air Carriers Access Act, section 255 of the Telecommunications Act, section 188 of the Workforce Investment Act, the Fair Housing Act, the Family and Medical Leave Act, the AT Act, and the Worker's Compensation Act;
- Coordinate its activities with the National Center on Accessible Education-based IT, and Federal agencies including, but not limited to, the Department of Justice, the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission, the Access Board, the Department of Education's Office for Civil Rights, the President's Committee on Employment of Persons with Disabilities, the National Council on Disability, and other offices within the Department of Education including the Rehabilitation Services Administration, and the Office of Special Education Programs;
- Provide performance accountability data on a monthly and annual basis as requested by NIDRR;
- Distribute services and resources equitably—taking into account population and size—among each State in its region;
- Address the needs of non-English speaking populations; and

Include in their target audience for activities (4), (5), (6), and (7): elementary and secondary institutions, and postsecondary educational entities including, but not limited to, institutions of higher learning, proprietary schools (particularly those offering IT training), and adult education programs.

In carrying out its evaluation activities, a DBTAC may maintain the ADA Impact Measurement System.

Proposed Additional Selection Criterion for the DBTACs and the National Center on Accessible Education-Based IT Priorities

We will use the selection criteria in 34 CFR 350.54 to evaluate applications under this program. In evaluating applications for the DBTACs and the National Center on Accessible Education-based IT and, we will also use the following factor under the project staff criterion. In determining the quality of the project staff, we will consider the extent to which key personnel have expert knowledge about state-of-the-art IT to conduct all proposed activities.

Disability and Rehabilitation Research Project and Centers Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to:

(a) Develop methods, procedures, and rehabilitation technology that maximizes the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities; and

(b) Improve the effectiveness of services authorized under the Act.

Proposed Priority 3: Traumatic Brain Injury (TBI) Data Center

Background

An estimated 5.3 million Americans currently live with disabilities resulting from brain injury. The Centers for Disease Control (CDC) estimates that approximately 80,000 Americans experience the onset of disabilities resulting from TBI each year. The three leading causes of TBI are motor vehicle crashes, violence, and falls, particularly among the elderly. As stated in the 1998 National Institutes of Health (NIH) Consensus Conference, ''TBI may result in lifelong impairment of an individual's physical, cognitive, and psychosocial functioning.''

In 1987, NIDRR established the National Traumatic Brain Injury Model Systems (TBIMS) Program by funding four research and demonstration projects to conduct research on comprehensive, multidisciplinary rehabilitation services to persons who experience TBI. This number expanded to 17 projects in 1998. The multi-project TBIMS program is designed to study the course of recovery and outcomes following the delivery of a coordinated system of care. (Additional information on TBIMS can be found at *http://www.tbims.org).* The TBIMS database currently contains over 2,000 cases and supports clinical research and research on outcomes including employment, community integration, and quality of life. Through a complex data collection and retrieval program, the TBIMS projects are capable of analyzing different system components to provide information on project cost effectiveness and benefits. Data is collected throughout the rehabilitation process and at specified follow up periods following discharge from the rehabilitation facility.

The parameters of the database are determined collaboratively by TBIMS project directors, in consultation with NIDRR. A syllabus describing the current data elements may be obtained from Donna Nangle at the contact information previously listed. Expansion of the number of projects has broadened the representation of subjects in terms of geographic distribution, ethnic group membership, and socioeconomic status.

In the past, data from the TBIMS database has been largely restricted to the use of TBIMS researchers. Recent Federal regulations (see March 16, 2000, 65 FR 14416–14418) outline conditions under which outside parties may request access to the data under the auspices of the Freedom of Information Act. In addition, there is increased interest in expanding the use of this data in conjunction with population-based data to further research on TBI by the larger research community. Both activities require development of guidelines that ensure subject confidentiality, protect the identity of individual projects, and support use of the data in rigorous research efforts.

Historically, the data center has been funded as a supplement to one of the projects in the TBIMS. We propose to establish a separate TBI data center to maintain this information.

Proposed Priority

We propose to establish a data center for the purpose of managing and facilitating the use of information

collected by the TBIMS projects on individuals with traumatic brain injury. The data center must:

(1) Establish and maintain a database repository for data from TBIMS projects while providing for confidentiality, quality control, and data retrieval capabilities, using cost-effective and user-friendly technology;

(2) Ensure data quality, reliability, and integrity by providing training and technical assistance to TBIMS projects on data collection procedures, data entry methods, and use of study instruments;

(3) Provide consultation to NIDRR and directors and staff of the TBIMS projects on utility and quality of data elements;

(4) Support efforts to improve the research findings of the TBIMS projects by providing statistical and other consultation regarding the national database;

(5) Facilitate dissemination of information generated by the TBIMS projects, including statistical information, scientific papers, and consumer materials;

(6) Evaluate the feasibility of linking and comparing TBIMS data to population-based data sets, such as the CDC State-based injury surveillance data and provide technical assistance for such linkage, as appropriate; and

(7) Develop guidelines to provide access to TBIMS data by individuals and institutions, ensuring that data are available in accessible formats for persons with disabilities.

In carrying out these purposes, the center must:

- Demonstrate knowledge of culturally appropriate methods of data collection, including understanding of culturally sensitive measurement approaches; and
- Collaborate with other NIDRR funded projects, e.g., the Model Spinal Cord Injury and Burn Injury Model System Data Centers, regarding issues such as database development and maintenance, center operations, and data management.

Proposed Additional Selection Criterion

We will use the selection criteria in 34 CFR 350.54 to evaluate applications under these programs. The maximum score for all the criteria is 100 points; however, we will also use the following criterion so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

Up to 10 points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

Thus, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Applicable Program Regulations: 34 CFR part 350.

Program Authority: 29 U.S.C. 762(g) and 764.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.133D, Americans with Disabilities Act Technical Assistance Projects and 84.133A, Disability and Rehabilitation Research Project and Centers Program)

Dated: November 2, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–28528 Filed 11–06–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: Subject to timely enactment of legislation to reinstate the antitrust defense under section 252 of the Energy Policy and Conservation Act, a meeting of the Industry Advisory Board to the International Energy Agency will be held on November 14, 2000, at the headquarters of the IEA in Paris, France in connection with a meeting of the IEA's Standing Group on Emergency Questions.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: Subject to timely enactment of legislation to reinstate the antitrust defense under section 252 of the Energy Policy and Conservation Act (EPCA), the following meeting notice is provided, in accordance with section 252(c)(1)(A)(i) of the EPCA (42 U.S.C. 6272(c)(1)(A)(i)):

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Federation, Paris, France, on November 14, 2000, beginning at approximately 9 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on November 14, including a preparatory encounter among company representatives on November 14 from approximately 9 a.m. to 9:15 a.m.

The Agenda for the preparatory encounter among company representatives is to elicit views regarding items on the SEQ's Agenda. The Agenda for the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following Agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 99th Meeting
3. SEQ Work Program
   - The Year 2001 Work Program of the SEQ
4. Follow-up to the Governing Board Decision of October 26
   - Measures to Ensure Compliance with IEA Stockholding Commitments
   - Alternative Criteria for Use of Emergency Stocks
5. Emergency Response Preparedness
   - Report on Results of Special Data Collection on Stocks and Refinery Operations
   - Report on the Communications Test
   - Arrangements for Preparedness Checklist and Country Profiles
   - Reports on Recent Test/Drawdown/Sale Operations by the United States, Japan and Germany
   - United States Heating Oil Reserves
6. Policy and Legislative Developments in Member Countries
   - Status of United States EPCA

- Revision to Oil Emergency Policies and Procedures of the United Kingdom
- Status of the new Dutch Stockholding Law
- Follow-up to Biarritz meeting of European Union Heads of State
- Other

7. Current IAB Activities (subject to reinstatement of EPCA's antitrust defense)
8. Emergency Reserve Issues
   - Progress Report of the Working Group on Unavailable Stocks
9. Policy and Legislative Developments in Candidate Countries
   - Emergency Response Review of Korea
   - Recent Developments in Korea
   - Other
10. Oil Security Developments in Member Countries
    - China-Japan Stockholding Symposium of October 17–18
    - APEC Initiatives on Stockholding
    - Other Initiatives and Events
11. Emergency Data System and Related Questions
    - Monthly Oil Statistics July 2000
    - Base Period Final Consumption 3Q99—2Q00
12. Emergency Reference Guide
    - Update of Emergency Contact Points List
13. Other Business
    - Dates of future SEQ Meetings and the Millennium Conference on Oil Security Strategy
    - Reminder of submission of comments on:

    Transition from CERM (Coordinated Emergency Response Measures) to IEP (International Energy Program) Procedures

    First Draft of Questionnaire for Next Review Cycle

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, November 2, 2000.

Mary Anne Sullivan,

General Counsel.

[FR Doc. 00–28536 Filed 11–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Subcommittee on Generation IV Technology Planning of the Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Subcommittee on Generation IV Technology Planning of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: November 16, 2000, 9 a.m.–Noon.

ADDRESSES: J W Marriott, National Place, 1331 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 393–2000. Public Meeting to be held in the Cannon Room.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy (DOE), NE–1, 1000 Independence Avenue, SW., Washington DC 20585, Telephone Number 202–586–0136, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The Subcommittee on Generation IV Technology Planning of the Nuclear Energy Research Advisory Committee has been requested to provide the Director of the Office of Nuclear Energy, Science and Technology with guidance on DOE's effort to prepare a Generation IV technology roadmap. The broad objectives of the Generation IV program are to develop nuclear energy systems that exceed today's state-of-the-art technology in terms of enhanced nuclear safety, minimization of waste generation, increased proliferation resistance and superior economics. The subcommittee will consider the views of individuals and organizations about specific goals that should be included in the roadmap as well as recommendations as to research and development activities that should be addressed.

Tentative Agenda

Thursday, November 16, 2000.

The agenda for this meeting will be dependent on the responses to this Notice.

Public Participation

The meeting is open to the public on a first-come, first-served basis. Written statements may also be filed with the committee before or after the meeting. Members of the public who wish to make oral statements should contact Norton Haberman at the address or telephone number listed above. Such statements should be limited to five minutes. Requests to make oral statements must be made and received five days prior to the meeting. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room. 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington DC on November 2, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–28500 Filed 11–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Secretary of Energy Advisory Board—Openness Advisory Panel; Department of Energy.

SUMMARY: This notice announces a meeting of the Secretary of Energy Advisory Board's Openness Advisory Panel. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES: Friday, November 17, 2000, 9 a.m.–3:30 p.m.

ADDRESSES: U.S. Department of Energy, Program Review Center (Room 8E–089), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTE: Members of the public are requested to contact the Office of the Secretary of Energy Advisory Board at (202) 586–7092 in advance of the meeting to expedite their entry to the Forrestal Building on the day of the meeting. Public participation is welcomed.

FOR FURTHER INFORMATION CONTACT: Mary Louise Wagner, Executive Director or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board

(AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Openness Advisory Panel is to provide advice to the Secretary of Energy Advisory Board regarding the status and strategic direction of the Department's classification and declassification policies and programs, and other aspects of the Department's ongoing Openness Initiative. The Panel's work will help institutionalize the Department's Openness Initiative.

Tentative Agenda

The agenda for the November 17 meeting has not been finalized but will include a discussion of the results of the Openness Advisory Panel's community relations pilot reviews conducted at the Fernald Environmental Management site, Lawrence Berkeley National Laboratory and Lawrence Livermore National Laboratory. In addition, the Openness Advisory Panel will review and discuss a draft report documenting the findings and recommendations of the OAP's Community Relations Pilot Review Members of the Public wishing to comment on issues before the Openness Advisory Panel will have an opportunity to address the Panel during a scheduled public comment period.

A final agenda will be available at the meeting.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Openness Advisory Panel and submit written comments or comment during the scheduled public comment periods. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C. the Panel welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on November 2, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–28498 Filed 11–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Teleconference Meeting

AGENCY: Secretary of Energy Advisory Board. Department of Energy.

SUMMARY: This notice announces a open teleconference meeting of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. The purpose of the teleconference is to discuss the final findings and recommendations of the Secretary of Energy Advisory Board's National Ignition Facility Laser System Task Force, a subcommittee of the Secretary of Energy Advisory Board.

Note: Copies of the draft final report of the National Ignition Facility Laser System Task Force may be obtained from the following internet address http://www.hr.doe.gov/seab/ or by contacting the Office of the Secretary of Energy Advisory Board at (202) 586–7092.

DATES: Monday, November 20, 2000, 1:30 PM–3:00 PM, Eastern Standard Time.

ADDRESSES: Participants may call the Office of the Secretary of Energy Advisory Board at (202) 586–7092 to reserve a teleconference line and receive a call-in number. Public participation is welcomed. However, the number of teleconference lines are limited and are available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Mary Louise Wagner, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board (The Board) is to provide the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's management reforms, research, development, and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy. The National Ignition Facility Laser System Task Force, a subcommittee of the Secretary of Energy Advisory Board, was formed to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on options to complete the National Ignition Facility (NIF) Project; to recommend the best technical course of action; and to review and assess the risks of successfully completing the NIF Project. The NIF Laser System Task Force was tasked to focus on the engineering and management aspects of the proposed method for accomplishing the assembly and installation of the NIF laser system; to review the full scope of assembly and installation and the ability, within the proposed approach, to achieve the cleanliness requirements established for the operation of the laser. The Task Force's review was also to address: (1) The engineering viability of the proposed assembly and activation method; (2) the assembly and installation cleanliness protocols; (3) the management structure; and (4) the adequacy of the cost estimating methodology. On October 19, 2000 the NIF Laser System Task Force completed their review and approved their final report.

On November 20, the Board will conduct a teleconference to discuss the findings and recommendations contained in the final report of the NIF Laser System Task Force. These findings and recommendations address the engineering and management aspects of the proposed method for accomplishing the assembly and installation of the NIF laser system.

Tentative Agenda

Monday, November 20, 2000

1:30 pm–1:40 pm—Welcome and Opening Remarks—Mr. Andrew Athy, Chairman of the Secretary of Energy Advisory Board

1:40 pm–2:00 pm—Overview of the National Ignition Facility Laser System Task Force's Final Findings

and Recommendations—Dr. John McTague, NIF Laser System Task Force Chairman

2:00 pm–2:30 pm—Public Comment Period

2:30 pm–3:00 pm—Board Review and Comment and Action—Mr. Andrew Athy, Chairman of the Secretary of Energy Advisory Board

3:00 pm–Adjourn

This tentative agenda is subject to change.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Secretary of Energy Advisory Board and submit written comments or comment during the scheduled public comment period. The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its open teleconference meeting, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the open teleconference meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on November 2, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–28499 Filed 11–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC00–538–001]

Information Collection Submitted for Review and Request for Comments

November 1, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of June 15, 2000 (65 FR 37533) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before December 7, 2000.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at *mike.miller@ferc.fed.us*.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–538 ''Gas Pipeline Certificate: Section 7(a) Mandatory Initial Service''

(2) *Sponsor:* Federal Energy Regulatory Commission.

(3) *Control No.:* OMB No. 1902–0061. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory collection requirement.

(4) *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the natural Gas Act (NGS). The information reported under Commission identifier FERC–538 is filed in accordance with Sections 7(a), 10(a) and 16 of the NGA (15 U.S.C. 717–717W). Under the NGA when a local distribution company or municipality makes an application, a natural gas pipeline company may be ordered by the Commission to extend or improve transportation facilities, establish physical connections to serve the entity, and sell natural gas to the applicant. Filings in accordance with Section 7(a) of the NGA are to contain all information necessary to advise the Commission fully concerning the service which the applicant has requested the Commission direct a natural gas pipeline company to provide. Included in the information to be provided should be a description of any improvement or extension of facilities which the natural gas pipeline company will be required to make in connection with the requested service, the applicant's present and proposed operations, construction, service, and sales in order to enable the applicant to engage in the local distribution of natural gas.

5. *Respondent Description:* The respondent universe currently comprises on average, 1 applicant for initial service.

6. *Estimated Burden:* 240 total burden hours, 1 respondent, 1 response annually, 240 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 240 hours ÷ 2,080 hours per year × $115,357 per year = $13,310.

Statutory Authority: Sections 7(a), 10(a), and 16 of the Natural Gas Act (NGA), (15 U.S.C. 717–717w).

David P. Boergers,

Secretary.

[FR Doc. 00–28466 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–19–000]

Chinook Pipeline Company; Notice of Application

November 1, 2000.

Take notice that on October 26, 2000, Chinook Pipeline Company (Chinook Pipeline), 2400, 645–7th Avenue, SW., Calgary, Alberta, Canada T2P 4G8, filed an application in Docket No. CP01–19–000, for a Presidential Permit and for authority under Section 3 of the Natural Gas Act to construct, connect, maintain and operate certain natural gas facilities at the border of the United States and Canada in Blaine County, Montana. The application was filed pursuant to Part 153 of the Commission's Regulations (18 CFR 153). The facilities will be used to export up to 15,000 Mcf per day of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). The name, address, and telephone/fax numbers of the applicant's representative, to whom correspondence and communications concerning this application should be address is: Wade J. McGowan, Chinook Pipeline Company, 2400, 645–7th Avenue, SW., Calgary, Alberta, Canada T2P 4G8, (403) 265–1200 (Phone) or (403) 265–1300 (Fax).

Chinook Pipeline is a wholly owned subsidiary of Xeno. Inc. (Xeno), a Montana Corporation. The proposed facilities are part of Chinook Pipeline's proposed project to construct, own and operate a 15.7 mile long, six-inch diameter gas pipeline from Xeno's existing Battle Creek natural gas plant in Blaine County, Montana, to the U.S.-Canada border. The proposed pipeline will cross the international boundary and connect to a receipt point at Loomis, Saskatchewan. This receipt point will be constructed by Many Islands Pipeline, a subsidiary of TransGas of Regina, Saskatchewan.

Chinook Pipeline requests that the Commission expeditiously grant the authorizations herein requested so as to enable it to construct and commence service through the proposed border crossing facilities as soon as possible, in order to begin service for the upcoming 2000–2001 winter heating season.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 22, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure provided for, unless otherwise advised, it will be unnecessary for Chinook Pipeline to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–28465 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–12–000]

Gregory & Beverly Swecker, Complainants v. Midland Power Cooperative, Respondent; Notice of Complaint

November 1, 2000.

Take notice that on October 30, 2000, Gregory & Beverly Swecker (Complainants) filed a complaint against Midland Power Cooperative (Respondent). The complainants are requesting the Federal Energy Regulatory Commission (Commission) to determine Midland Power Cooperative's full avoided cost.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 20, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before November 20, 2000. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–28501 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–180–001, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 27, 2000.

Take notice that the following filings have been made with the Commission:

1. New York Independent System Operator, Inc.

[Docket Nos. ER01–180–001 and ER01–181–001]

Take notice that on October 24, 2000, the New York Independent System Operator, Inc. (NYISO), tendered for filing a Notice of Correction in the above captioned proceedings. The Notice of Correction explained that due to an administrative error, revised tariff sheets

that should have been included in the NYISO's October 20, 2000 filing in Docket No. ER01–180–000 were mistakenly included in the NYISO's October 20, 2000 filing in Docket No. ER01–181–000. Similarly, revised tariff sheets that should have been included in the NYISO's October 20, 2000 filing in Docket No. ER01–181–000 were mistakenly included in the NYISO's October 20, 2000 filing in Docket No. ER01–180–000. Accordingly, the Notice of Correction included corrected versions of the two filings and new notices in both proceedings.

A copy of this filing was served upon all parties in Docket No. ER00–3038–000, Docket Nos. ER00–3591–000 and ER00–3591–001, Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4324–000, not consolidated, and on all other parties who have executed Service Agreements under the NYISO's Open Access Transmission Tariff or Market Administration and Control Area Services Tariff.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC (AE Supply)

[Docket No. ER00–3568–001]

Take notice that on October 23, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (AE Supply), tendered for filing Original Sheet Nos. 7 through 35 to AE Supply's Rate Schedule No. 7.

AE Supply has requested a waiver of notice to make the rate schedule change effective on August 1, 2000, or on a date determined by the Commission.

Copies of the filing have been provided to the customer and to the West Virginia Public Service Commission.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Georgia-Pacific Corporation

[Docket No. ER00–3604–001]

Take notice that on October 23, 2000, Georgia-Pacific Corporation (G-P), tendered for filing FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 1, in compliance with Order No. 614, Designation of Electric Rate Schedules, 99 FERC ¶61,352.

G-P requests that this tariff be made effective October 18, 2000, in accordance with its Petition filed with the Commission on September 7, 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. The Dayton Power and Light Company

[Docket No. ER00–3641–001]

Take notice that on October 24, 2000, The Dayton Power and Light Company (DP&L), tendered for filing an amended Wholesale Market Based Rate Tariff and a pro forma Service Agreement to comply with Order 614.

DP&L seeks it originally requested effective date of September 15, 2000 for all of the tariff sheets submitted with this filing.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No. ER01–177–000]

Take notice that on October 19, 2000, Arizona Public Service Company (APS) tendered for filing Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC).

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Customer name	APS-FPC/FERC rate schedule
Electrical District No. 3	12
Tohono O'odham Utility Authority[1]	52
Arizona Electric Power Cooperative	57
Wellton-Mohawk Irrigation and Drainage District	58
Arizona Power Authority	59
Colorado River Indian Irrigation Project	[2] 65
Electrical District No. 1	68
Arizona Power Pooling Association	70
Town of Wickenburg	74
Southern California Edison Company	120
Electrical District No. 6	126
Electrical District No. 7	128
City of Page	134
Electrical District No. 8	140
Aguila Irrigation District	141
McMullen Valley Water Conservation and Drainage District	142
Tonopah Irrigation District	143
Citizens Utilities Company	[2] 207
Harquahala Valley Power District	153
Buckeye Water Conservation and Drainage District	155
Roosevelt Irrigation District	158
Maricopa County Municipal Water Conservation District	168
City of Williams	192
San Carlos Indian Irrigation Project	201
Maricopa County Municipal Water Conservation District at Lake Pleasant	209

[1] Formerly Papago Utility Tribal Authority.
[2] APS–FPC/FERC Rate Schedule in effect during the refund period.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Ameren Services Company

[Docket No. ER01–184–000]

Take notice that on October 23, 2000, Ameren Services Company (Ameren Services) tendered for filing a Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Newton, Illinois. Ameren Services asserts that the purpose of the Agreement is to permit Ameren Services to provide transmission service to the City of Newton, Illinois pursuant to Ameren's Open Access Tariff.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Indiana Gas and Electric Company

[Docket No. ER01–185–000]

Take notice that on October 23, 2000, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing the following agreement concerning the provision of electric service as an umbrella service agreement under its market-based Wholesale Power Sales Tariff:

Wholesale Energy Service Agreement dated October 12, 2000, by and between Southern Indiana Gas and Electric Company and El Paso Merchant Energy, L.P.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–186–000]

Take notice that on October 20, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Southern Energy Marketing, Inc. (now Southern Company Energy Marketing L.P., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 48.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–187–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Energy and Constellation Power Source (now Constellation Power Source, Inc.), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 95.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–188–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Energy and El Paso Energy Marketing Company (now, El Paso Merchant Energy, L.P.), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 91.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–189–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Service, Inc. and AYP Energy, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 58.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–190–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Energy and American Electric Power Service Corporation, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 92.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–191–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and PECO Energy Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 11.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–192–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Energy and GPU Advanced Resources, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 86.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–193–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Energy and DTE Co-Energy LLC, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 89.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–194–000]

Take notice that on October 23, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Long Island Lighting Company (now Long Island Lighting Co. d/b/a LIPA through buyer's agent Keyspan Energy Trading Services LLC), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 3.

GPU Energy requests that cancellation be effective the 20th day of December 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Indiana Gas and Electric Company

[Docket No. ER01–195–000]

Take notice that on October 23, 2000, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing Service Agreements for Firm and Non-Firm Transmission Service under Part II of its Transmission Services Tariff with Alliance Energy Services Partnership and with H.Q. Energy Services (U.S.) Inc.

Copies of the filing were served upon each of the parties to the Service Agreements.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER01–200–000]

Take notice that on October 23, 2000, Cinergy Services, Inc. (Services), Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI) (collectively, Cinergy) tendered for filing a notice of termination of the Operating Agreement, dated March 2, 1994, by and among CG&E, PSI and Services. The Operating Agreement is designated as Cinergy Operating Companies Rate Schedule FERC No. 1.

Cinergy has requested that termination take effect on December 31, 2000.

Copies of the filing were served on the affected state commissions and the other persons identified on the service list attached to the filing.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Central Power and Light Company

[Docket No. ER01–201–000]

Take notice that on October 23, 2000, Central Power and Light Company (CPL), tendered for filing revised Facility Schedule No. 7 to the Interconnection Agreement between CPL and Medina Electric Cooperative, Inc. (Medina).

CPL requests an effective date for revised Facility Schedule No. 7 of June 15, 2000. Accordingly, CPL requests waiver of the Commission's notice requirements.

CPL states that a copy of the filing was served on Medina and the Public Utility Commission of Texas.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Deseret Generation & Transmission Co-operative

[Docket No. ER01–203–000]

Take notice that on October 23, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing two executed firm point-to-point service agreements with Deseret Generation & Transmission Co-operative, Inc.'s Merchant Function (Deseret Merchant) under Deseret's open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of November 1, 2000. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret Merchant has been provided a copy of this filing.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. PJM Interconnection, L.L.C.

[Docket No. ER01–204–000]

Take notice that on October 23, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing revised pages to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., to modify the confidentiality provisions in Section 18.17 of that agreement relating to the procedures for the release of confidential information.

PJM requests a waiver of the Commission's 60-day notice requirement and to permit an effective date of October 24, 2000.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Xcel Energy Services Inc.

[Docket No. ER01–205–000]

Take notice that on October 23, 2000, Xcel Energy Services Inc. (Xcel Energy Services), tendered for filing (i) a market-based tariff to enable it to make market-based rate sales on behalf of Northern States Power Company, Northern States Power Company (Wisconsin), Public Service Company of Colorado (PSCo), and Southwestern Public Service Company (SPS) (collectively the Xcel Operating Companies) in any combination including singly, (ii) an amended version of the PSCo Rate Schedule for Market-Based Power Sales; (iii) an amended version of the SPS Rate Schedule for Market-Based Power Sales; and (iv) an updated market-power analysis for the Xcel Operating Companies and e prime.

Xcel Energy Services has requested that the various tariffs be made effective on October 24, 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Minnesota Power, Inc.

[Docket No. ER01–206–000]

Take notice that on October 23, 2000, Minnesota Power, Inc., tendered for filing a signed Service Agreement with Alliant Energy Corporate Services, Inc., under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Newark Bay Cogeneration Partnership, L.P.

[Docket No. ER01–207–000]

Take notice that on October 23, 2000, Newark Bay Cogeneration Partnership, L.P., (Newark Bay), an Exempt Wholesale Generator that owns and operates an electric generation plant near Newark, New Jersey, tendered for filing a Power Marketing Agreement with El Paso Merchant Energy, L.P., in the above-captioned docket.

Newark Bay requests that the Agreement be permitted to become effective September 27, 2000.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Delmarva Power & Light Company

[Docket No. ER01–209–000]

Take notice that on October 23, 2000, Delmarva Power & Light Company (Delmarva), tendered for filing revised rate schedules between Delmarva and each of the Delaware Cities of Lewes, Milford, Newark, and New Castle and the Delaware Towns of Middletown, Clayton, and Smyrna (collectively, the Municipalities). Delmarva also tendered for filing a revised rate schedule between Delmarva and the Delaware Municipal Electric Corporation (DEMEC).

Delmarva requests that the Commission waive its notice of filing requirements to allow all of the revised rate schedules to become effective retroactively as of January 1, 2000 because the revisions provide for reductions in the charges to the customers.

Copies of the filing were served upon the Municipalities, DEMEC, and the state commission of Delaware.

Comment date: November 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Tucson Electric Power Company

[Docket No. ER01–208–000]

Take notice that on October 24, 2000, Tucson Electric Power Company (Tucson) submitted for filing a revision to its Open Access Transmission Tariff (OATT) in order to include the Protocols Manual of the Arizona Independent Scheduling Administrator Association.

Tucson requests an effective date of date of November 1, 2000.

Comment date: November 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. PJM Interconnection, L.L.C.

[Docket No. ER01–210–000]

Take notice that on October 24, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing revised pages to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., and the PJM Open Access Transmission Tariff to permit the reallocation of Fixed Transmission Rights to network service customers on an annual basis.

PJM requests an effective date of December 24, 2000 for the amendments.

Copies of this filing were served upon all PJM members and the state electric regulatory commissions in the PJM control area.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Duke Energy Trenton, LLC

[Docket No. ER01–211–000]

Take notice that on October 24, 2000, Duke Energy Trenton, LLC (Duke Trenton), tendered for filing an Electric Energy and Ancillary Service Sales Agreement by and between Duke Energy Trenton, LLC and Duke Energy Trading and Marketing, LLC.

Duke Trenton requests an effective date for the Service Agreement of September 28, 2000.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Consumers Energy Company

[Docket No. ER01–212–000]

Take notice that on October 24, 2000, Consumers Energy Company (Consumers) tendered for filing executed Firm and Non-Firm Point to Point Transmission Service Agreements with Quest Energy (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreements have effective dates of October 20, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Duke Energy Morro Bay, LLC

[Docket No. ER01–213–000]

Take notice that on October 24, 2000, Duke Energy Morro Bay, LLC (Duke Morro Bay), tendered for filing an Electric Energy and Ancillary Service Sales Agreement by and between Duke Energy Morro Bay, LLC and Duke Energy Trading and Marketing, LLC.

Duke Morro Bay requests an effective date for the Service Agreement of September 28, 2000.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Duke Energy Moss Landing, LLC

[Docket No. ER01–214–000]

Take notice that on October 24, 2000, Duke Energy Moss Landing, LLC (Duke Moss Landing), tendered for filing an Electric Energy and Ancillary Service Sales Agreement by and between Duke Energy Moss Landing, LLC and Duke Energy Trading and Marketing, LLC.

Duke Moss Landing requests an effective date for the Service Agreement of September 28, 2000.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Duke Energy South Bay, LLC

[Docket No. ER01–215–000]

Take notice that on October 24, 2000, Duke Energy South Bay, LLC (Duke South Bay), tendered for filing an Electric Energy and Ancillary Service Sales Agreement by and between Duke Energy South Bay, LLC and Duke Energy Trading and Marketing, LLC.

Duke South Bay requests an effective date for the Service Agreement of September 28, 2000.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Duke Energy Casco Bay, LLC

[Docket No. ER01–216–000]

Take notice that on October 24, 2000, Duke Energy Casco Bay, LLC (Duke Casco Bay), tendered for filing an Electric Energy and Ancillary Service Sales Agreement by and between Duke Energy Casco Bay, LLC and Duke Energy Trading and Marketing, LLC.

Duke Casco Bay requests an effective date for the Service Agreement of September 28, 2000.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Maine Electric Power Company

[Docket No. ER01–219–000]

Take notice that on October 24, 2000, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Umbrella Non-Firm Point-to-Point Transmission Service entered into with NRG Power Marketing Inc. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO–FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. GEN~SYS Energy

[Docket No. EC01–9–000]

Take notice that on October 20, 2000, GEN~SYS Energy tendered for filing an application under Section 203 of the Federal Power Act for approval for a change of control of GEN~SYS Energy. GEN~SYS Energy has served copies of this filing on the United States Department of Agriculture Rural Utilities Service and the Mid-Continent Area Power Pool.

Comment date: November 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/ online/rims.htm* (call 202–208–2222 for assistance). Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–28464 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2203–007]

Alabama Power Company; Notice of Availability of Final Environmental Assessment

November 1, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for license amendment for the Holt Project, located on the Black Warrior River in Tuscaloosa County, Alabama and has prepared a Final Environmental Assessment (FEA) for the project.

Copies of the FEA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The FEA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

For further information, contact Steve Kartalia at (202) 219–2942.

David P. Boergers,

Secretary.

[FR Doc. 00–28469 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2731–020 & 2737–002 Vermont]

Central Vermont Public Service Corporation; Notice of Availability of Final Environmental Assessment

November 1, 2000.

In accordance with the National Environmental Policy Act of 1969, and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for new license for the continued operation of the Weybridge and Middlebury Lower Hydroelectric Projects located on Otter Creek, in the towns of Middlebury and Weybridge, Addison County, Vermont, and has prepared a Final Environmental Assessment (FEA) for the projects. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the projects, evaluated comments filed in response to the issuance of the Draft Environmental Assessment (DEA), and has concluded that approval of the projects, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The FEA may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm*. Please call (202) 208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 00–28470 Filed 11–06–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–471–000]

Wyoming Interstate Company, Ltd.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Medicine Bow Lateral Loop Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

November 1, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Wyoming Interstate Pipeline Company, Ltd.'s (WIC) proposed Medicine Bow Lateral Loop Project in Weld County, Colorado and Laramie, Platte, and Converse Counties, Wyoming.[1] The Medicine Bow Lateral Loop Project would involve the construction and operation of about 155 miles of 36-inch-diameter pipeline and addition of about 7,170 horsepower (hp) of compression. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a WIC representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable

[1] WIC's application under section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations was filed on September 26, 2000.

agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' should have been attached to the project notice WIC provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website *www.ferc.fed.us*.

This Notice of Intent (NOI) is being sent to landowners along WIC's proposed route; Federal, state, and local government agencies; national elected officials; regional environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding. Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this NOI we are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated WIC's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

Summary of the Proposed Project

WIC's proposed action consists of:

- About 155 miles of 36-inch-diameter pipeline, extending south from WIC's existing Douglas Compressor Station in Converse County, Wyoming to WIC's existing Cheyenne Compressor Station in Weld County, Colorado. This new pipeline would loop [2] WIC's existing 24-inch-diameter lateral pipeline;
- Adding a 7,170 hp Solar Taurus 60S–C404 turbine compressor unit to WIC's Douglas Compressor Station; and
- Increasing the capacity of WIC's Medicine Bow measurement facilities at the Douglas Compressor Station and the Spearpoint measurement facilities at the Cheyenne Compressor Station.

The proposed facilities would allow WIC to increase capacity along this portion of its system from 380 million decatherms per day (MDth/d) of natural gas to 1,055 MDth/d. The loop would transport coal bed methane produced in the Power River Basin south to WIC's existing mainline.

The general location of WIC's facilities is shown on the map attached as appendix 1.[3]

Land Requirements for Construction

Construction of WIC's proposed facilities would affect a total of about 2,684 acres of land. Following construction, about 939 acres would be retained as permanent right-of-way. The remaining 1,745 acres of temporary work space would be restored and allowed to revert to its former use.

The nominal construction right-of-way for the loop would be 100 feet wide, with 50 feet retained as permanent right-of-way. About 87 percent of the route of the loop would abut or overlap existing easements, including the permanent right-of-way for WIC's existing 24-inch-diameter lateral and adjacent power line rights-of-way. The loop would deviate away from existing rights-of-way in multiple segments, totaling 36 miles, because of terrain constraints, landowner requests, or to avoid impacts on sensitive environmental areas, such as the Oregon Trail.

The proposed aboveground facilities would consist of a new compressor unit, to be contained within an extension of the existing compressor building at WIC's Douglas Compressor Station. Construction for this new unit would disturb about 8 acres, of which 4 acres would be required for operation of the facility. The Medicine Bow and Spearpoint measurement facilities would be expanded within the existing yards for the Douglas and Cheyenne Compressor Stations, respectively, with about 1 acre of land disturbed by construction, but no additional land required for operation. New pig launcher and receiver facilities would be installed within the Douglas and Cheyenne Compressor Station yards, and within the permanent right-of-way at Block Valve No. 7. Eight other new block valves would be installed within the permanent right-of-way for the pipeline.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [4] to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by WIC. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils.

—Shallow topsoil depth
—Erosion prone soils

- Water Resources and Wetlands.

—Crossing 26 perennial and 27 intermmittent streams
—Crossing 62 wetlands

- Vegetation and Wildlife.

—Crossing 1.5 miles of forest

[2] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through the pipeline system.

[3] The appendices referenced in this notice are not being printed in the *Federal Register*. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and File Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] ''Us,'' ''we,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

—Potential impacts on cold water fisheries

• Threatened and Endangered Species

—Potential impacts on 4 federally listed species, including the Bald eagle, Black-footed ferret, Preble's meadow jumping mouse, and Ute ladies'-tresses

• Cultural Resources

—Potential impacts on 72 cultural resources, including the Oregon Trail

—Native American concerns

• Land Use

—Impacts on about 21 miles of public lands

—Impacts on about 133 miles of rangeland

• Air and Noise Quality

—Impacts on local air quality and noise environment as a result of the addition of the new compressor unit

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of the Gas/Hydro Group, PJ–11.3;

• Reference Docket No. CP00–471–000; and

• Mail your comments so that they will be received in Washington, DC on or before December 8, 2000. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

(If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be removed from the environmental mailing list.)

Public Scoping Meetings and Site Visit

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings the FERC will conduct in the project area. The locations and times for these meetings are listed below.

Monday, December 4, 2000, 7 pm: Best Western Hitching Post Inn, Rm. CCR East, 1700 W. Lincolnway, Cheyenne, WY 82001, (307) 638–3301

Tuesday, December 5, 2000, 7 pm: 4H Community Bldg., Platte County Fairgrounds, 59 Antelope Gap Rd., Wheatland, WY 82201, (307) 322–9504

Wednesday, December 6, 2000, 7 pm: Best Western Douglas Inn, Riverbend Ballroom, 1450 Riverbend Rd., Douglas, WY 82633, 307–358–9790

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. WIC representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EA. A transcript of each meeting will be made so that your comments will be accurately recorded.

On December 4, 5, and 6, 2000, we will also be conducting a site visit to the project area. This would be an on-the-ground inspection, conducted by automobile on public roads, or where access to private property has been granted (specific locations to be determined later). Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs identified at the end of this notice for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 15 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–28471 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 1, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use of Project Lands

b. *Project No.*: P–1494–218

c. *Date Filed*: October 3, 2000

d. *Applicant*: Grand River Dam Authority

e. *Name of Project*: Pensacola Project

f. *Location*: The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact*: Bob Sullivan, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact*: Shannon Dunn at *shannon.dunn@ferc.fed.us*, or telephone (202) 208–0853.

j. *Deadline for filing comments, motions, or protests*: December 3, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P:–1494–218) on any comments or motions filed. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

k. *Description of Project*: Grand River Dam Authority, licensee for the Pensacola Project, requests approval to grant permission to The Queens, LLC to dredge approximately 76,000 cubic yards of material to increase water depth for riverboats and for future installation of docks. The proposed projects is on Grand Lake in section 22, Township 25 North, Range 23 East, Delaware County.

l. *Locations of the application*: A copy of the application is available for inspection and reduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'',''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–28467 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To Surrender License

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No.:* P–1986–010.

c. *Date Filed:* September 29, 2000.

d. *Applicant:* Oregon Trail Electric Consumers Cooperative, Inc. (Oregon Trail).

e. *Name of Project:* Rock Creek Hydroelectric Project.

f. *Location:* The project is located on Rock Creek, a tributary of the Powder River, in Baker County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Justice, Oregon Trail Electric Consumers Cooperative, Inc., 4005 23rd Street, Baker City, Oregon 97814.

i. *FERC Contact:* Shannon Dunn at *shannon.dunn@ferc.fed.us,* or telephone (202) 208–0853.

j. *Deadline for filing comments, motions, or protests:* December 3, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–1986–010) on any comments or motions filed. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

k. *Description of Project:* Oregon Trail requests to surrender its license for the Rock Creek Hydroelectric Project No. 1986. The project consists of: (a) a five-foot-tall, 70-foot-long concrete diversion dam/intake structure on Rock Creek; (b) an 8,800-foot-long wooden flume; (c) a 15-foot-tall, 500-foot-long earthfill dam; (d) a 2,720-foot-long penstock; (e) a powerhouse containing two 400 kW generators; (f) a tailrace returning flows to Rock Creek; and appurtenant facilities.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies

provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–28468 Filed 11–6–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00688; FRL–6754–7]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to an assessment of scientific information concerning Starlink corn. The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on November 28 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Rosslyn Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209. The telephone number for the Holiday Inn Rosslyn Hotel is (703) 807–2000.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your request must identify docket control number OPP–00688 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Designated Federal Official, Office of Science Coordination and Policy, (7101C), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons interested in biotechnology and food plus issues related to the evaluation of allergens. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically.* A meeting agenda is currently available; EPA's primary background documents should be available the week of November 6, 2000. In addition, the Agency may provide additional documents as the material becomes available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the **''Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr.

To access information about the meeting go directly to the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap and select **Federal Register** notice announcing this meeting.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00688. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to Starlink corn, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional documents as the material becomes available. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy. Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in This Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00688 in the subject line on the first page of your request. Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advance written request to the person listed under **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc.). There is no limit on the extent of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements at the meeting should contact the person listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies of their presentation and/or remarks to the Panel. The

Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: ''opp-docket@epa.gov.'' Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00688. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

On October 25, 2000, Aventis CropScience USA, LP (Aventis) submitted new information in support of its petition (PP 9F5050) (PF–867B) for an exemption from the requirement of a tolerance for the genetically engineered ''plant-pesticide'' in StarLink corn plant-pesticide in *Bacillus thuringiensis* subsp. *tolworthi* Cry9c protein and the genetic material (DNA) necessary for the production of this protein. While the original petition requested an exemption covering both the DNA and Cry9C protein in all food commodities, this submission limits the request only to foods made from StarLink corn. The Aventis submission specifically addresses the potential allergenicity of the Cry9C protein that may be present in human food made from StarLink corn, a line of genetically modified corn developed by Aventis.

On October 31, 2000, EPA issued a Notice in the **Federal Register** announcing receipt of the Aventis submission and the opportunity for the public to comment on the submission (65 FR 65245) (FRL–6754–3). This notice also indicated that EPA intended to hold a public meeting of a group of external independent scientists to conduct a peer review of scientific issues raised by the Aventis submission.

Today's notice announces the date, location and purpose of that public meeting, topics for discussion and provides additional information of the procedures that will be used in this meeting. This will be a 1–day meeting of the FIFRA Scientific Advisory Panel. The purpose of this FIFRA SAP meeting is to consider the potential allergenicity, sensitization and dietary exposure of Starlink corn.

B. Panel Report

The Agency anticipates that the Panel's report of their recommendations will be available as soon as possible but no later than December 1, 2000. The Panel's report will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of this document.

List of Subjects

Environmental protection.

Dated: November 3, 2000.

Steven K. Galson,

Director, Office of Science Coordination and Policy, Office of Prevention, Pesticides, and Toxic Substances.

[FR Doc. 00–28643 Filed 11–3–00; 12:07 p.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6897–9]

Notice of Availability for Draft EPA Guidelines for Management of Onsite/ Decentralized Wastewater Systems and Guidance Manual Outline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The EPA published a document in the **Federal Register** on October 6, 2000, concerning a request for comments on the draft EPA Guidelines for Management of Onsite/ Decentralized Wastewater Systems and Guidance Manual Outline. The document contained an incorrect signature block title.

FOR FURTHER INFORMATION CONTACT: Joyce Hudson, 202–260–1290.

Correction

In the **Federal Register** of October 6, 2000, 65 FR 59841, in the first column, correct the signature block title for J. Charles Fox to read:

J. Charles Fox,

Assistant Administrator for Office of Water.

Dated: October 26, 2000.

J. Charles Fox,

Assistant Administrator for Office of Water.

[FR Doc. 00–28517 Filed 11–6–00; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 9, 2000, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

1. Approval of Minutes

October 12, 2000 (Open and Closed)

2. Report

Report on Corporate Approvals

3. New Business

A. Other

Corporate and Chartering Approvals

B. ACA Restructures

AgChoice Farm Credit, ACA

Carolina Farm Credit, ACA

Central Kentucky Agricultural Credit Association

Farm Credit of Southwest Florida, ACA

Closed Session*

4. Report

OSMO Report

Dated: November 2, 2000.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–28644 Filed 11–3–00; 2:22 pm]

BILLING CODE 6705–02–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–31–I (Auction No. 31); DA 00–2404]

Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for March 6, 2001; Comment Sought on Modifying the Calculation for Determining Minimum Accepted Bids and Changing the Provisions Concerning ''Last and Best'' Bids

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on modifying the calculation for determining minimum accepted bids and changing the provisions concerning ''last and best'' bids.

DATES: Comments are due on or before November 15, 2000, and reply comments are due on or before November 22, 2000.

ADDRESSES: An original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., TW–A325, Washington, DC 20054.

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FOR FURTHER INFORMATION CONTACT:

Walter D. Strack, Bureau Chief Economist, Wireless Telecommunications Bureau, (202) 418–0600;

Evan Kwerel, Senior Economist, Office of Plans and Policy, (202) 418–2030;

Howard Davenport, Auctions Attorney; Craig Bomberger, Auctions Analyst; or Karen Wrege, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released November 2, 2000. The complete text of the public notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036; (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov.

I. General

1. On July 3, 2000, the Wireless Telecommunications Bureau (''Bureau'') announced the procedures for implementing package bidding for Auction No. 31. *See Auction No. 31 Package Bidding Procedures Public Notice,* 65 FR 43361 (July 13, 2000). After further analysis and testing, we have determined that it may be appropriate to make further refinements: (i) To the calculation for determining minimum accepted bids; and (ii) to the provisions that allow a bidder that wishes to drop out of the auction to have an opportunity to make ''last and best'' bids on licenses and packages.

II. Calculation for Determining Minimum Accepted Bid

2. With regard to determining minimum accepted bids, we adopted the following three-part calculation: The minimum accepted bid for any license or package will be the greatest of: (i) The minimum opening bid; (ii) the bidder's own previous high bid on that package plus x%, where the Bureau will specify the value of x in each round; or (iii) the number of bidding units for the license or package multiplied by the lowest $/bidding unit on any provisionally winning package in the last five rounds.

3. We initially adopted part (iii) of the formula so that bids have a reasonable chance of becoming part of the provisionally winning set and because it was simple to implement for the then-scheduled auction date of September 6, 2000. Based on our initial experimental testing, we are concerned that part (iii) of the minimum accepted bid formula may not be sufficiently refined to discourage parking strategies, which could excessively delay the completion of the auction.

4. Several commenters responding to the *Auction No. 31 Package Bidding Comment Public Notice,* 65 FR 35636 (June 5, 2000) suggested an alternative approach to determining minimum accepted bid amounts, which they claimed would be more likely to ensure serious bids and help address the threshold problem. This approach would allocate among non-provisionally winning bids the total increase in revenue needed to tie the provisional winners. One of the commenters, Paul Milgrom, defines the ''shortfall'' associated with a license or package as the difference between the revenue of the provisionally winning bid set and the maximum total revenue associated with the set of bids that includes that particular license or package. He defines the ''deficit'' for the license or package as the shortfall multiplied by that package or license's proportion of the [non-provisionally winning] bidding units. In other words, the deficit is an allocation of the shortfall to the particular license or package in proportion to its share of bidding units relative to those associated with bids that were not part of the provisionally winning set, but are part of the set that maximizes revenue when including the particular license or package. Milgrom suggests that the minimum acceptable bid should be the greater of 50% of the deficit or the bidder's own previous high bid on that package plus x%. Alternatively, Pekec and Rothkopf propose allocating the shortfall in proportion to the bid amounts instead of the bidding units. Pekec and Rothkopf would permit bids at less than this amount but would only give activity credit for such a bid if it was the highest bid for that license or package.

5. We propose to replace part (iii) of the minimum accepted bid formula with a percentage of the deficit as defined by Milgrom because it better approximates the amount of a bid that could become part of the provisionally winning set. We propose to set the percentage initially at 100 percent. We would retain the discretion to adjust the percentage of the deficit during the course of the auction to provide control over the pace of the auction. We believe that allocating the shortfall according to bidding units as opposed to bid amounts reduces the risk that bidders might attempt to bid up the prices of licenses or packages they do not wish to

acquire in order to increase the share of the shortfall allocated to those licenses or packages. We seek comment on this proposal.

6. To account for the possibility that there can be more than one set of bids that yields the same shortfall for a given bid, we propose to choose the shortfall set that includes the most provisionally winning bidding units. Once such a shortfall set is determined, the deficit for the bid of interest is determined by multiplying the shortfall by the ratio of bidding units associated with the bid to the total non-provisionally winning bidding units in the set. This approach is likely to produce new bids with a realistic chance of becoming part of the provisionally winning set because it does not allocate any of the shortfall to provisional winners or to bids that were simple ties with provisionally winning bids but not chosen as provisional winners.

7. To illustrate the proposed new method for calculating part (iii) of the minimum accepted bid formula, consider the following example: Suppose that in round x the provisionally winning set is a set of two packages: one nationwide package of the 10 MHz licenses and another nationwide package of the 20 MHz licenses. The revenue for this set is $500,000,000.

Suppose that the last time Bidder A bid on the Northeast 10 MHz license was in round y when he made a bid of $30,000,000. To determine the minimum accepted bid amount in round x+1 for Bidder A for the Northeast 10 MHz license, we begin by calculating the shortfall for that license. This is calculated by forcing Bidder A's $30,000,000 bid from round y into the solution set for round x, allowing that bid to partner with all other bids by Bidder A in the considered bid set from round y, and making it mutually exclusive with all of Bidder A's bids not in round y. Assume that the maximum revenue obtained by forcing this bid into the solution set is $400,000,000. Therefore, the shortfall for this bid is $100,000,000 ($500,000,000 − $400,000,000).

Next, to address the possibility of multiple shortfall sets, we solve an optimization problem that maximizes the number of provisionally winning bidding units from round x in the shortfall set with the added constraints that the maximum revenue equals $400,000,000 and that Bidder A's bid on the 10 MHz license must be in the solution. Suppose that the solution set for this optimization problem includes, in addition to Bidder A's 10 MHz Northeast license, the package of nationwide 20 MHz licenses that was in the provisionally winning set, and one or more other packages making up the remaining five 10 MHz licenses. Since provisionally winning bids have no shortfall, we would allocate the shortfall only among those bids in the shortfall set that are not in the provisionally winning set.

The total bidding units from non-provisionally winning bids is 6 × 14,000,000 = 84,000,000 bidding units. Since Bidder A's bid has 14,000,000 of the 84,000,000 bidding units, 14,000,000/84,000,000, or 1/6, the shortfall would be allocated to Bidder A's bid on the Northeast 10 MHz license. Thus, the minimum accepted bid increment for Bidder A's bid using this calculation would be $100,000,000/6 = $16,667,000 (rounded to the nearest thousand), making part (iii) of the new minimum accepted bid for this license $46,667,000 for Bidder A ($16,667,000 + $30,000,000 (Bidder A's previous bid)).

Part (i) of the minimum accepted bid formula would be the minimum opening bid for this license ($14,000,000), and part (ii) would be x% more than this bidder's previous bid amount (assuming x = 10, $33,000,000). Part (iii) yields the maximum value among the three alternatives; accordingly, Bidder A's minimum accepted bid for this license in the next round would be $46,667,000.

8. We propose an exception to the modified minimum accepted bid formula for new packages. For operational considerations (running the optimization solver only between rounds), we propose that part (iii) of the formula for the initial minimum accepted bid for a new package created during the auction will continue to be calculated by multiplying the number of bidding units in the package by the lowest $/bidding unit of any provisionally winning bid in the last five rounds.

This exception will not apply to bids for the global package, however. In that case we will apply the three-part calculation as modified herein because the shortfall and deficit are so simple to calculate. Because a bid for the global package could never become a provisional winner unless it equals the maximum revenue from the previous round, we propose that the initial minimum accepted bid of a global package will be a percentage of the maximum revenue from the previous round. We seek comment on this proposal.

III. ''Last and Best'' Bids

9. In the *Auction No. 31 Package Bidding Procedures Public Notice,* we adopted a procedure by which bidders that wish to drop out of the auction would have the opportunity before they drop out to make a ''last and best'' bid on any license or package for which they remain eligible. We adopted this procedure in part to allow bidders to bid the maximum amount they are willing to pay for a package regardless of how the Commission sets the minimum accepted bid.

We propose to modify this procedure to allow bidders to pursue contingent bidding strategies. In mock auctions we conducted for software testing, there were bidders who wanted to provide a ''last and best'' bid on every license or package they wanted but did not have the opportunity to do so because some of their bids were mutually exclusive. Allowing two rounds of ''last and best'' bids would give bidders this flexibility.

Specifically, we propose to allow bidders to make two sets of mutually exclusive last and best bids. In determining the provisionally winning bid(s), the round solver would consider these two sets of mutually exclusive bids, as well as any of the bidder's bids that remain in the provisionally winning set. The bidder who chooses this option would not be permitted to make any further bids during the auction. We seek comment on this proposal to modify the ''last and best'' bid procedures.

IV. Filing Comments

10. Comments should refer to the DA number on this *Public Notice*, DA 00–2404. *See* 47 CFR 1.51(c). In addition, one copy of each comment must be delivered to each of the following locations:

(1) the Commission's duplicating contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, N.W., Washington, DC 20036;

(2) Office of Media Relations, Public Reference Center, 445 Twelfth Street, S.W., CY–A257, Washington, DC 20554;

(3) Rana Shuler, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 445 Twelfth Street, S.W., 4–A628, Washington, DC 20554.

Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, CY-A257, 445 12th Street, S.W., Washington, DC 20554.

11. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47

CFR 1.1200(a), 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–28608 Filed 11–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

November 2, 2000.

Open Commission Meeting, Thursday, November 9, 2000

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 9, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Common Carrier	Title: 2000 Biennial Regulatory Review—Telecommunications Service Quality Reporting Requirements. Summary: The Commission will consider a Notice of Proposed Rule Making concerning measures to streamline and reform its service quality monitoring program.
2	Common Carrier	Title: 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations (CC Docket No. 99–216). Summary: The Commission will consider a Report and Order concerning streamlining and privatizing the detailed regulations in Part 68 of the rules relating to the attachment of terminal equipment to the public switched telephone network.
3	Wireless Telecommunications and Office of Engineering and Technology.	Title: Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets. Summary: The Commission will consider a Notice of Proposed Rule Making concerning the promotion of secondary market mechanisms to facilitate efficient use of wireless spectrum in the public interest.
4	Office of Engineering and Technology and Wireless Telecommunications.	Title: Principles for Encouraging the Development of Secondary Markets for Spectrum. Summary: The Commission will consider a Policy Statement setting forth guiding principles for the promotion of secondary market mechanisms to facilitate efficient use of wireless spectrum in the public interest.
5	Wireless Telecommunications ..	Title: Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended (WT Docket No. 99–87); Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies (RM–9332); Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz (RM–9405); and Petition for Rule Making of The American Mobile Telecommunications Association (RM–9705). Summary: The Commission will consider a Report and Order and Further Notice of Proposed Rule Making regarding the Balanced Budget Act of 1997's statutory revisions to section 309(j) of the Communications Act of 1934, as amended, which governs the Commission's competitive bidding authority, and certain Petitions for Rule Making proposing revisions to the licensing rules for the public safety and private radio services.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsdocs.com/.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–28605 Filed 11–3–00; 11:25 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, November 7, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8),

(c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's receivership and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: November 3, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–28604 Filed 11–3–00; 11:21 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1347–DR]

Arizona; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA–1347–DR), dated October 27, 2000, and related determinations.

EFFECTIVE DATE: October 27, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 27, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Arizona, resulting from severe storms and flooding beginning on October 21, 2000 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Arizona.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The State Emergency Management Agency (SEMA) will manage the Public Assistance operation, including project eligibility reviews, process control, and resource allocation. FEMA will retain obligation authority, the final approval of environmental and historic preservation reviews, and will assist SEMA to the extent that such assistance is necessary and is specifically requested by SEMA.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Fukutomi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arizona to have been affected adversely by this declared major disaster:

La Paz and Maricopa Counties for Individual Assistance.

Cochise, La Paz, and Santa Cruz Counties for Public Assistance.

All counties within the State of Arizona are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–28489 Filed 11–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1346–DR]

Michigan; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Michigan (FEMA–1346–DR), dated October 17, 2000, and related determinations.

EFFECTIVE DATE: October 17, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 17, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Michigan, resulting from severe storms and flooding on September 10–11, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Michigan.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later determined to be warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of

the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Suzanne Schmitt of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Michigan to have been affected adversely by this declared major disaster:

Wayne County for Individual Assistance.

All counties within the State of Michigan are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–28490 Filed 11–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1346–DR]

Michigan; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Michigan, (FEMA–1346–DR), dated October 17, 2000, and related determinations.

EFFECTIVE DATE: October 27, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Michigan is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 17, 2000:

Oakland County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–28491 Filed 11–6–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. William Elton Kennedy, MerRouge, Louisiana, and William Edward Pratt, Bastrop, Louisiana; both to acquire voting shares of American National Bancshares, Inc., Ruston, Louisiana, and thereby indirectly acquire voting shares of American Bank of Ruston, N.A., Ruston, Louisiana.

Board of Governors of the Federal Reserve System, November 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28530 Filed 11–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 1, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Innes Street Financial Corporation, Salisbury, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank, Inc. (also known as Citizens Bank, FSB), Salisbury, North Carolina, upon the conversion of Citizens Bank FSB.

B. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Firstrust Corporation, New Orleans, Louisiana; to acquire 100 percent of the voting shares of Metro Bank, Kenner, Louisiana.

2. PAB Bankshares, Inc., Valdosta, Georgia; to acquire 100 percent of the

voting shares of FCB Interim Bank, Ocala, Florida.

Board of Governors of the Federal Reserve System, November 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28531 Filed 11–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 22, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Covenant Bancgroup, Inc., Leeds, Alabama; to engage *de novo* through its subsidiary, Raymond James Financial Services, St. Petersburg, Florida, in agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, November 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–28529 Filed 11–6–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1563]

Draft Guidance for Industry on Carcinogenicity Study Protocol Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Carcinogenicity Study Protocol Submissions.'' This document is intended to provide guidance on the types of information the Center for Drug Evaluation and Research relies on when evaluating protocols for animal carcinogenicity studies.

DATES: Submit written comments on the draft guidance by February 5, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5476.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Carcinogenicity Study Protocol Submissions.'' The draft guidance describes the kind of information the agency relies on when evaluating special protocols for animal carcinogenicity studies.

The Prescription Drug User Fee Act of 1992 (PDUFA) was reauthorized in November 1997 (PDUFA 2). In conjunction with PDUFA 2, FDA agreed to specific performance goals (PDUFA goals) for activities associated with the development and review of products in human drug applications as defined in section 735(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g(1)). The PDUFA goals for special protocol assessment and agreement provide that, upon request, FDA will evaluate within 45 days certain protocols and issues relating to the protocols to assess whether they are adequate to meet scientific and regulatory requirements identified by the sponsor. Protocols for animal carcinogenicity studies are eligible for this special protocol assessment. This draft guidance is intended to facilitate the agency's review of animal carcinogenicity study protocols.

This draft guidance is being issued consistent with FDA's good guidance practices (65 FR 56468, September 19, 2000). The draft guidance represents the agency's current thinking on carcinogenicity study protocol submissions. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28521 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0790]

Final Guidance for Industry: The Use of Published Literature in Support of New Animal Drug Approval; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#106) entitled ''The Use of Published Literature in Support of New Animal Drug Approval.'' The final guidance is intended to fulfill the section of the FDA Modernization Act of 1997 (FDAMA) that requires the agency to issue guidance to clarify the circumstances in which published matter may be the basis for approval of a supplemental application. The final guidance also clarifies the circumstances in which published literature may be the basis for approval of an original application. The final guidance is intended to provide specific advice on when FDA may be able to rely on published literature, with or without the submission of underlying data, to support new animal drug approvals.

DATES: Submit written comments at any time.

ADDRESSES: Submit written requests for single copies of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on this final guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the final guidance may be obtained on the Internet at *http://www.fda.gov/cvm/fda/TOCs/guideline.html.*

FOR FURTHER INFORMATION CONTACT: Gail L. Schmerfeld, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20850, 301–594–1620, e-mail: *gschmer1@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 19, 2000 (65 FR 20997), FDA published the draft guidance entitled ''The Use of Published Literature in Support of New Animal Drug Approval'' giving interested persons until July 18, 2000, to submit comments. No comments were received.

Section 403(b) of FDAMA (Public Law 105–115) requires FDA to issue guidances to clarify the requirements for, and facilitate the submission of data to support, the approval of supplemental applications for articles approved under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) or section 351 of the Public Health Service Act (42 U.S.C. 262). This provision includes a requirement that FDA publish guidance to clarify circumstances in which published matter may be the basis for approval of a supplemental application.

This final guidance for industry clarifies the circumstances in which published literature may be the basis for approval of both original and supplemental new animal drug applications. Specifically, the final guidance describes the circumstances under which FDA could rely on published literature without access to the underlying data and the circumstances under which the applicant should provide additional information about a published study.

II. Significance of Guidance

This final guidance represents the agency's current thinking with regard to the use of published literature in support of new animal drug approval. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of the applicable statutes and regulations. The agency has developed this final guidance in accordance with the agency's good guidance practices published in the **Federal Register** of September 19, 2000 (65 FR 56468), which set forth the policies and procedures for the development, issuance, and use of guidance documents.

III. Comments

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. FDA will periodically review the comments in the docket and, where appropriate, will amend the guidance. The public will be notified of any such amendments through a notice in the **Federal Register**.

Dated: October 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–28448 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Children's Hospital Graduate Medical Education Program (OMB No. 0915–0247)

Public Law 106–129 amended the Public Health Service Act to provide for the support of graduate medical education (GME) in children's hospitals. The provision authorizes payments for direct and indirect expenses associated with operating approved GME programs. Section 340E(c)(1) of the PHS Act, as amended, states that the amount determined under this subsection for payments for direct medical expenses for a fiscal year is equal to the product of (a) the updated per resident amount as determined, and (b) the average number of FTE residents in the hospital's approved graduate medical residency training programs as determined under section 1886(h)(4) of the Social Security Act during the fiscal year. Section 340E(d)(2) requires the Secretary to determine the appropriate amount of indirect medical education for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs to a children's hospital by considering variations in case mix among children's hospitals, and the hospitals' number of FTE residents in approved training programs.

Administration of the Children's Hospital Graduate Medical Education

Program relies on the reporting of the number of full-time equivalent residents in applicant children's hospital training programs to determine the amount of direct and indirect expense payments to participating children's hospitals. Indirect expense payments will also be derived from a formula that requires the reporting of case mix index information from participating children's hospitals.

Hospitals will be requested to submit such information in an annual application. The statute also requires reconciliation of the estimated numbers of residents with the actual number determined at the end of the fiscal year. Participating children's hospitals would be required to complete an adjusted report to correct such information on an annual basis.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Form name	Number of respondents	Responses per respondents	Total responses	Hrs. per response	Total hour burden	Wage rate ($/hr)	Total hour cost ($)
HRSA–99–1:	54	1	54	99.9	5,395	45	242,775
(Annual)	54	1	54	8	432	45	19,440
(Reconciliation).							
HRSA–99–2 (IME)	54	1	54	14	756	45	34,020
HRSA–99–4 Required							
GPRA Tables	54	1	54	28	1,512	45	68,040
Total	54	.....	54	.....	8,095		364,275

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, 725 17th St., NW., New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 31, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–28449 Filed 11–06–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Health Service Corps (NHSC) Scholarship Program Deferment Request Forms and Associated Reporting Requirements (OMB No. 0915–0179)—Revision

The National Health Service Corps (NHSC) Scholarship Program was established to assure an adequate supply of trained primary care health professionals to the neediest communities in the Health Professional Shortage Areas (HPSAs) of the United States. Under the program, allopathic physicians, osteopathic physicians, dentists, nurse practitioners, nurse midwives, physician assistants, and, if needed by the NHSC program, students of other health professionals are offered the opportunity to enter into a contractual agreement with the Secretary under which the Public Health Service agrees to pay the total school tuition, required fees and a stipend for living expenses. In exchange, the scholarship recipient agrees to provide full-time clinical services at a site in a federally designated HPSA.

Once the scholars have met their academic requirements, the law requires that individuals receiving a degree from a school of medicine, osteopathic medicine or dentistry be allowed to defer their service obligation for a maximum of 3 years to complete approved internship, residency or other advanced clinical training. The Deferment Request Form provides the information necessary for considering the period and type of training for which deferment of the service obligation will be approved.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Deferment Request Forms	600	1	1	600
Letters of Intent and Request	100	1	1	100
Total	700			700

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 31, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–28450 Filed 11–06–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Health Service Corps (NHSC) Scholarship Program In-School Worksheets (New)

The National Health Service Corps (NHSC) Scholarship Program was established to help alleviate the geographical and specialty maldistribution of physicians and other health practitioners in the United States. Under this program, health professional students are offered scholarships in return for services in a federally-designated Health Professional Shortage Area (HPSA). If awarded an NHSC Scholarship, the Program requires the schools and the awardees to review and complete data collection worksheets for each year that the student is a NHSC Scholar.

The Data Sheet requests that the NHSC Scholar review the form for the accuracy of information such as social security number, contact information, current curriculum, and date of graduation. If the information is inaccurate, the scholar makes the necessary changes directly on the form. If the inaccurate information pertains to the curriculum or date of graduation, the scholar will make changes directly on the form and include written notification from the school.

The Verification Sheet is sent to the school along with a list of the NHSC scholars who are enrolled for the current academic year. The schools verify and/or correct the enrollment status of each of the scholars on the list.

The Contact Sheet requests contact information for pertinent school officials. This information is used by the NHSC Scholarship Program for future contacts with the schools.

The estimated burden is as follows:

Form name	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Data Sheet	800	1	10 mins	134
Verification Sheet	300	1	10 mins	50
Contact Sheet	550	1	10 mins	92
Total	1,350			276

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 1, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–28525 Filed 11–6–00; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: An Evaluation of PASRR and Mental Health Services for Persons in Nursing Facilities—New

SAMHSA's Center for Mental Health Services is sponsoring an assessment of the effectiveness of the Preadmission Screening and Resident Review (PASRR) program, which is a required component of every State's Medicaid plan. Data will be collected from administrators and staff in 24 nursing facilities in four states (six facilities per state). In addition, data will be collected from a total of 100 residents of nursing facilities in two of the states. Data collection for this evaluation will be conducted over a 4-month period.

Nursing facility variables of interest include the following: availability of mental health services; change in condition procedures; alternative placement procedures; and experience with PASRR. Variables of interest for the nursing facility residents include: mental health symptomotology, functioning, and mental health service access. Data will be entered and managed electronically. The total estimated respondent burden is summarized in the table below.

Respondent	Number of respondents	Responses/ respondent	Average burden/response (hrs.)	Total burden (hrs.)
Nursing Facility Residents	100	1	.5	50
Nursing Facility Administrators	24	1	1	24
Nursing Facility Staff	48	1	1	48
Total	172			122

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 31, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–28476 Filed 11–6–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Ballast Water and Shipping Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces a meeting of the Ballast Water and Shipping Committee of the Aquatic Nuisance Species Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION:**

DATES: The Committee will meet from 9 a.m. to 4 p.m., Tuesday, November 21, 2000.

ADDRESSES: The meeting will be held at the National Oceanic Atmospheric Administration (NOAA) complex, SSMC–II, Room 2358, 1305 East West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: LT Mary Pat McKeown, U.S. Coast Guard, Chair, Ballast Water and Shipping Committee, at 202–267–0500 or by email at mmckeown@comdt.uscg.mil or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: sharon_gross@fws.gov

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Ballast Water and Shipping Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741). Topics to be addressed at this meeting include: continued discussion on the development of standards for ballast water; discussion on membership of the committee including addition of new members; and discussion and recommendations for committee vision and goals.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and the Chair of the Ballast Water and Shipping Committee at the Environmental Standards Division, Office of Operations and Environmental Standards, U.S. Coast Guard (G–MSO–4), 2100 Second Street, SW, room 1309, Washington, DC 20593–0001. Minutes for the meetings will be available at these locations for public inspection during regular business hours, Monday through Friday.

Dated: November 2, 2000.

Cathleen I. Short,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 00–28508 Filed 11–6–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR section 1501.4 and section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Amoco Pipeline Company, Pipeline Activity, SEA No. P–12255 (G–21277).	Viosca Knoll, Block 823, Lease OCS–G 21277, 55 to 80 miles offshore Pascagoula, Mississippi.	09/20/00
CXY Energy Offshore, Inc., Exploration Activity, SEA No. N–6849.	Viosca Knoll Area, Block 565, Lease OCS–21154, 53 miles south of Baldwin County, Alabama.	09/01/00
Chevron U.S.A., Development Activity, SEA No. R–3490	Viosca Knoll Area, Blocks 251, 252, and 208; Leases OCS–G 10930, 13982, and 13981, 30 miles south of Mobile County, Alabama.	10/05/00
Murphy Exploration and Production Company, Exploration Activity, SEA No. R–3470.	South Timbalier Area, Block 86, Lease OCS–G 0605, 25 miles from the nearest coastline.	8/09/00
Chevron U.S.A., Development Activity, SEA No. R–3454	Destin Dome Area, Blocks 1 and 2, Leases OCS–G 6397 and 6398, 18 miles south of Baldwin County, Alabama.	10/12/00
Murphy Exploration and Production Company, Exploration Activity, SEA No. S–5236.	South Timbalier Area, Block 86, Lease OCS–G 0605, 25 miles from the nearest shoreline.	07/10/00

Activity/operator	Location	Date
Newfield Exploration Company, Structure Removal Activity, SEA No. ES/SR 00–102.	East Cameron Area, Block 45, Lease OCS–G 3287, 20 miles south/southeast of Grand Chenier, Louisiana.	07/10/00
Murphy Exploration and Production Company, Structure Removal Activity, SEA No. ES/SR 00–103.	Ship Shoal Area, Block 134, Lease OCS–G 5201, 39 miles southwest of Cocodrie, Louisiana.	07/28/00
Murphy Exploration and Production Company, Structure Removal Activity, SEA No. ES/SR 00–104.	Ship Shoal Area, Block 135, Lease OCS–G 3164, 60 miles southwest of Cocodrie, Louisiana.	07/28/00
ATP Oil and Gas Corporation, Structure Removal Activity, SEA No. ES/SR 00–105.	West Cameron Area, Block 425, Lease OCS–G 11796, 74 miles south of Cameron Parish, Louisiana.	07/27/00
Shell Offshore, Inc., Structure Removal Activity, SEA Nos. ES/SR 00–106 through 00–111.	High Island Area, Blocks 135, 160, and 119; Leases OCS–G 0741, 0743, and 14882; 25 to 26 miles south of Jefferson County, Texas.	08/03/00
Shell Offshore, Inc., Structure Removal Activity, SEA Nos. ES/SR 00–112 and 00–113.	High Island Area, Blocks 136 and 161, Leases OCS–G 0742 and 0744, 24 to 26 miles from the Texas coastline.	08/01/00
Basin Exploration, Inc., Structure Removal Activity, SEA No. ES/SR 00–114.	West Cameron Area, Block 45, Lease OCS–G 0300, 6 miles south of Cameron Parish, Louisiana.	08/04/00
Chevron U.S.A., Structure Removal Activity, SEA No. ES/SR 00–115.	South Timbalier Area, Block 52, Lease OCS–G 1241, 14 miles south of Terrebonne Parish, Louisiana.	08/11/00
Kerr-McGee Oil and Gas Corporation, Structure Removal Activity, SEA Nos. ES/SR 00–116 through 00–118.	Ship Shoal Area, Block 28, Lease OCS–G 0346, 8 miles south of Terrebonne Parish, Louisiana.	08/21/00
Chevron U.S.A., Structure Removal Activity, SEA No. ES/SR 00–119.	South Marsh Island Area, Block 60, OCS–G 3145, 55 miles south of Iberia Parish, Louisiana.	08/29/00
Chevron U.S.A., Structure Removal Activity, SEA No. ES/SR 00–120.	Viosca Knoll Area, Block 70, Lease OCS–G 16532, 22 miles south of Jackson County Mississippi.	09/06/00
El Paso Production, Structure Removal Activity, SEA No. ES/SR 00–121.	East Cameron Area, Block 280,Lease OCS–G 13590, 84 miles south of Cameron Parish, Louisiana.	09/07/00
AGIP Petroleum Co. Inc., Structure Removal Activity, ES/SR 00–122.	South Marsh Island Area, Block 250, Lease OCS–G 12901, 15 miles south of Iberia Parish, Louisiana.	09/19/00
Ocean Energy, Inc., Structure Removal Activity, SEA No. ES/SR 00–123.	Mustang Island Area, Block 831, Lease OCS–G 3043, 29 miles east of Kleberg County, Texas.	10/04/00

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: November 1, 2000.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 00–28477 Filed 11–6–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.
(2) Roll call. Confirm quorum.
(3) Approval of summary of meeting minutes for November 15–17,1999 meeting in Fairbanks.
(4) Review agenda.
(5) Superintendent's Welcome.
(6) Introductions of Guests and Agency Staff.
(7) Review Commission Role and Purpose.
(8) Superintendent's Management and Research Update.
(9) Public and agency comments.
  a. Correspondence.
(10) Old Business.
  a. October 2000 SRC Chair's Meeting Report.
  b. Review Public Comments on the Gates of the Arctic National Park and Preserve Draft Subsistence Management Plan.
  c. Hunting Plan Recommendation 99–01 (Customary Trade)—Review public, Regional Council and Local Advisory Committee comments.
(11) New Business.
  a. Review Federal Subsistence Board and Regional Advisory Council actions.
  b. Federal Subsistence Fisheries Management Update.
  c. Western Arctic Caribou Working Group Update.
  d. SRC Work Session (Draft letters/Outreach).
(12) SRC Elections for Chair and Vice Chair.
(13) Set time and place of next SRC meeting.
(14) Adjournment.

DATES: The meeting will be held from 8:30 a.m. to 5 p.m. on Tuesday, November 14 and 8:30 a.m. to 5 p.m. on Wednesday, November 15, 2000.

LOCATION: The meeting will be held at Sophie Station Hotel, 1717 University Ave., Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Superintendent and Jeff Mow, Subsistence Manager, 201 First Avenue, Doyon Bldg., Fairbanks, Alaska 99701. Phone (907) 456–0578.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487 and operate in accordance with the provisions of the Federal Advisory Committees Act.

John Quinley,

Acting Regional Director.

[FR Doc. 00–28575 Filed 11–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Joshua Tree National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Joshua Tree National Park Advisory Commission (Commission) will be held from 10 am (PDT) until 2 pm on Friday, December 1, 2000, at the Black Rock Interagency Fire Center at 9800 Black Rock Canyon Road, Black Rock Campground, in the city of Yucca Valley, California. The Commission will hear reports by the Climbing Committee, the Park Wilderness Steering Committee, the Park Trails Program, the Park Road Construction Project, the Park FY2001 Budget and the Joshua Tree Fund.

The Commission was established by Public Law 103–433, section 107 to advise the Secretary concerning the development and implementation of a new or revised comprehensive management plan Joshua Tree National Park.

Members of the Commission include:

Mr. Chuck Bell	Planner.
Ms. Cyndie Bransford	Recreational Climbing Interest.
Ms. Marie Brashear	Mining Interest.
Mr. Gary Daigneault	Property Owner/Business Interest.
Hon. Kathy Davis	County of San Bernardino.
Mr. John Freter	Property Owner Interest.
Mr. Brian Huse	Conservation.
Mr. Julian McIntyre	Conservation.
Mr. Roger Melanson	Equestrian Interest.
Mr. Ramon Mendoza	Native American Interest.
Ms. Leslie Mouriquand	Planner.
Mr. Richard Russell	All Wheel Drive Vehicle Interest.
Ms. Lynne Shmakoff	Property Owner Interest.
Hon. Roy Wilson	County of Riverside.
Mr. Gilbert Zimmerman	Tourism.

The meeting is open to the public and will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. For copies, please contact Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, California 92277 at (760)367–5502.

Dated: October 31, 2000.

Ernest Quintana,

Superintendent.

[FR Doc. 00–28573 Filed 11–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting: The Christmas Pageant of Peace

The National Park Service is seeking public comments and suggestions on the planning of the 2000 Christmas Pageant of Peace, which opens on December 11, 2000, on the Ellipse (President's Park), south of the White House. The meeting will be held at 11 a.m. on Friday, November 17, in room 234 of the National Capital Region Building, at 1100 Ohio Drive, SW, Washington, DC (East Potomac Park).

Persons who would like to comment at the meeting should notify the National Park Service by November 15 by calling the White House Visitor Center weekdays between 9 a.m. and 4 p.m. at (202) 208–1631. Written comments may be sent to the Park Manager, White House Visitor Center, 1100 Ohio Drive, SW, Washington, DC 20252, and can be accepted until November 14.

Dated: November 1, 2000.

Stan E. Lock,

Deputy Director, White House Liaison.

[FR Doc. 00–28574 Filed 11–6–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Solano Project—Lake Berryessa; Napa, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) is initiating a formal Visitor Services Planning effort for the Lake Berryessa Recreation Area. Reclamation intends to prepare an environmental impact statement (EIS) for implementing the provisions of the plan. The purpose of the Visitor Services Plan is to determine the type and level of commercial facilities and services that are necessary and appropriate for future long term operations. The current concession contracts expire in 2009 and the Visitor Services Plan will be used as a basis for future concession prospectuses.

DATES: Formal public scoping meetings are scheduled for May 2001. Notice of the specific dates and locations of the meetings will appear at future date.

ADDRESSES: Mail comments on the existing facilities, possible issues and alternatives and requests to participate in public scoping meetings to Mr. Bruce Wadlington at the address below. You may also submit requests and comments by sending electronic mail (e-mail) to: *bwadlington@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Wadlington, Mid-Pacific Regional Concessions Manager, Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630; telephone: Folsom (916) 989–7175, Berryessa (707) 966–2111 ext. 108 (TDD (916) 989–7285).

SUPPLEMENTARY INFORMATION:

Background

Lake Berryessa was created as part of the Solano Project with the completion of Monticello Dam in 1957. In 1958, Reclamation and the County of Napa entered into an agreement for the County to assume management responsibilities for the lake. A Public Use Plan (PUP) was developed by the National Park Service in 1959 to guide Reclamation and the County in development of the recreational facilities at the lake. In 1975, Reclamation resumed direct management of Lake Berryessa as a result of Title VI of the Reclamation Development Act of October 27, 1974 (Public Law 93–493), which authorizes Reclamation to provide for the protection, use, and enjoyment of the aesthetic and recreational values at Lake Berryessa. In 1987 a new planning process began to develop an updated management document for the lake. A Reservoir Area Management Plan (RAMP) was developed to provide guidance for Reclamation in management issues which were not mentioned in the PUP and to assist Reclamation in administering the lake and concession areas. Reclamation completed a final EIS for the RAMP in 1993.

Presently there are seven (7) concessionaires authorized by Reclamation to provide commercial support services to visitors to Lake Berryessa. These concession contracts have been in effect since the late 1950's. All the contracts will expire by 2009. Reclamation also administers two day-use areas and a public launching facility, as well as numerous roadside turnouts and trails. The eastside of the lake has been designated a State Wildlife Area and is managed cooperatively by Reclamation and the California Department of Fish and Game.

Visitor Services Plan

The Visitor Services Plan will identify and develop the requirements, terms, and conditions for new competitive concession contracts that will be developed by the Federal Government. Some of the issues to be addressed in the plan include day-use needs, long-term and short-term recreational vehicle and trailer sites, campground development, marina development, consolidation or expansion of operations, new services development and construction, retention or removal of existing facilities, food and beverage service needs, overnight lodging facilities, and support for marine based activities, *i.e.,* fishing (individual and tournament), swimming, water skiing, etc.

Public Involvement and Planning Schedule

The time frame for completion of this plan is 18 to 24 months. Formal Public Scoping meetings are scheduled to be held in May 2001. The draft EIS is expected to be completed by November 2001. The final EIS is scheduled to be released in March 2002.

Anyone interested in more information concerning the plan, or who has an interest in the future development of Lake Berryessa as related to this planning effort or has suggestions as to significant environmental issues, should contact Mr. Bruce Wadlington as provided above. A web site has been established to provide additional information regarding plan progress and public comment at: *http://www.mp.usbr.gov/berryessa.*

Dated: October 20, 2000.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 00–28454 Filed 11–06–00; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the exemption of coal extraction incidental to the extraction of other minerals at 30 CFR Part 702.

DATES: Comments on the proposed information collection must be received by January 8, 2001, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@smre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR 702, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, 30 CFR Part 702.

OMB Control Number: 1029–0089.

Summary: This part implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16⅔ percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

Bureau Form Number: None.

Frequency of Collection: Once and annually thereafter.

Description of Respondents: Producers of coal and other minerals.

Total Annual Responses: 61.

Total Annual Burden Hours: 513.

Dated: November 2, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–28563 Filed 11–6–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with the Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America and the State of Louisiana Department of Environmental Quality* v. *Acadia Woods Add. #2 Sewer Co., et al., Defendants, and Total Environmental Solutions, Inc., Intervening Defendant,* Civil Action No. 6:98–0687, was lodged on October 23, 2000, with the United States District Court for the Western District of Louisiana, Lafayette-Opelousas Division. The Consent Decree addresses relief sought by the United States on behalf of the United States Environmental Protection Agency (''EPA'') under the Clean Water Act (''CWA''), 33 U.S.C. 1251, *et seq.,* with respect to numerous, ongoing, violations of the CWA and applicable National Pollutant Discharge Elimination System (''NPDES'') permits at more than 170 package sewage treatment plants (''STPs'') in Louisiana owned and formerly operated by Johnson Properties, Inc., its numerous subsidiaries and affiliates, Glenn Johnson, and Darren K. Johnson (collectively, the ''Original Defendants'').

The Consent Decree has been signed by Total Environmental Solutions, Inc., (''TESI''), a wholly-owned subsidiary of South Louisiana Electric Cooperative Association (''SLECA''). TESI is a corporation newly created by SLECA to purchase all of the assets of the corporate Original Defendants, and is not connected with the Original Defendants. On October 25, 2000, TESI filed a motion to intervene as a defendant in the above-captioned action for the purpose of placing the STPs on the compliance schedule set forth in the Consent Decree.

The Original Defendants failed to comply with a 1998 Consent Decree requiring them to bring the STPs into compliance. In March 1999, the District Court replaced the management of the corporate Original Defendants with a receiver. Also in March 1999, the corporate Original Defendants commenced a proceeding under Chapter 11 of the Bankruptcy Code, entitled *In re Johnson Properties*, No 99–10437, in the United States Bankruptcy Court for the Middle District of Louisiana. The Bankruptcy Court appointed the receiver as trustee. After a hearing on plan conformation, the Bankruptcy Court concluded that sale of the STPs to a qualified buyer willing to invest in repairs and capital improvements would serve to advance the objective of causing the STPs to comply with the CWA. Under the confirmed plan of reorganization, all of the STPs will be sold to TESI. In the Consent Decree, TESI agrees to a schedule for performing repairs and improvements and for reaching compliance at all of the STPs. If TESI complies with the Consent Decree, it will not be liable for penalties if the STPs exceed permitted effluent limitations during certain defined periods.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, PO Box 7611, Washington, DC 20044, and should refer to *United States* v. *Acadia Woods Add. #2 Sewer Co.,* DOJ Ref. No. 90–5–1–1–4375.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 800 Lafayette Street, Lafayette, Louisiana 70501; the Region 6 office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, refer to the referenced case and enclose a check in the amount of $13.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker B. Smith,

Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–28538 Filed 11–6–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that a proposed consent decree embodying a settlement in *United States* v. *Akzo Nobel Chemicals, Inc. and CK Video Corporation,* Civil Action No. 00–0908–RV–M, was lodged on October 10, 2000, with the United States District Court for the Southern District of Alabama.

The United States seeks reimbursement of response costs incurred by the United States Environmental Protection Agency (''EPA''), pursuant to section 107 of CERCLA, 42 U.S.C. 9607, in response to releases of hazardous substances at the Stauffer Chem (LeMoyne Plant) Superfund Site (the ''Site''), which is located near Mobile, Alabama.

Under the proposed consent decree, the Settling Parties, Akzo Nobel Chemical, Inc. and CK Witco Corporation have agreed to address groundwater and subsurface soil contamination on Site in the area designated by EPA as the Operable Unit #2 (''OU #2''). The remedial action selected from EPA's Record of Decision of OU #2 will be the construction, operation, and maintenance of an in-situ soil flushing system, which will operate in tandum with an existing groundwater treatment system, OU #1. OU #2 will significantly expand the range of groundwater and soil remediation of OU #1 by extending the treated areas of the Site reached by the treatment system and enhancing the capture, acceleration of the migration, and removal of contaminants. Monitoring and reporting of the subsurface soil for cyanide and thiocyanate will continue throughout the affected areas on an annual basis to determine if contaminants are moving into the groundwater in a controlled manner and are affectively being captured and treated by the total groundwater treatment system. The Settling Parties also agree to reimburse the Agency for 100% of past and future response and oversight costs.

The Department will receive, for a period of thirty (30) days from the date of this publication, comments relating to the propose consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S.

Department of Justice, Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Akzo Nobel Chemicals, Inc. and CK Witco Corporation,* DOJ Ref. #90–11–2–912/1.

The proposed consent decree may be examined at the EPA Region 4 Superfund Records Center, 61 Forsyth Street, 11th Floor, SW, Atlanta, Georgia 30303–8960, and at the Office of the United States Attorney for the Southern District of Alabama, 169 Dauphin Street, Suite 200, Mobile, Alabama 36602. A copy of the proposed consent decree may be also be obtained by mail from the Department of Justice Consent Decree Library, Box 7611, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and enclosed a check in the amount of $34.50 (25 cents per page reproduction costs) payable to the Consent Decree Library. A copy of the decree, exclusive of the parties' signature pages and attachments, may be obtained for $10.00.

Bruce Gelber,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 00–28539 Filed 11–6–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 206–2000]

Privacy Act of 1974 (5 U.S.C. 552a) As Amended by The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503)

This notice is published in the **Federal Register** in accordance with the requirements of the Privacy Act, as amended by the Computer Matching and Privacy Protection Act of 1988 (CMPPA) (5 U.S.C. 552a(e)(12)). The Immigration and Naturalization Service (INS), Department of Justice (the source agency), is participating in a computer matching program with the Minnesota Department of Economic Security (MNDES) (the recipient agency). This matching activity will permit the recipient agency to confirm the immigration status, and therefore eligibility status, of alien applicants for, or recipients of, unemployment compensation. Immigration status will be verified under the ''Systematic Alien Verification for Entitlements (SAVE)'' program as required by the Immigration Reform and Control Act (ICRA) of 1986 (Pub. L. 99–603).

Section 121(c) of the Immigration Reform and Control Act (IRCA) of 1986 amends Section 1137 of the Social Security and other statutes to require agencies which administer the Federal entitlement benefits programs designated within IRCA as amended, to use the INS verification system to determine eligibility. Accordingly, through the use of user identification codes and passwords, authorized persons from these agencies may electronically access the database of an INS system of records entitled ''Alien Status Verification Index, Justice/INS–009.'' From its automated records system, the MNDES may enter electronically into the INS database the alien registration number of the applicant or recipient. This action will initiate a search of the INS database for a corresponding alien registration number. When such a number is located, MNDES will receive electronically from the INS database the following data upon which to determine eligibility: alien registration number, last name, first name, data of birth, country of birth (not nationality), social security (if available), date of entry, immigration status data, and employment eligibility data. In accordance with 5 U.S.C. 552a(p), MNDES will provide the alien applicant with 30 days notice and an opportunity to contest any adverse finding before final action is taken against that alien because of ineligible immigration status as established through the computer match.

The Department of Justice's Data Integrity Board has approved a new computer matching agreement pursuant to the above-named computer matching program. Matching activities under this new agreement will be effective 30 days after publication of this computer matching notice in the **Federal Register**, or 40 days after a report concerning the computer matching program has been transmitted to the Office of Management and Budget (OMB), and transmitted to Congress along with a copy of the agreement, whichever is later. The agreement (and matching activity) will continue for a period of 18 months from the effective date unless, within 3 months prior to the expiration of the agreement, the Data Integrity Board approves a one-year extension pursuant to 5 U.S.C. 552a(o)(2)(D).

In accordance with 5 U.S.C. 552a(o)(2)(A) and (r), the required report is being provided to the OMG, and to the Congress together with a copy of the agreement.

Inquiries may be addressed to Kathy Riddle, Procurement Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530.

Dated: October 26, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 00–28540 Filed 11–6–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Republic Services, Inc. and Allied Waste Industries, Inc., Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States* v. *Republic Services, Inc. and Allied Waste industries, Inc.,* No. 1:00CV02311. The civil antitrust Complaint, filed on September 27, 2000, alleges that the Republic Services, Inc.'s (''Republic'') acquisition of Allied Waste Industries, Inc.'s Akron/Canton, Ohio small container commercial waste hauling assets would substantially lessen competition in the waste collection industry in the Akron/Canton, Ohio market in violation of section 7 of the Clayton Act, 15 U.S.C. 18. The Akron/Canton market is defined as the cities of Akron and Canton, Ohio and counties of Summit, Stark and Portage, Ohio. The proposed Final Judgment, filed at the same time as the Complaint, requires Republic to divest its Akron/Canton, Ohio small container commercial waste collection assets.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and the Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC (telephone: 202–514–2481) and at the office of the Clerk of the U.S. District Court for the District of Columbia, Washington, DC. Copies of

these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. ''Allied'' means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Republic'' means defendant Republic Service, Inc., a Delaware corporation with its headquarters in Ft. Lauderdale, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Relevant Akron/Canton Assets'' means Republic's front-end loader truck small container commercial routes 91, 92, 94, 96, and 97 that serve Summit, Stark, and Portage counties, Ohio.

Relevant Akron/Canton Assets includes, with respect to each of Republic's small container routes listed above, all tangible assets (including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies); and all intangible assets (including hauling-related customer lists, contracts, leasehold interests, and accounts related to each such route).

II. Objectives

The Final Judgment filed in this case is meant to ensure Republic's prompt divestiture of the Relevant Akron/Canton Assets for the purpose of establishing one or more viable competitors in the commercial waste hauling business, to remedy the effects that the United States alleges would otherwise result from Republic's acquisition of certain Allied assets. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Relevant Akron/Canton Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Republic; and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transactions sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Republic represents that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Republic shall preserve, maintain, and operate the Relevant Akron/Canton Assets as independent, ongoing, economically viable competitive businesses, with management, sales, and operations of such assets held entirely separate, distinct, and apart from the other operations of Republic. Republic shall not coordinate the marketing of, or negotiation or terms of sale by, any Relevant Akron/Canton Asset with its other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, or thirty (30) days after the entry of this Order, whichever is later, Republic will inform the United States of the steps Republic has taken to comply with this Hold Separate Stipulation and Order.

B. Republic shall take all steps necessary to ensure that (1) the Relevant Akron/Canton Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the commercial waste hauling business; (2) the management of the Relevant Akron/Canton Assets will not be influenced by Republic; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Akron/Canton Assets will be kept separate and apart from Republic's other operations. Republic's influence over the Relevant Akron/Canton Assets shall be limited to that necessary to carry out defendant Republic's obligations under this Hold Separate Stipulation and Order and the proposed final Judgment.

C. Republic shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Akron/Canton Assets, and shall maintain at 2000 or at previously approved levels for 2001, whichever are higher, all promotional, advertising, sales, technical assistance, marketing, and merchandising support for the Relevant Akron/Canton Assets.

D. Republic shall provide sufficient working capital to maintain the Relevant Akron/Canton Assets as economically viable and competitive, ongoing businesses, consistent with the requirements of Section V (A) and (B).

E. Republic shall take all steps necessary to ensure that the Relevant

Akron/Canton Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Akron/Canton Assets.

F. Republic shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Relevant Akron/Canton Assets.

G. Republic shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Relevant Akron/Canton Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order. Republic shall not hire, transfer, terminate, or otherwise alter the salary agreements for any Republic employee who, on the date of Republic's signing of this Hold Separate Stipulation and Order, either: (1) Works with a Relevant Akron/Canton Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Akron/Canton Assets are divested pursuant to the terms of the final Judgment, the Relevant Akron/Canton Assets shall be managed by Raul Rodriguez. Mr. Rodriguez shall have complete managerial responsibility for the Relevant Akron/Canton Assets, subject to the provisions of this Order and the proposed Final Judgment. In the event that Mr. Rodriguez is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Republic fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Republic shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the proposed Final Judgment or until further order of the Court.

Dated: October 27, 2000

For Plaintiff, United States of America.

Arthur A. Feiveson,
IL Bar #3125793, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0901.

For Defendant Republic Services, Inc.

Paul B. Hewitt,
Akin, Gump, Strauss, Hauer & Feld, 1333 New Hampshire Avenue, NW, Suite 400, Washington, DC 20036, (202) 887–4120.

For Defendant Allied Waste Industries, Inc.

Tom D. Smith,
Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113, (202) 879–3971

Order

It Is So Ordered on this __ day of __2000._____,

_____

United States District Judge

Pursuant to LCvR7.1(k), the following are the attorneys entitled to be notified of the entry of the Order

Arthur A. Fieveson, Esq., United States Department of Justice, Antitrust Division, Litigation II, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Paul B. Hewitt, Esq., Akin, Gump, Strauss, Hauer & Feld, 1333 New Hampshire Avenue, NW., Suite 400, Washington, DC 20036.

Tom D. Smith, Esq., Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW., Washington, DC 20001–2113

Final Judgment

Whereas, plaintiff, the United States of America, having filed its Complaint in this action on September 27, 2000, and plaintiff and defendants, Republic Services, Inc. (''Republic'') and Allied Waste Services, Inc., (''Allied''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Relevant Republic Assets by Republic to assure that competition is not substantially lessened;

And Whereas, the United States requires Republic to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures required below, can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or other injunctive provisions contained below;

Now Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed:*

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom Republic divests the Relevant Republic Assets.

B. ''Allied'' means defendant Allied Waste Industries, Inc., a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Hauling'' means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

D. ''MSW'' means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.,* waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

E. ''Relevant Republic Assets'' means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies; and if requested by the purchaser, real property and improvements to real property (*i.e.,* buildings and garages). It also includes all intangible assets, including hauling-

related customer lists, contracts, leasehold interests, and accounts related to each such route or asset.

Relevant Republic Assets includes the following: Republic's front-end loader truck small container routes (hereinafter, ''commercial routes'') 91, 92, 94, 96, and 97 that serve Summit, Stark, and Portage counties, Ohio.

F. ''Republic'' means defendant Republic Services, Inc., a Delaware corporation with its headquarters in Ft. Lauderdale, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

G. ''Small container commercial waste collection service'' means the business of collecting MSW from commercial and industrial accounts, usually in ''dumpsters'' (i.e., a small container with one to ten cubic yards of storage capacity), and transporting or ''hauling'' such waste to a disposal site by use of a front- or rear-end loader truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (e.g., stores and restaurants).

III. Applicability

A. This Final Judgment applies to Republic and Allied, as defined above, and all other persons in active concert or partipation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Republic shall require, as a condition of the sale or other disposition of all or substantially all of its assets, or of lesser business units that include defendant's Relevant Republic Assets, that the Acquirer or Acquirers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Republic is hereby ordered and directed, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Relevant Republic Assets in a manner consistent with this Final Judgment to an Acquirer(s) acceptable to the United States in its sole discretion. Republic agrees to use its best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously and timely as possible. The United States, in its sole discretion, may agree to an extension of this time period of up to sixty (60) calender days, and shall notify the Court in such circumstances.

B. In accomplishing the divestitures ordered by this Final Judgment. Republic promptly shall make known, by usual and customary means, the availability of the Relevant Republic Assets. Republic shall inform any person making an inquiry regarding a possible purchase of the Relevant Republic Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Republic shall also offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Relevant Republic Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. Republic shall make available such information to the United States at the same time that such information is made available to any other person.

C. Republic shall provide the Acquirer(s) and the United States information relating to the personnel involved in the operation and management of the Relevant Republic Assets to enable the Acquirer to make offers of employment. Republic and Allied will not interfere with any negotiations by the Acquirer(s) to employ any Republic employee whose primary responsibility is the operation or management of the Relevant Republic Assets.

D. Republic shall permit prospective Acquirer(s) of the Relevant Republic Assets to have reasonable access to personnel and to make inspections of the physical facilities; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Republic shall warrant to all Acquirers of the Relevant Republic Assets that each asset will be operational on the date of sale.

F. Republic and Allied shall not take any action that will impede in any way the permitting, operation, or divestiture of the Relevant Republic Assets.

G. Republic shall warrant to the Acquirer(s) of the Relevant Republic Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the divestiture of the Relevant Republic Assets, Republic and Allied will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits or applications for permits or licenses relating to the operation of the Relevant Republic Assets.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Relevant Republic Assets, and shall be accomplished in such a way to satisfy the United States, in its sole discretion, that the Relevant Republic Assets can and will be used by the Acquirer(s) as part of a viable, ongoing waste hauling business. Divestiture of the Relevant Republic Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Relevant Republic Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment.

(1) Shall be made to an Acquirer or Acquirers that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the waste hauling business; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer or Acquirers and Republic gives Republic or Allied the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If Republic has not divested the Relevant Republic Assets within the time period specified in Section IV(A), Republic shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Relevant Republic Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Republic Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer or Acquirers acceptable to the United States at such price on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other power as this Court deems appropriate. Subject to Section V(D) of this Final

Judgment, the trustee may hire at the cost and expense of Republic any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Republic and Allied shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Republic or Allied must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Republic, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Republic and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Relevant Republic Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Republic shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Republic shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Republic and Allied shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contracted or made an inquiry about acquiring any interest in the Relevant Republic Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Relevant Republic Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Republic or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Republic. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Relevant Republic Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer or Acquirers, any third party, and the trustee, whichever is later, the United States shall provide written notice to Republic and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, Republic shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Republic and Allied shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture(s) has been completed under Section IV or V, Republic shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Republic Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Republic has taken to solicit buyers for the Relevant Republic Assets, and to provide required

information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Republic, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Republic shall deliver to the United States and affidavit that describes in reasonable detail all actions Republic has taken and all steps Republic has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Republic shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Republic's earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Republic shall keep all records of all efforts made to preserve and divest the Relevant Republic Assets until one year after such divestiture(s) has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option demand defendants provide copies of, all books, ledgers, accounts, records and documents in the possession or control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the interviewees' reasonable convenience and without restraint or interference by defendants.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar day notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Republic may not reacquire any part of the Relevant Republic Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

United States District Judge

[File No. 1:00 CV 2311]

Judge: Ricardo M. Urbina.
Deck Type: Antitrust.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on September 27, 2000, seeking to enjoin the acquisition of certain waste hauling assets by Republic Services, Inc. (''Republic'') from Allied Waste Industries, Inc. (''Allied''). Republic and Allied had entered into agreements pursuant to which Republic would acquire waste hauling assets from Allied in the Akron/Canton, Ohio area. The Complaint alleges that the likely effects of these acquisitions would be to substantially lessen competition for waste collection services in the Akron/Canton area in violation of Section 7 of the Clayton Act, 15 U.S.C. Section 18, resulting in consumers paying higher prices and receiving fewer services for the collection of waste.

At the time the Complaint was filed, the United States also filed a proposed Final Judgment and a Hold Separate Stipulation and Order that would permit Republic to complete its acquisition of the Allied assets, provided divestitures of certain waste collection assets are accomplished in such a way as to preserve competition in the market. Under the proposed Final Judgment, which is explained more fully below, Republic is required within 120 days after September 27, 2000, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest as viable, ongoing business operations certain waste hauling assets in the Akron/Canton area. Under the terms of the Hold Separate Stipulation and Order, Republic is required to take certain steps to ensure that the assets to be divested will be preserved and held separate from Republic's other assets and businesses until the divestiture is accomplished. Republic has appointed, subject to the United States' approval, an individual to manage the assets to be divested and ensure the defendants' compliance with the requirements of the proposed Final Judgment and Hold Separate Order.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the

Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Republic, with revenues of approximately $1.8 billion in its 1998 fiscal year, is engaged in providing waste collection and disposal services throughout the United States. Allied, with revenues in 1999 of approximately $6 billion, is the nation's second-largest waste hauling and disposal company, operating throughout the United States. Pursuant to a Put/Call Agreement dated December 6, 1999 and a Letter Agreement dated August 1, 2000, Republic will acquire from Allied certain waste-hauling and disposal assets in the Akron/Canton area. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States on September 27, 2000.

B. The Competitive Effects of the Transaction

Waste collection firms, or ''haulers,'' contract to collect municipal solid waste (''MSW'') from residential and commercial customers; they transport the waste to private and public disposal facilities (e.g., transfer stations, incinerators and landfills), which, for a fee, process and legally dispose of waste. In the Akron/Canton area, Republic and Allied compete in operating small container waste collection routes and waste disposal facilities.

Small container commercial waste collection service is the collection of MSW from commercial businesses such as office and apartment buildings and retail establishments (e.g., stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into special routes, and use specialized equipment to store, collect and transport waste from these accounts to approved disposal sites. This equipment—one to ten cubic yard containers for waste storage, plus front-end and rear-end loader trucks for collection and transportation—is uniquely well suited for the provision of small container commercial waste collection service. Providers of other types of waste collection services (e.g., residential and roll-off services) are not good substitutes for small container commercial waste collection firms. In their waste collection efforts, other firms use different waste storage equipment (e.g., garbage cans or semi-stationary roll-off containers) and different trucks (e.g., side-load trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect or transport waste generated by commercial accounts, and hence, are rarely used on small container commercial waste collection routes. For purposes of antitrust analysis, the provisions of small container commercial waste collection services constitutes a line of commerce, or relevant service, for analyzing the effects of the acquisition.

The Complaint alleges that the provision of small container commercial waste collection services takes place in compact, highly localized geographic markets. It is expensive to ship waste long distances in either collection or disposal operations. To minimize transportation costs and maximize the scale, density and efficiency of their waste collection operations, small container commercial waste collection firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Sheer distance may significantly limit a distant firm's ability to provide commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local commercial customers without losing significant sales to firms outside the area.

Applying that analysis, the Complaint alleges that the Akron/Canton, Ohio area constitutes a section of the country, or relevant geographic market, for the purpose of assessing the competitive effects of a combination of Republic and Allied in the provision of small container commercial waste collection services. The Akron/Canton area includes the Cities of Akron and Canton, Ohio; and Summit, Stark and Portage counties, Ohio. In the Akron/Canton area, Republic's acquisition of Allied's assets would reduce from four to three the number of major firms competing in small container commercial waste collection service. After the acquisition, Republic would control approximately 35% of the total market revenue, which exceeds $25 million annually.

New entry into this market would be difficult and time consuming and is unlikely to be sufficient to constrain any post-merger price increase. Many customers of commercial waste collection firms have entered into long-term contracts, tying them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, i.e., selectively (and temporarily) change unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor from competing for such accounts, which, if won, may be unprofitable to serve. Taken together, the prevalence of long-term contracts and the ability of market incumbents to price discriminate substantially increases any would-be new entrant's costs and the time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

The Complaint alleges that a combination of Republic and Allied in Akron/Canton would likely lead to an increase in prices charged to consumers of small container commercial waste collection services. The acquisition would diminish competition by enabling the few remaining competitors to engage more easily, frequently and effectively in coordinated pricing interaction that harms consumers.

III. Explanation of the Proposed Final Judgment

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in small container commercial waste collection services in the Akron/Canton area by establishing a new, independent and economically viable competitor in the markets. The proposed Final Judgment requires Republic, within 120 days after September 27, 2000, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable, ongoing business or businesses its small container commercial waste collection assets (e.g., routes, trucks, containers, and customer lists) relating to the Akron/Canton market to a purchaser acceptable to the United States in its sole discretion.

These assets must be divested in such a way as to satisfy the United States that the operaitons can and will be operated by the purchaser or purchasers as a viable, ongoing business that can compete effectively in the relevant

market. Republic must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

In the event that Republic does not accomplish the divestiture within the above-described period, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Republic will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth its efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The relief sought in the Akron/Canton area will maintain the pre-acquisition structure of the market and thereby ensure that consumers of small container commercial waste collection services will continue to receive the benefits of competition—lower prices and better service.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response to the United States will be filed with the Court and published in the**Federal Register.** Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Republic and Allied. The United States could have continued the litigation and sought preliminary and permanent injunctions against Republic's acquisition of the Allied assets. The United States is satisfied, however, that the divestiture of hauling assets will preserve competition for small container commercial waste collection services in the Akron/Canton area. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent Republic's acquisition of the Allied assets from having adverse competitive effects.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally an individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61.508 at 71.980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462

[1] 119 Cong. Rec. 24,598 (1973) *see also United States* v. *Gillette Co.* 406 F. Supp. 713, 715 (D. Mass. 1975), *aff'd sub norm. Maryland* v. *United States*, 406 U.S. 1001 (1983). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, *see* 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, at 8–9 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6535, 6538.

(9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981)); *see also Microsoft,* 56 F.3d 1448 (D.C. cir. 1995). Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree. [2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest' '' [3]

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relation to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case,'' *Microsoft,* 56 F.3d at 1459. Because ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id. at 1459–60.*

[2] *Bechtel Corp.,* 648 F.2d at 666 (citations omitted and emphasis added); *see BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broad Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *s* v. *Gillette Co.,* 406 F. Supp. at 716; *see also United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied,* 465 U.S. 1101 (1984).

[3] *United States* v. *American Tel. and Tel. Co.,* 552 F.Supp. 131, 150 (D.D.C. 1982) (citations omitted) *quoting Gillette Co.,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F.Supp. 619, 622 (W.D. Ky. 1985).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: October 23, 2000.

Respectfully submitted.

Arthur A. Feiveson,
IL Bar #3125793, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0901.

[Civil No. 00 2311]

Filed: 9/27/00.

Certificate of Service

I hereby certify that copies of the Competitive Impact Statement have been served upon Republic Services, Inc. and Allied Waste Industries, Inc. by U.S. mail, postage prepaid, to the attorneys listed below, this 23rd day of October, 2000.

Counsel for Defendant Allied Waste Industries, Inc., Tom D. Smith, Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113.

Counsel for Defendant Republic Services, Inc., Paul B. Hewitt, Akin. Gump, Strauss, Hauer & Feld, 1333 New Hampshire Avenue, NW, Suite 400, Washington, DC 20036.

Arthur A. Feiveson,
IL Bar #3125793, U.S. Department of Justice, Antitrust Division, Suite 3000, 1401 H Street, NW, Washington, DC 20530, (202) 307–0901.

[FR Doc. 00–28541 Filed 11–6–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

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

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board. The CJIS Advisory Policy Board is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI CJIS Division and thereafter, make appropriate recommendations to the FBI Director. The topics to be discussed will include CJIS System Enhancement Strategy Group (SESG) recommendations for prioritization of system enhancements, Data systems for policing in the 21st century, Secondary Dissemination of National Crime Information Center (NCIC) Wanted Person File Data and Name-based criminal history records. Discussion will also include the status on the CJIS Development and Enhancement Strategy Team (C-Dest), Integrated Automated Fingerprint Identification System (IAFIS) latent fingerprint connectivity, the National Crime Prevention and Privacy Compact, and other issues related to the IAFIS, NCIC, Law Enforcement Online, National Instant Criminal Background Check System (NICS), and Uniform Crime Reporting Programs.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Roy Weise, Unit Chief, Programs Development Section (304) 625–2730, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed not more than 15 minutes to present a topic.

DATES AND TIMES: The Advisory Policy Board will meet in open session from 9 a.m. until 5 p.m. on December 12–13, 2000.

ADDRESSES: The meeting will take place at the Tampa Convention Center, 333 South Franklin Street, Tampa, Florida, telephone (813) 274–8422.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Lori A. Kemp, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2619, facsimile (304) 625–5090.

Dated: October 27, 2000.

Thomas E. Bush, III,

Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 00–28455 Filed 11–6–00; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts as preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information on the Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 8, 2001.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 9033, Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports, should be directed to Dale M. Ziegler, Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, D.C. 20210; (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. Background

The information collection is required due to amendments to section 258 of the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA). The amendments created a prevailing practice exception to the general prohibition on the performance of longshore work by alien crewmembers in U.S. ports. Under the prevailing practice exception, before any employer may use alien crewmembers to perform longshore activities in U.S. ports, it must submit an attestation to ETA containing the elements prescribed by the INA.

The INA further requires that the Department make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation it has received.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection 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 collections techniques or other forms of information, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

In order for the Department to meet its statutory responsibilities under the INA there is a need for an extension of an existing collection of information pertaining to employers' seeking to use alien crewmembers to perform longshore activities in U.S. ports.

Because the prevailing practice exception remains in the Statute, ETA is requesting a one-hour marker as a place holder for this collection of information. ETA has not received any attestations under the prevailing practice exception within the last two years. An information collection request will be submitted to increase the burden should activities recommence.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports.

OMB Number: 1205–0309.

Agency Number: Form ETA 9033.

Recordkeeping: Annually.

Affected Public: Businesses or other for-profit.

Total Responses: 1.

Average Time Per Response: 4 hours.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $100 per response.

Comment Language: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 1st day of November 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 00–28513 Filed 11–6–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications For 2000 Under The Federal Unemployment Tax Act

On October 31, 2000, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.,* thereby enabling employers who make contributions to State unemployment funds to obtain certain credits against their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Dated: November 1, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor.

Secretary of Labor

Washington
October 31, 2000.
The Honorable Lawrence H. Summers,
Secretary of the Treasury,
Washington, DC 20220,

Dear Secretary Summers: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending on October 31, 2000. One is required with respect to the normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986 (IRC), and the other is required with respect to the additional tax credit by Section 3303 of the IRC. Both certifications list all 53 jurisdictions.

Sincerely,
Alexis M. Herman.

Enclosures.

Certification of States to the Secretary of the Treasury, Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 2000, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Lousiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 2000.
Alexis M. Herman,
Secretary of Labor.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant To Section 3303(b)(1) of The Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 2000:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Dalaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 2000.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 00–28512 Filed 11–6–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the Work Schedules Supplement to the Current Population Survey (CPS), to be conducted in May 2001. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before January 8, 2001.

ADDRESSES: Send comments to Ausie B. Grigg, Jr., BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE, Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Ausie B. Grigg, Jr., BLS Clearance Officer, telephone number 202–691–7628. (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for over 50 years. Collection of labor force data through the CPS is necessary to meet the requirements in Title 29, United States Code, Sections 1 and 2. Over the past several decades, the economy of the United States has been undergoing a fundamental restructuring. Advances in computer and communications technology have increasingly enabled some workers to perform part or all of their work at home. The growth of this phenomenon represents an important development in this country's labor markets. This supplement will provide a substantial and objective set of data about work at home and work in home-based businesses. It will provide valuable information on the work schedules of employed persons, that is, the beginning and ending times of work, type of shift worked, and calendar days worked. It also will provide information about employed persons who do work at home. Work schedule supplements have been conducted since the 1970s. Questions on home-based work were included in May 1985, May 1991, and May 1997. A key purpose of the May 2001 collection is to gather updated information on these topics. In particular, it is widely believed that the number of persons who work at home is growing rapidly, and the May 2001 supplement will provide information that will help researchers gauge the extent to which this group is expanding and provide additional detail on the nature of this work activity. More generally, the May 2001 Work Schedule Supplement will be used by BLS researchers and others to examine the changes in work schedules and work at home that are taking place over time.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

OMB clearance is being sought for the Work Schedules Supplement to the CPS.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: Work Schedules Supplement to the CPS.

OMB Number: 1220–0119.

Affected Public: Households.

Total Respondents: 58,000.

Frequency: Monthly.

Total Responses: 58,000.

Average Time Per Response: 4.5 Minutes.

Estimated Total Burden Hours: 4,350 Hours.

Total Burden Cost (capital/startup): $0

Total Burden Cost (operating/maintenance): $0

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 31st day of October, 2000.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 00–28511 Filed 11–6–00; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[IA–00–032]

In the Matter of Hiram J. Bass; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Hiram J. Bass was formerly employed as the Measuring and Test Equipment (M&TE) Program Administrator by Tennessee Valley Authority (TVA or Licensee). The Licensee is the holder of License Nos. DPR–33, DPR–52, DPR–68, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50 on December 20, 1973, August 2, 1974, and August 18, 1976, respectively. The licenses authorize the operation of the Browns Ferry Nuclear Plant Units 1, 2, and 3 (BFN or facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site in Athens, Alabama.

II

On September 21, 1999, the Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) initiated an investigation to determine whether Hiram J. Bass deliberately failed to issue and/or disposition nonconformance evaluations as required by site procedures while employed as the M&TE Program Administrator at the facility. The NRC also conducted an inspection of this issue during the period April 2 through June 24, 2000. The results of this investigation and inspection were documented in NRC Inspection Report 50–259/00–03, 50–260/00–03, 50–296/00–03, issued on July 27, 2000, and our letter to Mr. Bass dated July 31, 2000.

As background, certain M&TE used at BFN is calibrated on a regular basis by TVA's Central Laboratory Field Testing Services (CLFTS). When CLFTS identifies an instrument that is out of tolerance, that information is forwarded to the BFN Maintenance Department, M&TE Group. The M&TE Program Administrator is responsible for issuing and ensuring disposition of each nonconformance evaluation for M&TE found to be out of tolerance. The purpose of a nonconformance evaluation is, among other reasons, to initiate the facility review process to ensure that plant components have not been negatively affected by the out-of-tolerance M&TE, and to initiate action to address plant components that have been affected.

BFN Technical Specification 5.4.1, BFN Site Standard Practice Procedure (SSP)–6.7, Control of Measuring and Test Equipment, Revision 8A, effective May 27, 1997 through June 1, 1998, and TVA Standard Programs and Processes Procedure (SPP)–6.4, Measuring and Test Equipment, Revision 0, effective May 29, 1998, through August 15, 1999, together require nonconformance evaluations to be issued and dispositioned for conditions such as lost M&TE or standards, out-of-tolerance M&TE or plant standards, damaged or otherwise defective M&TE or plant standards, and disassembled M&TE or plant standards.

In June 1999, a BFN self-assessment of the M&TE program revealed that several out-of-tolerance M&TE items did not have nonconformance evaluations initiated by BFN. Further TVA review determined that, from June 1997 to June

1999, approximately 500 nonconformance evaluations were not properly issued and/or dispositioned for components tested or inspected using the out-of-tolerance M&TE. When questioned by TVA and subsequently by the NRC OI, Mr. Bass failed to explain why the large number of nonconformance evaluations had not been issued and/or dispositioned. On June 21, 1999, following questions by TVA regarding this matter, Mr. Bass resigned from TVA.

The NRC's investigation and inspection of this matter concluded that Mr. Bass deliberately failed to issue and/or disposition nonconformance evaluations on test equipment that was out-of-tolerance, in accordance with BFN Technical Specification required Licensee procedures.

The NRC informed Mr. Bass by certified letter dated July 31, 2000, of the results of the NRC's investigation and inspection of this matter, and provided Mr. Bass the opportunity to respond to this matter or request a predecisional enforcement conference. Receipt of the letter by Mr. Bass was verified by his signature on the certified mail return receipt. The NRC has attempted to contact Mr. Bass by telephone on numerous occasions; however, to date he has not responded to the NRC's July 31, 2000 letter.

III

Based on the above, the NRC has concluded that Mr. Bass engaged in deliberate misconduct from approximately June 1997 to June 1999, by deliberately failing to adhere to Technical Specification 5.4.1 required Licensee procedures related to out of tolerance measuring and test equipment (M&TE).

These actions constituted a violation of 10 CFR 50.5(a)(1), which prohibits an individual from engaging in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or order or any term, condition or limitation of any license issued by the Commission. As defined by 10 CFR 50.5(c)(2), deliberate misconduct means an intentional act or omission that the person knows constitutes a violation of a requirement, procedure, or instruction of a licensee; in this case Technical Specification 5.4.1. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements. Mr. Bass' conduct raises serious doubt about his trustworthiness and reliability; particularly whether he can be relied upon to comply with NRC requirements in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Bass were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Bass be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of his resignation from the Licensee (June 21, 1999). Additionally, Mr. Bass is required to notify the NRC of his first employment after the prohibition period ends and all subsequent employment in NRC-licensed activities for a period of three years following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Bass' conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 50.5, it is hereby ordered, effective immediately, that:

1. Hiram J. Bass is prohibited for three years from the date of his resignation, June 21, 1999, from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Bass is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of three years after the three year period of prohibition has expired, Mr. Bass shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement (OE), U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Bass shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Bass of good cause.

V

In accordance with 10 CFR 2.202, Hiram J. Bass must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Bass or other person adversely affected relies and the reasons as to why the Order should not have been issued.

Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Associate General Counsel for Hearings, Enforcement & Administration at the same address, to the Regional Administrator, NRC Region II, 61 Forsyth Street, SW, Suite 23T85, Atlanta, GA, 30303, and to Mr. Bass, if the answer or hearing request is by a person other than Mr. Bass.

If a person other than Mr. Bass requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Bass or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Bass may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of

the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated: Dated this 27th day of October 2000.

R.W. Borchardt,

Director, Office of Enforcement.

[FR Doc. 00–28496 Filed 11–06–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Energy Co.; Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–20, issued to Consumers Energy Company (the licensee), for operation of the Palisades Plant, located in Van Buren County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the expiration date of the Operating License from ''midnight on March 14, 2007'' to ''midnight on March 24, 2011.'' Palisades is currently licensed to operate 40 years commencing with the issuance of the construction permit on March 14, 1967. At present, the Facility Operating License expires at midnight on March 14, 2007. The licensee seeks an extension of the license term to allow Palisades to operate until 40 years from the issuance of its Provisional Operating License. The Provisional Operating License for Palisades was issued on March 24, 1971. This action would extend the period of operation to the full 40 years provided by the Atomic Energy Act and the Code of Federal Regulations.

The proposed action is in accordance with the licensee's application for license amendment dated April 27, 2000.

The Need for the Proposed Action

The proposed action is needed to allow the licensee to continue to operate Palisades for 40 years from the date of issuance of the Provisional Operating License. This extension of 4 years and 10 days would permit Palisades to operate for the full 40-year design-basis lifetime, consistent with the Commission's policy stated in a memorandum dated August 16, 1982, from William Dircks, Executive Director for Operations, to the Commissioners, and as evidenced by the issuance of more than 50 such extensions to other licensees.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that extending Facility Operating License No. DPR–20 for 4 years and 10 days would not create any new or unreviewed environmental impacts. This change does not involve any physical modifications to Palisades and there are no new or unreviewed environmental impacts that were not considered as part of the Final Environmental Statement (FES) related to operation of Palisades, dated June 1972, as supplemented by a final addendum (NUREG–0343), dated February 1978, related to an increase in core power level, and as supplemented by an environmental assessment (EA) dated October 22, 1990, related to conversion of the Provisional Operating License to a 40-year full-term Facility Operating License, which concluded that an FES supplement was not necessary. Evaluations for the FES, as supplemented by the final addendum and by the EA, considered a 40-year operating life. The considerations involved in the NRC staff's determination are discussed below.

Radiological Impacts of the Hypothetical Design-Basis Accidents

The offsite exposure from releases during postulated accidents was evaluated and found acceptable during the operating license stage and subsequent license amendments. This type of evaluation involves four issues: (1) Type and probability of postulated accidents, (2) the radioactive material releases calculated for each accident, (3) the assumed meteorological conditions, and (4) population size and distribution in the vicinity of Palisades. The NRC staff has concluded that neither the type and probability of postulated accidents nor the radioactive material releases calculated for each accident would change through the proposed extended operation. As discussed in Sections 2.5.5 and 2.5.6 of Palisades' Updated Final Safety Analysis Report (UFSAR), more recent meteorological data collected onsite (1983 to 1997 for short-term and 1988 to 1993 for long-term atmospheric dispersion potentials) since issuance of the Operating License have resulted in generally more favorable atmospheric dispersion estimates such that the earlier analyses of the offsite consequences of postulated radiological releases to the atmosphere remain bounding. A comparison of the 1980 population in the UFSAR with the actual 1990 census data shows a 3.5-percent decline in the permanent resident population within 10 miles of Palisades. Using 1990 census data and recent surveys to establish the possible transient population, the licensee found that the maximum probable population within the 10-mile Emergency Planning Zone has declined from that shown in the UFSAR for 1980. The 1998 estimated population for the 13 cities and townships within 10 miles of Palisades declined by 1 percent from the 1990 census. These declining trends are expected to continue such that the population for the period 2007 through 2011 should be well within the previous FES and UFSAR projections. There are no changes to the current exclusion area, low population zone, and nearest population center distance, and the licensee will continue to meet the requirements of 10 CFR 100.11(a) for the proposed license term extension. Also, there is no expected change in land usage during the license terms that would affect offsite dose calculations. Therefore, cumulative exposure to the general public due to a design-basis accident would be within the bounds of the original projections because of the lower than projected population and improved meteorological conditions for the site and surrounding area.

Accordingly, the NRC staff concludes that the proposed action will not significantly change previous conclusions regarding the potential environmental effects of offsite releases from postulated accident conditions.

Radiological Impacts of Annual Releases and Occupational Exposures

On an annual basis, the licensee submits an Occupational Radiation Exposure Report to the NRC. The data in these reports show that the collective occupational exposure at Palisades is in a declining trend. The 3-year annual average collective occupational

exposure at Palisades has dropped from about 270 person-rem/year in 1996 to about 161 person-rem/year in 1999. Through continued implementation of As Low As Is Reasonably Achievable (ALARA) and other programs, and by continuing to apply new techniques as they are developed by the industry, the licensee expects to minimize occupational exposure for Palisades during the period of the license extension. The licensee projects that the collective occupational exposure at Palisades for the period of 2007 to 2011 will average 125 person-rem/year. Based on its review of historical radiation exposure data at Palisades, the licensee's continued implementation of ALARA, and the licensee's continued compliance with the requirements of 10 CFR Part 20, the NRC staff concludes that the occupational exposures will continue to decline, and therefore, exposures during the proposed extended period will remain below the exposures experienced during Palisades' previous years of operation.

In accordance with Palisades' Technical Specifications (TSs), the licensee has established several radiation monitoring programs, including a program that follows 10 CFR Part 50, Appendix I, guidelines to maintain radiation doses ALARA to members of the public. The Appendix I guidelines establish radioactive design/dose objectives for liquid and gaseous offsite releases, including iodine particulate radionuclides. In addition, routine releases to the environment are governed by 10 CFR Part 20, which states that such releases should be ALARA. Each year, the licensee submits an Annual Radioactive Effluent Release and Waste Disposal Report that provides an annual assessment of the radiation dose as a result of radioactive liquid and gaseous effluents released from Palisades. These reports show that release of radioactive liquids and gases have historically been only a small percentage of the Appendix I guidelines. As a result of the continued implementation of the ALARA program, offsite exposures can be expected to remain lower than the Appendix I guidelines and FES estimates. These reports also discuss the types and quantity of solid radioactive waste (radwaste) processed during the year and shipped to a licensed offsite low-level waste disposal facility in another state. Solid radwaste typically includes dry active waste, evaporator bottom contents, spent resins and filters, and irradiated hardware. The volume of solid radwaste shipped from Palisades has historically been consistent with that projected in the FES (2100 to 10,000 cubic feet per year). The volume of radwaste generated at Palisades due to the processing of radioactive liquids (filters and resins), and due to routine maintenance on equipment, has decreased significantly since the late 1980's due, in part, to the processing of dry active waste by incineration. The licensee continues to pursue waste volume reduction technology to minimize impacts associated with radwaste management. Therefore, the NRC staff concludes that the additional solid radwaste generated and processed during the extended period of operation will continue to be consistent with the types and quantities previously projected in the FES.

In accordance with Palisades' TSs, the licensee has an established Radiological Environmental Monitoring Program by which it monitors the effect of operation of its facility upon the environment. This is accomplished by continuously measuring radiation levels and airborne radioactive material levels and periodically measuring amounts of radioactive materials in samples at various locations surrounding Palisades. Continued environmental monitoring and surveillance under the program ensure early detection of any increase in exposures over the proposed extended operation.

Accordingly, the NRC staff concludes that the radiological impact upon the public due to the proposed extended operation would not increase over that previously evaluated in the FES and the occupational exposures will be consistent with the industry average and in accordance with 10 CFR Part 20.

The NRC staff has reviewed the environmental impacts attributable to the transportation of spent fuel and waste from the Palisades site. With respect to the normal conditions of transport and possible accidents in transport, the NRC staff finds that the environmental impacts are bounded by those identified in Table S–4, ''Environmental Impact of Transportation of Fuel and Waste to and from One Light Water-Cooled Nuclear Power Reactor,'' of 10 CFR Part 51.52 for burnup levels up to 60,000 megawatt-days per metric ton of uranium (MWd/MTU) and 5 weight percent U-235 enrichment (53 FR 6040 and 53 FR 30355). The NRC staff concludes that the environmental impact related to the transportation of fuel and waste remains low and is not significantly increased by the change in the expiration date of the Operating License.

Based upon the conservative population estimate in the FES dated November 1973 and EAs dated February 26 and June 7, 1990, low radiological exposure from plant releases during normal operation and postulated accidents, and the environmental monitoring program, the NRC staff concludes that the radiological impact on the public due to the proposed action would not be significant and the conclusions of the FES would remain valid.

Environmental Impact of the Uranium Fuel Cycle

Palisades is currently operating in its 15th fuel cycle. Fuel enrichments (batch average) have ranged from a minimum of 1.65 weight percent U-235 up to 4.02 weight percent U-235. Palisades is presently licensed to store fuel with enrichments up to 4.4 weight percent U-235. To date, the maximum burn-up of any single fuel assembly has been 51,500 MWd/MTU. In its generic EA dated February 29, 1988 (53 FR 6040), the NRC staff concluded that the environmental impact of extended fuel irradiation up to 60,000 MWd/MTU and increased enrichment up to 5 weight percent are bounded by the impacts reported in Table S–4 of 10 CFR 51.52. Thus, this generic assessment is bounding for the Palisades Plant.

The total projected number of fuel cycles remaining before the current Facility Operating License expiration date (March 14, 2007) is five. The proposed extended operation will increase the number of complete fuel cycles by about 3 to a total of 22 based on projected cycle lengths. The total number of discharged fuel assemblies, including a full core discharge at the end of the current Operating License expiration date, is projected to be 1453. The licensee projects that the total number of spent fuel assemblies, including a full core discharge at the end of the 40-year operating life, would be between 1577 and 1625. Thus, the proposed extended operation involves the generation, interim storage, and ultimate disposal of up to an additional 172 spent fuel assemblies.

To provide for the storage of additional spent fuel assemblies beyond the licensed capacity of the Palisades spent fuel pool, the licensee began using dry storage in 1993 under a general license in accordance with 10 CFR part 72 (Docket No. 72–7). The licensee projects that the proposed extended operation will result in an additional 126 fuel assemblies in dry fuel storage. Licensed dry fuel storage has provided, and will continue to provide, sufficient extra spent fuel storage capacity to accommodate the spent fuel storage needed for 40 years of operation.

Based on the above, the NRC staff concludes that there are no significant changes in the environmental impact related to the uranium fuel cycle due to the proposed extended operation of Palisades.

Nonradiological Impacts

The NRC relies upon the State of Michigan, Department of Environmental Quality (MDEQ), for regulation of nonradiological matters involving water quality and aquatic biota. The State of Michigan has reviewed and considered the environmental impacts of Palisades' water discharge in its issuance of the National Pollutant Discharge Elimination System (NPDES) permit and renewals. The NPDES permit contains requirements necessary to comply with State and Federal water pollution control laws, and is audited by MDEQ and the U.S. Environmental Protection Agency. On October 1, 1999, MDEQ renewed the NPDES permit for Palisades (NPDES Permit No. MI0001457) with an effective date of November 1, 1999, and an expiration date of October 1, 2003. The licensee expects the MDEQ to renew and issue NPDES permits about every 4 years until expiration of the Operating License. Because the licensee will continue to abide by the NPDES permits, there will be no significant nonradiological impact on the environment with regard to liquid discharges from Palisades as a result of extending the expiration date of the Operating License. Also, the proposed action does not involve any historic sites. Therefore, the NRC concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no action'' alternative). Denial of the application would result in no significant improvement in environmental impacts, but could result in nonradiological environmental effects due to airborne effluents from nonnuclear plants that would be required to operate in order to replace the power supplied by Palisades. The environmental impacts of the proposed action and the alternative action are otherwise similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the FES, as supplemented, for Palisades.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the Michigan State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of no Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 27, 2000. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 31st day of October 2000.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–28494 Filed 11–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 6, 13, 20, 27, December 4, and 11, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 6

There are no meetings scheduled for the Week of November 6.

Week of November 13—Tentative

Wednesday, November 15, 2000

10:00 a.m. Briefing by the Executive Branch (Closed-Ex. 1)

Friday, November 17

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on Risk-Informed Regulation Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)

This meeting will be webcast live at the Web address–*www.nrc.gov/live.html*

Week of November 20—Tentative

There are no meetings scheduled for the Week of November 20.

Week of November 27—Tentative

Monday, November 27, 2000

9:00 a.m. (Briefing by DOE on Plutonium Disposition Program and MOX Fuel Fabrication Facility Licensing (Public Meeting) (Contact: Drew Persinko, 301–415–6522)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 4—Tentative

Monday, December 4

1:55 p.m. Affirmation Session (Public Meeting) (If needed)

2:00 p.m. Briefing on License Renewal Generic Aging Lessons Learned (GALL) Report, Standard Review Plan (SRP), and Regulatory Guide (Public Meeting) (contact: Chris Grimes, 301–415–1183)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

Week of December 11—Tentative

There are no meetings scheduled for the Week of December 11.

The Schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting

schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: November 3, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–28669 Filed 11–3–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guides; Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability; Correction.

SUMMARY: This document corrects a notice relating to the availability of Draft Regulatory Guides DG–1102 and DG–1103, appearing in the **Federal Register** on October 31, 2000 (65 FR 65024). This action is necessary to correct the accession numbers listed in the notice for viewing the electronic copies of the draft guides.

FOR FURTHER INFORMATION CONTACT: John P. Segala, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7162 (e-mail: *jps1@nrc.gov*).

In the **Federal Register** dated October 31, 2000, page 65024, second column, third paragraph, fourth sentence, the third and fourth lines are corrected to read as follows: ML003756180 for DG–1102 and ML003756467 for DG–1103.

Dated at Rockville, Maryland, this 1st day of November, 2000.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 00–28497 Filed 11–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Plan for Using Risk Information in the Materials and Waste Arenas: Case Studies

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is developing an approach for using risk information in the nuclear materials regulatory process. As part of this effort, the NRC staff has developed a plan for using risk-informed approaches in the nuclear materials and waste arenas. The plan employs case studies to examine the use of risk information in the nuclear materials and waste arenas.

The purpose of the case studies is: (1) To illustrate what has been done and what could be done in the materials and waste arenas to alter the regulatory approach in a risk-informed manner; and (2) to establish a framework for using a risk-informed approach in the materials and waste arenas. A draft of the plan was published in the **Federal Register** (65 FR 54323, September 7, 2000). On September 21, 2000, the NRC staff held a public meeting to communicate the draft plan to the public and to receive feedback. The meeting was open to the public and all interested parties were welcomed to attend and provide comments. The meeting was held from 9 a.m. to 12 noon in the U.S. Nuclear Regulatory Commission Auditorium in Rockville, Maryland. Based on the comments received at the public meeting and on comments from members of the Office of Nuclear Materials Safety and Safeguards Risk Steering Group, the NRC staff has revised and finalized the plan. The final plan is provided below in its entirety.

Plan for Using Risk Information in the Materials and Waste Arenas: Case Studies

1. Background

In SECY–99–100, ''Framework for Risk-Informed Regulation in the Office of Nuclear Material Safety and Safeguards (NMSS),'' dated March 31, 1999, the Nuclear Regulatory Commission (NRC) staff proposed a framework for risk-informed regulation in the materials and waste arenas. On June 28, 1999, the Commission approved the staff's proposal. In the associated staff requirements memorandum, the Commission approved the staff's recommendation to implement a five-step process consisting of:

(1) Identifying candidate regulatory applications that are amenable to expanded use of risk assessment information;
(2) Making a decision on how to modify a regulation or regulated activity;
(3) Changing current regulatory approaches;
(4) Implementing risk-informed approaches; and
(5) developing or adapting existing tools and techniques of risk analysis to the regulation of nuclear materials safety and safeguards.

Step one of the five-step process will be accomplished by applying screening criteria to regulatory application areas as a means to identify the candidate regulatory applications. To be a candidate for expanded use of risk information in the materials and waste arenas, regulatory application areas must meet the screening criteria.

As part of the staff's effort to use an enhanced public participatory process in developing the framework, the staff held a public workshop in Washington, DC, on April 25 and 26, 2000. The staff published draft screening criteria in a **Federal Register** Notice (65 FR 14323, March 16, 2000) announcing the workshop. The purpose of the first part of the workshop was to solicit public comment on the draft screening criteria and their applications. The purpose of the second part of the workshop was to solicit public input for the process of developing safety goals for nuclear materials and waste applications.

The workshop included participation by representatives from NRC, Environmental Protection Agency, Department of Energy, Occupational Safety and Health Administration, Organization of Agreement States, Health Physics Society, Nuclear Energy Institute, environmental and citizen groups, licensees, and private consultants. A consensus among the workshop participants was that case studies and iterative investigations would be useful for the following purposes: (1) To test the screening criteria; (2) to show how the application of risk information has affected or could affect a particular area of the regulatory process; and (3) to develop safety goal parameters and a first draft of safety goals for each area.

2. Purpose

The purpose of the case studies is: (1) To illustrate what has been done and what could be done in the materials and waste arenas to alter the regulatory approach in a risk-informed manner; and (2) to establish a framework for using a risk-informed approach in the materials and waste arenas by testing the draft screening criteria, and determining the feasibility of safety goals. Once the screening criteria have been tested using a spectrum of case studies, the criteria can be modified as appropriate, placed in final form, and established as part of the framework for prioritizing the use of risk information in materials and waste regulatory applications.

The case studies will be used to begin the process of developing safety goals

for applications in the materials and waste arenas. Specifically, safety goal parameters (*e.g.,* public, worker, acute fatality, latent fatality, injury, property damage, environment damage, safeguards, absolute vs. relative) should be identified in each study. Each case study will determine the feasibility of safety goals in that area. If feasible, a first draft of safety goals will be developed. The case studies will also be used to check for and test any existing risk-informed framework (*e.g.,* defense-in-depth) in the material and waste arenas.

All case studies will have these general objectives. However, certain case studies may have specialized objectives. For example, as one type of test of the screening criteria, a case study will be chosen in an area that the staff intuitively feels might not pass the screening criteria. These additional objectives are discussed in the case study outline which is included in this plan.

The intent of the case studies is *not* to reopen or reassess previous decisions made by the staff and the Commission. The information gained by performing the case studies may impact future decisions to be made by the staff and the Commission.

Questions have been developed for each case study to answer. Answering these questions will guide the case studies to meet the objectives outlined below. Each case study will be of limited scope, but collectively, the case studies will cover a broad spectrum of regulatory applications in the materials and waste arenas. The case studies have been selected in areas that the staff believes would specifically help in establishing a framework, as well as areas that would help to set the groundwork for establishing safety goals.

3. Objectives

Case studies will have the following objectives:

Objective 1: Produce a final version of screening criteria for the materials and waste arenas.

Objective 2: Illustrate how the application of risk information has improved or could improve a particular area of the regulatory process in the materials and waste arenas.

Objective 3: Determine the feasibility of safety goals in a particular area. If feasible, develop safety goal parameters, and a first draft of safety goals. If infeasible, document the reasons.

Objective 4: Identify methods, data, and guidance needed to implement a risk-informed regulatory approach.

4. Draft Screening Criteria

Draft screening criteria were published in **Federal Register** Notices announcing the April 2000 workshop and a September 2000 public meeting (65 FR 14323, 03/16/00, and 65 FR 54323, 09/07/00, respectively). On the basis of comments received at the workshop, the public meeting, and discussions with the NMSS Risk Steering Group, the criteria have been revised.

The revised draft screening criteria are as follows:

(1) Would a risk-informed regulatory approach help to resolve a question with respect to maintaining or improving the activity's safety?

(2) Could a risk-informed regulatory approach improve the efficiency or the effectiveness of the NRC [1] regulatory process?

(3) Could a risk-informed regulatory approach reduce unnecessary regulatory burden for the applicant or licensee?

(4) Would a risk-informed approach help to effectively communicate a regulatory decision or situation?

If the answer to any of the above is yes, proceed to additional criteria; if not, the activity is considered to be screened out.

(5) Does information (data) and analytical models exist that are of sufficient quality or could they be reasonably developed to support risk-informing a regulatory activity?

If the answer to criterion 5 is yes, proceed to additional criteria; if not, the activity is considered to be screened out.

(6) Can startup and implementation of a risk-informed approach be realized at a reasonable cost to the NRC,[1] applicant or licensee, and/or the public, and provide a net benefit? The net benefit will be considered to apply to the public, the applicant or licensee, and the NRC.[1] The benefit to be considered can be improvement of public health and safety, improved protection of the environment, improved regulatory efficiency and effectiveness, improved communication to the public, and/or reduced regulatory burden (which translates to reduced cost to the public.)

If the answer to criterion 6 is yes, proceed to additional criteria; if not, the activity is considered to be screened out.

(7) Do other factors exist (*e.g.,* legislative, judicial, adverse stakeholder reaction) which would preclude changing the regulatory approach in an area, and therefore, limit the utility of implementing a risk-informed approach?

If the answer to criterion 7 is no, a risk-informed approach may be implemented; if the answer is yes, the activity may be given additional consideration or be screened out.

5. Measures of Success

Success of the case studies will be measured by the following:

(1) If, based on the testing of the draft screening criteria, final screening criteria are established, the case studies will collectively meet Objective 1.

(2) If a case study can illustrate how the application of risk information has affected or could affect and improve a particular area of the regulatory process, the case study will meet Objective 2.

(3) If a case study can determine the feasibility of establishing safety goals, and if feasible, develop the necessary safety goal parameters and a first draft of goals, the case study will meet Objective 3.

(4) If a case study can develop the risk-informed regulatory approach sufficient to define the methods, data, and guidance needed and the feasibility of developing them, the case study will meet Objective 4.

When completed, the staff will present the results of the spectrum of case studies to the Commission.

6. Case Study Outline

I. Revise draft screening criteria based on workshop and other suggestions (completed prior to September 21, 2000, meeting).

II. Meet with the NRC historian and other appropriate individuals (NRC and non-NRC) for perspectives and insights on the materials and waste regulatory history.

III. Review tables from the NRC–EPA risk harmonization effort and other sources such as the National Academy of Sciences study to uncover any implicit objectives (goals) under the existing regulatory framework. Glean insights on any potential underlying safety goals.

IV. Case Study Areas:

A. Gas Chromatographs (new and old designs, the line between general licenses and specific licenses for almost identical devices is

[1] For those regulatory processess in which Agreement States are involed, this criterion is applicable to Agreement States.

unclear—illustrate how the application of risk information could improve a particular area of the regulatory process).

B. Fixed Gauges (some are specifically licensed, and others are under a general license; regulatory criteria for general versus specific license are not based on risk—illustrate how the application of risk information could improve a particular area of the regulatory process; also, this could be a test case for a safety goal on property damage).

C. Site Decommissioning—the study may focus on certain decommissioning incidents and certain selected sites (elements of implied safety goals may be found in Commission decisions).

D. Uranium Recovery Facilities (gaps in the regulations may be found; helpful in testing the screening criteria; if determined to be a good candidate for using risk, develop and use risk information for new part 41 rulemaking effort).

E. Radioactive Material Transportation (elements of existing, implicit safety goals may be found in Commission decisions; public confidence and communication issue).

F. Part 76 (decide to use expanded risk information for gaseous diffusion plants or document the reasons why risk information will not improve the regulatory process in this area—contrast with new Part 70 approach; this decision-making process will be a good test for the draft screening criteria and will help establish consistency in applying risk information across materials and waste programs; also, possibly an area to look at chemical risk).

G. Spent Fuel Interim Storage (study probabilistic hazards analysis exemptions and proposed rulemaking—implicit safety goals may be found; public confidence issues and burden considerations).

H. Static Eliminators (public confidence issue; risk communication issue—regulatory changes were made even though perceived risk was low).

V. Case Study Structure:

A. Develop a set of questions for all case studies to answer.

B. Select a case-specific contact in each NMSS Division; obtain agreement with the Divisions on participation.

C. Public meeting to announce our plan for case studies (September 21, 2000).

D. Make any necessary revisions to plan based on input from public meeting.

E. Develop detailed approach and timeline for each case study including the need and level of involvement of contractor support.

F. Begin work on case studies.

G. Test screening criteria for each case study.

H. Answer all questions for each case study.

I. Meet with case-specific stakeholders as input to case studies.

J. Develop recommendations for safety goals (will be done in parallel with above).

K. Document results.

L. Conduct public meeting to present results of case studies.

M. Inform Commission of results.

VI. Assess the outcome and develop a plan to move forward.

7. Draft Questions for Case Studies

7.1. Screening Criteria Analysis/Risk Analysis Questions

(1) What risk information is currently available in this area? (Have any specific risk studies been done?)

(2) What is the quality of the study? (Is it of sufficient quality to support decision-making?)

(3) What additional studies would be needed to support decision-making and at what cost?

(4) How is/was risk information used and considered by the NRC and licensee in this area?

(5) What is the societal benefit of this regulated activity?

(6) What is the public perception/acceptance of risk in this area?

(7) What was the outcome when this application was put through the draft screening criteria? Did this application pass any of the screening criteria? Does the outcome seem reasonable? Why or why not?

7.2 Safety Goal Analysis Questions

(1) What is the basis for the current regulations in this area (*e.g.*, legislative requirements, international compatibility, historical events, public confidence, undetermined, etc.)?

(2) Are there any explicit safety goals or implicit safety goals embedded in the regulations, statements of consideration, or other documents (an example would be the acceptance of a regulatory exemption based in part on a risk analysis and the outcome)?

(3) What was the basis for the development of the strategic goals, performance goals, measures and metrics? How are they relevant/applicable to the area being studied and how do they relate/compare with the regulatory requirements? How would they relate to safety goals in this area?

(4) Are there any safety goals, limits, or other criteria implied by decisions or evaluations that have been made that are relevant to this area?

(5) If safety goals were to be developed in this area, would tools/data be available for measurement?

(6) Who are/were the populations at risk?

(7) What are/were, and what could be/have been, the various consequences to the populations at risk?

(8) What parameters should be considered for the safety goals (*e.g.*, workers vs. public, individual vs. societal, accidents vs. normal operations, acute vs. latent fatality or serious injury, environmental and property damage)?

(9) On the basis of the answers to the questions above, would it be feasible to develop safety goals in this regulatory area?

(10) What methods, data results, safety goals, or regulatory requirements would be necessary to make it possible to risk-inform similar cases?

7.3 Questions Upon Developing Safety Goals

(1) Are the current regulations sufficient in that they reflect the objectives of the draft goals? Would major changes be required?

(2) Would the regulations need to be tightened?

(3) Are the regulations overly conservative and/or too prescriptive with respect to the goals?

(4) If these were the safety goals, what decisions would be made?

(5) Would these goals be acceptable to the public?

ADDRESSES: Copies of this plan are available on the Internet at http://www.nrc.gov/NMSS/IMNS/riskassessment.html. Submit written requests for single copies of this plan to the U. S. Nuclear Regulatory Commission, Office of Nuclear Materials Safety and Safeguards, Risk Task Group, MS T–8–A–23, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Marissa Bailey, Mail Stop T–8–A–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7648; Internet: *MGB@NRC.GOV*.

Dated at Rockville, MD, this 1st day of November 2000.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Section Chief, Risk Task Group, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–28415 Filed 11–6–00; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments Are Invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarify of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection:

Public Service Pension Questionnaire; OMB 3220–0136.

Public Law 95–216 amended the Social Security Act of 1977 by providing, in part, that spouse or survivor benefits may be reduced when the beneficiary is in receipt of a pension based on employment with a Federal, State, or local government unit. Initially, the reduction was equal to the full amount of the government pension. Public Law 98–21, changed the reduction to two-thirds of the amount of the government pension. Sections 4(a)(1) and 4(f)(1) of the Railroad Retirement Act (RRA) provides that an spouse or survivor annuity should be equal in amount to what the annuitant would receive if entitled to a like benefit from the Social Security Administration. Therefore, the public service pension (PSP) reduction provision applies to RRA annuities.

Regulations pertaining to the collection of evidence relating to public service pensions or worker's compensation paid to spouse or survivor applicants or annuitants are found in 20 CFR 219.64c. The RRB utilizes Form G–208, Public Service Pension Questionnaire, and Form G–212, Public Service Monitoring Questionnaire, to obtain information used to determined whether an annuity reduction is in order. Completion is voluntary. However, failure to complete the forms could result in the nonpayment of benefits. One response is requested of each respondent.

The RRB proposes to revise Form G–208 to request additional information regarding service time worked under the Federal Employee Retirement System (FERS). Additional nonburden impacting, editorial and reformatting changes, which include enhanced instructions intended to make the form easier to complete, are also proposed. The RRB also proposes minor non burden impacting editorial changes to Form G–212. The completion time for the G–208 is estimated at 15 minutes. The completion time for the G–212 is estimated at 3 minutes. The RRB estimates that approximately 1,700 Form G–208's and 1,000 Form G–212's are completed annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (212) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–28456 Filed 11–6–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–2; SEC File No. 270–442; OMB Control No. 3235–0498.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–12 under the Securities Exchange Act of 1934 is the reporting rule tailored specifically for OTC derivatives dealers, and Form X–17A–5IIB, the Financial and Operational Combined Uniform Single Report, is the basic document for reporting the financial and operational condition of OTC derivatives dealers.

At this point there is only one registered OTC derivatives dealer, however it is anticipated to affect approximately six (and possibly up to ten) OTC derivatives dealers within the next three years, Rule 17a–12 requires OTC derivatives dealers to file quarterly Financial and Operational Combined Uniform Single Reports (FOCUS)—Form X–17A–5IIB.[1] Rule 17a–12 also requires that OTC derivatives dealers file audited financial statements annually. The staff estimates that the average amount of time necessary to prepare and file the information required by the proposed rule is eighty hours per OTC derivatives dealer[2] with each spending an additional one hundred hours on the annual audit for a total of 180 hours per OTC derivatives dealer annually. Thus the staff estimates that the total number of hours necessary for six OTC derivatives dealers to comply with the requirements of Rule 17a–12 on an annual basis is 1,080 hours.[3]

The staff believes that financial reporting specialists will prepare the FOCUS IIB Report and supporting Schedules, compliance personnel may review the reports to assure compliance with applicable rules, and accountants will prepare the audited annual reports. The staff estimates that the hourly salary of a financial reporting specialist is $72.40 per hour,[4] the hourly salary of a compliance manager is $82.50 per hour,[5] and the hourly salary of a compliance manager is $51.60 per hour.[6] Based upon these numbers, the

[1] Form X–17a–5 [17 CFR 249.617].

[2] Based upon an average of 4 responses per year and an average of 20 hours spent preparing each response.

[3] Or, 1,800 hours annually for 10 OTC derivatives dealers to comply.

[4] Per Securities Industry Association (SIA) Management and Professional Earnings. Table 011 (Financial Reporting Manager) + 35% overhead (based on end-of-year 1998 figures).

[5] SIA Management and Professional Earnings, Table 051 (Compliance Manager + 35% overhead (based on end-of-year 1998 figures).

[6] SIA Management and Professional Earnings, Table 003 (Senior Accountant) + 35% overhead (based on end-of-year 1998 figures).

total cost of compliance for six respondents is $65,950.00 per year.[7]

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: October 31, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28503 Filed 11–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 29; SEC File No. 270–169; OMB Control No. 3235–0149.

Rule 83; SEC File No. 270–82; OMB Control No. 3235–0181.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 29, Filing of Reports to State Commissions, concerns reports to state commissions by registered holding companies and their subsidiaries. The rule requires that a copy of each annual report submitted by any registered holding company or any of its subsidiaries to a state commission covering operations not reported to the Federal Energy Regulatory Commission be filed with the Securities and Exchange Commission no later than ten days after such submission.

The information collected under Rule 29 permits the Commission to remain current on developments that are reported to state commissions, but that might not be reported to the Commission otherwise. This information is beneficial to the liaison the Commission maintains with state governments and also is useful in the preparation of annual reports to the U.S. Congress under Section 23 of the Public Utility Holding Company Act of 1935.

The title of Rule 83 is Exemption In the Case of Transactions With Foreign Associates. It authorizes exemption from the cost standard of section 13(b) of the Public Utility Holding Company Act of 1935 for services provided to associated foreign utility companies.

Rule 83 requires a registered holding company system that wishes to avail itself of this exemption from Section 13(b) to submit an application, in the form of a declaration, to the Commission. The Commission will grant the application if, by reason of the lack of any major interest of holders of securities offered in the United States in servicing arrangements affecting such serviced subsidiaries, such an application for exemption is necessary or appropriate in the public interest or for the protection of investors.

Rules 29 and 83 do not create a recordkeeping or retention burden on respondents. These rules do, however, contain reporting and filing requirements. Rule 29 imposes a reporting burden of about .25 hours for each of sixty-two respondents, each of which makes one submission annually. The total annual burden is fifteen and one-half hours. Rule 29 imposes no cost burdens.

Since the Commission has received no applications under Rule 83 recently, it is estimated the burden of Rule 83 as zero.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Directory, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: October 30, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28505 Filed 11–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ad–13; SEC File No. 270–263; OMB Control No. 3235–0275.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17Ad–13, Annual Study and Evaluation of Internal Accounting Control

Rule 17Ad–13 requires approximately 200 registered transfer agents to obtain an annual report on the adequacy of internal accounting controls. In addition, transfer agents must maintain copies of any reports prepared pursuant to Rule 17Ad–13 plus any documents prepared to notify the Commission and appropriate regulatory agencies in the event that the transfer agent is required to take any corrective action. These recordkeeping requirements assist the

[7] (19 hours × $72.40 × 4 filings per year) + (1 hour × $82.50 per hour × 4 filings per year) + (100 hours × $51.60 × 1 filing per year) × six (6) OTC derivatives dealers. The total cost for ten (10) respondents would be $109,924.00 per year.

Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. Small transfer agents are exempt from Rule 17Ad–13.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–13 is one hundred seventy-five hours annually. The total burden is 35,000 hours annually for transfer agents, based upon past submissions. The average cost per hour is approximately $60. Therefore, the total cost of compliance for transfer agents is $1,300,000.

The retention period for the recordkeeping requirement under Rule 17Ad–13 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under Rule 17Ad–13 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that 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 control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, DC 20549. Comments must be submitted to OMB within thirty days of this notice.

Dated: November 1, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28502 Filed 11–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 10b–10; SEC File No. 270–389; OMB Control No. 3235–0444.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 10b–10 requires broker-dealers to convey basic trade information to customers regarding their securities transactions. This information includes: the date and time of the transaction, the identity and number of shares bought or sold, and the trading capacity of the broker-dealer. Depending on the trading capacity of the broker-dealer, the Rule requires the disclosure of commissions as well as markup and markdown information. For transactions in debt securities, the Rule requires the disclosure of redemption and yield information. The Rule potentially applies to all of the approximately 5,300 firms registered with the Commission that effect transactions on behalf of customers.

The confirmations required by Rule 10b–10 are generally processed through automated systems. It takes approximately 1 minute to generate and send a confirmation. It is estimated that broker-dealers spend 56 million hours per year complying with rule 10b–10.

The Commission staff estimates the costs of producing and sending a confirmation to be approximately 89 cents. The amount of confirmations sent and the cost of sending each confirmation varies from firm to firm. Smaller firms generally send fewer confirmations than larger firms because they effect fewer transactions.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 31, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28504 Filed 11–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24720]

Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940

October 31, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October, 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 27, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Time Horizon Funds [File No. 811–9024]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 20, 1999, applicant transferred it assets to Nations Asset Allocation Fund, a portfolio of The Nations Institutional Reserves, based on net asset value. Expenses of $232,024 incurred in connection with the reorganization were paid by applicant's investment adviser, Bank of America, and/or its affiliates.

Filing Dates: The application was filed on September 26, 2000, and amended on October 25, 2000.

Applicant's Address: 103 Bellevue Parkway, Wilmington, Delaware 19809.

Morgan Stanley Aggressive Equity Fund, Inc. [File No. 811–8504]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Dates: The application was filed on August 17, 2000, and amended on October 24, 2000.

Applicant's Address: c/o Morgan Stanley Dean Witter Investment Management, Inc., 1221 Avenue of the Americas, New York, New York 10020.

Nationwide Investing Foundation [File No. 811–435]; Nationwide Investing Foundation II [File No. 811–4436]; Financial Horizons Investment Trust [File No. 811–5559]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On May 9, 1998, each applicant transferred its assets to Nationwide Mutual Funds (F/K/A Nationwide Investing Foundation III) based on net asset value. Expenses of $198,784, $216,597 and $167,098, respectively, were incurred in connection with the reorganizations, with each applicant paying 50% of their respective expenses and Nationwide Advisory Services, Inc., applicants' investment adviser, paying the remaining 50%.

Filing Date: The applications were filed on September 22, 2000.

Applicants' Address: One Nationwide Plaza, Columbus, Ohio 43215.

Merrill Lynch Emerging Tigers Fund, Inc. [File No. 811–7135]; Merrill Lynch Middle East/Africa Fund, Inc. [File No. 811–7155]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On May 22, 2000, applicants transferred their assets to Merrill Lynch Dragon Fund, Inc. and Merrill Lynch Developing Capital Markets Fund, Inc., respectively, based on net asset value. Expenses of $188,907 were incurred in connection with the reorganization of Merrill Lynch Emerging Tigers Fund, Inc., of which applicant paid $113,581 and Merrill Lynch Investment Managers L.P., investment adviser to each applicant, paid the remaining $75,326. Expenses of $145,384 were incurred in connection with the reorganization of Merrill Lynch Middle East/Africa Fund, Inc., of which applicant paid $75,484 and applicant's investment adviser paid the remaining $69,900.

Filing Date: The applications were filed on September 29, 2000.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

The Bradford Funds, Inc. [File No. 811–5682]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By August 16, 2000, applicant had made final liquidating distributions to its shareholders based on net asset value. Expenses of $100,710 were incurred in connection with the liquidation, of which applicant paid $53,407 and PaineWebber Group, Inc. paid the remaining $47,303.

Filing Date: The application was filed on September 28, 2000.

Applicant's Address: 600 Fifth Avenue, New York, New York 10020.

MuniHoldings Insured Fund III, Inc. [File No. 811–9285]; MuniHoldings Insured Fund IV, Inc. [File No. 811–9557]

Summary: Each applicant, a closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On August 14, 2000, each applicant transferred its assets to MuniHoldings Insured Fund II, Inc. based on net asset value. Each holder of each applicant's auction market preferred stock (''AMPS'') received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $159,320 and $85,316, respectively, were incurred in connection with the reorganizations and were paid by the acquiring fund.

Filing Date: The applications were filed on October 6, 2000.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

Virginia Daily Municipal Income Fund, Inc. [File No. 811–9006]

Summary: Applicant seeks an order declaring it has ceased to be an investment company. On September 22, 2000, applicant made its final liquidating distribution to its shareholders based on net asset value. Expenses of $3,000 incurred in connection with the liquidation were paid by Reich & Tan Asset Management L.P., applicant's investment adviser.

Filing Date: The application was filed on October 3, 2000.

Applicant's Address: 600 Fifth Avenue, New York, New York 10020.

Reich & Tang Equity Fund, Inc. [File No. 811–4148]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 16, 2000, applicant transferred its assets to Delafield Fund, Inc., based on net asset value. Expenses of $64,357 incurred in connection with the reorganization were paid by Reich & Tang Asset Management L.P., applicant's investment adviser.

Filing Date: The application was filed on October 6, 2000.

Applicant's Address: 600 Fifth Avenue, New York, New York 10020.

Fidelity Advisor Korea Fund, Inc. [File No. 811–8608]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 30, 2000, applicant transferred its assets to Fidelity Advisor Korea Fund, a series of Fidelity Advisor Series VIII, an open-end investment company, based on net asset value. Expenses of $138,170 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on September 22, 2000.

Applicant's Address: 82 Devonshire Street, Boston Massachusetts 02109.

Hyperion 1999 Term Trust, Inc. [File No. 811–6483]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 2, 1999, applicant made a final liquidating distribution to its shareholders based on net asset value. Distributions payable to unlocated shareholders are being held by EquiServe. Amounts that are unclaimed will eventually escheat to the various states. Expense of $2,120,389 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on September 20, 2000.

Applicant's Address: One Liberty Plaza, 165 Broadway, New York, New York 10006.

Gradison-McDonald Cash Reserves Trust [File No. 811–2618]; Gradison Growth Trust [File No. 811–3760]; Gradison Custodian Trust [File No. 811–5198]; Gradison-McDonald Municipal Custodian Trust [File No. 811–6705]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By April 6, 1999, each applicant had transferred its

assets to a corresponding series of The Victory Portfolios based on net asset value. Expenses of approximately $658,050, $593,457, $57,930, and $61,926, respectively, incurred in connection with each reorganization were paid by BISYS Fund Services Ohio Inc., Key Corp and The Victory Portfolios.

Filing Dates: Each application was filed on September 23, 1999, and amended on August 18, 2000.

Applicant's Address: 580 Walnut Street, Cincinnati, Ohio 45202.

American Diversified Funds, Inc. [File No. 811–3434]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 17, 1999, applicant transferred its assets to Orbitex Growth Fund, a series of the Orbitex Group of Funds, based on net asset value. Expenses of $36,663 incurred in connection with the reorganization were paid by Orbitex Management, Inc., investment adviser to the acquiring fund.

Filing Dates: The application was filed on August 28, 2000, and amended on October 10, 2000.

Application's address: c/o Orbitex Group of Funds, 410 Park Avenue, New York, New York 10022.

USAllianz Funds [File No. 811–9489]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made a public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Dates: The application was filed on September 18, 2000, and amended on October 5, 2000.

Applicant's Address: 3435 Stelzer Road, Columbus, Ohio 43219.

CrestFunds, Inc. [File No. 811–4620]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By May 24, 1999, applicant had transferred its assets to STI Classic Funds based on net asset value. Expenses of $580,272 incurred in connection with the organization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on October 13, 2000.

Applicant's Address: 300 East Lombard Street, Baltimore, Maryland 21202.

Global Small Cap Fund Inc. [File No. 811–7814]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 27, 2000, applicant transferred its assets to PaineWebber Global Equity Fund, a series of PaineWebber Investment Trust, based on net asset value. Expenses of $256,900 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on October 19, 2000.

Applicant's Address: 51 West 52nd Street, New York, New York 10019–6114.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–28506 Filed 11–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 65 FR 65034, October 31, 2000.

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: October 25, 2000.

CHANGE IN THE MEETING: Cancellation of meeting.

The closed meeting scheduled for Thursday, November 2, 2000 at 11:00 a.m. has been cancelled.

Dated: November 2, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–28581 Filed 11–2–00; 4:16 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [to be published]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW, Washington, DC.

DATE PREVIOUSLY ANNOUNCED: November 1, 2000.

CHANGE IN THE MEETING: Cancellation of Meeting.

The closed meeting scheduled for Wednesday, November 8, 2000 at 11 a.m. has been cancelled.

Dated: November 2, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–28625 Filed 11–3–00; 12:49 pm]

BILLING CODE 81010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43501; File No. SR–NASD–00–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Interpretation Regarding ACT Risk Management Charges, and to Clarify the ACt Risk Management Function

October 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2000, the National Association of Securities Dealers (''NASD''), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to NASD Rules 7010 and 6150. The purpose of the proposal is to issue an interpretation regarding Automated Confirmation Transaction Service (''ACT'') risk management charges and a clarification regarding the ACT risk management function. Below is the text of the proposed rule change. Proposed new language is in *italics*.

Rule 7010. System Services

(a)–(f) No change.

(g) Automated Confirmation Transaction Service

The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On August 17, 2000, Nasdaq minor, technical changes to the proposed rule change, none of which were substantive in nature, and none which required the filing of a formal amendment. Telephone conversation among Mary N. Revell, Associate General Counsel, Office of General Counsel, Nasdaq, and Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC and Joseph P. Morra, Special Counsel, Division, SEC.

Transaction Related Charges:

No change.

Risk Management Charges: $0.035/side and $17.25/month per correspondent firm (maximum $10,000/month per correspondent firm)

IM–7010–1; Risk Management Charges

All clearing brokers are provided access to the ACT risk management function for which they are assessed the charges detailed above, unless exempted under the provision detailed below.

Self-clearing brokers are not required to pay risk management charges.

Clearing brokers that are effectively self-clearing with respect to certain correspondents may seek relief from the requirement to pay ACT risk management charges for trades cleared on behalf of these correspondents. A firm is ''effectively self-clearing'' if it clears for affiliated correspondents that are wholly or majority owned by a common corporate parent, which will be solely liable for any credit problems encountered by the affiliates. Such a firm may choose not to utilize the ACT risk management function for trades cleared on behalf of affiliated correspondents and may seek relief from ACT risk management charges by submitting a letter to Nasdaq containing the following:

(1) a detailed description of the firm's corporate structure showing that all affiliates are wholly or majority owned by a common corporate parent;

(2) a statement that the firm will use an internal risk management capability to monitor the trading activities and risk exposure of its affiliated correspondents and meet its financial and operational obligations under the federal securities laws and NASD rules that provides risk management functions comparable to those provided by ACT as described in Rule 6150;

(3) an acknowledgment that the firm will no longer utilize the ACT risk management function for trades cleared for these affiliated correspondents; and

(4) a request for relief from ACT risk management charges. After reviewing the letter to ensure that it addresses all the above elements, Nasdaq will:

(1) instruct the NASD Finance Department to cease assessing ACT risk management charges on trades cleared by the firm on behalf of its affiliated correspondents;

(2) notify ACT that the firm will no longer utilize the ACT risk management function for the affiliated correspondents' trades; and

(3) inform NASD Regulation of this new arrangement.

* * * * *

Rule 6150. ACT Risk Management Functions

Self-clearing brokers, corresponding clearing brokers, and executing brokers, whether they utilize the ACT risk management function or not, are required to report all clearing-eligible transactions to ACT for ACT risk management functions. The ACT system will provide the following risk management capabilities to clearing brokers that have executed an ACT Participants Risk Management Agreement:

(a)–(g) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq including statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

1. *Purpose*

ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing of pre-negotiated trades completed in Nasdaq, OTC Bulletin Board, and other over-the-counter securities. ACT handles transactions negotiated over the phone or executed through any of Nasdaq's automated trading services. It also manages post-execution procedures for transactions in exchange-listed securities that are traded off-board in the Nasdaq InterMarket. Participation in ACT is mandatory for NASD members that are members of a clearing agency registered with the SEC, that have a clearing arrangement with such a member, or that participate in any of Nasdaq's trading services. An integral part of ACT is the risk management function.

The ACT risk management function provides firms that clear for other firms with the capability to establish acceptable levels of credit for their introducing firms. ACT risk management also enables clearing brokers to monitor buy/sell trading activity of their introducing firms, establish trading thresholds, allow/inhibit large trades, add/delete clearing relationships, and access a real-time database of correspondent trading activity.[4] Clearing brokers providing clearing services to correspondent firms are assessed risk management charges of $0.035 per trade and $17.25 per month per correspondent firm. Nasdaq recently adopted a new rule, limiting this charge to a maximum of $10,000 per month per correspondent.[5] Self-clearing brokers without correspondents have no reason to utilize the ACT risk management function, given their lack of exposure, and are not assessed risk management charges.

The ACT service was implemented for self-clearing firms in March 1990.[6] The ACT service for clearing firms and their executing correspondents, including the risk management function, was implemented in October 1990;[7] the ACT risk management service charge was implemented in November 1990.[8]

Recently, Nasdaq received two inquiries from clearing brokers seeking relief from the ACT risk management charges for trades cleared for affiliated correspondents. These clearing firms have entered into new relationships with previously unaffiliated broker-dealer firms. As a result, all of the affiliated firms, including the clearing firm and the correspondent firm(s), are wholly or majority owned by a common corporate parent, which will be solely liable for any credit problems encountered by the affiliated firms. The clearing firm in such an arrangement has an internal risk management system that allows it to monitor the capital exposure of the consolidated entities. These clearing firms have represented to Nasdaq that they believe they are effectively self-clearing firms, and should be treated as such for purposes of application of the requirement to pay ACT risk management charges.

Nasdaq believes there is merit to this position, and proposes to issue a responsive interpretation regarding ACT risk management charges. The proposed interpretation would reiterate Nasdaq's long-standing position that clearing brokers are required to pay ACT risk management charges and that self-clearing brokers are not required to pay these charges. The interpretation would further state that firms that are effectively self-clearing are not required to pay ACT risk management charges, subject to the provisions set forth in the interpretation. Nasdaq supports the view that a firm that clears for affiliated correspondents that are wholly or majority owned by a common corporate parent, which will be solely liable for any credit problems encountered by the affiliates, should be effectively considered self-clearing. Nasdaq believes that such a firm should be able

[4] *See* NASD Rule 6150.

[5] *See* Securities Exchange Act Release No. 42984 (June 27, 2000), 65 FR 41119 (July 3, 2000) (SR–NASD–00–35).

[6] *See* Securities Exchange Act Release No. 27229 (Sept. 8, 1989), 54 FR 38484 (Sept. 18, 1989) (SR–NASD–89–25).

[7] *See* Securities Exchange Act Release No. 28583 (Oct. 26, 1990), 55 FR 46120 (Nov. 1, 1990) (SR–NASD–89–25).

[8] *See* Securities Exchange Act Release No. 28595 (Nov. 5, 1990), 55 FR 47161 (Nov. 9, 1990) (SR–NASD–90–57).

to choose whether or not to participate in the ACT risk management function with respect to trades cleared on behalf of the affiliates, as long as it has an effective internal risk management system.

Under the interpretation, a firm that chooses not to participate in the ACT risk management function will be able to seek an exemption from the ACT risk management charge for trades cleared on behalf of affiliated correspondents by submitting a letter to Nasdaq. The letter must describe in detail the clearing firm's ownership structure, state that the firm will use an internal risk management capability to monitor the trading activities and risk exposure of its affiliated correspondents and meet its financial and operational obligations under the federal securities laws and NASD rules that provides risk management functions comparable to those provided by ACT, acknowledge that it will no longer utilize the ACT risk management function for trades cleared for its affiliates, and request an exemption from the ACT risk management charge. After reviewing the letter to ensure that it addresses all of the above, Nasdaq will instruct the NASD Finance Department that it should no longer assess ACT risk management charges on trades cleared by the firm on behalf of its affiliates, notify ACT that the firm will no longer utilize the ACT risk management function for the affiliated correspondents' trades, and inform NASD Regulation of this new arrangement.

Nasdaq proposes to make the interpretation effective immediately after SEC approval. Firms that submit a satisfactory letter to Nasdaq requesting relief from ACT risk management charges within 90 days of the effective date of the interpretation will no longer be assessed future ACT risk management charges and will receive a credit for any such fees paid for ACT risk management services after April 1, 2000. Firms that request relief from ACT risk management charges 90 days or more after the effective date of the interpretation will not be assessed ACT risk management charges beginning on the first day of the first month after a satisfactory letter is received by Nasdaq.

Nasdaq also proposes to revise NASD Rule 6150, ACT Risk Management Functions, to explicitly state that clearing brokers and executing brokers must report all clearing-eligible transactions to ACT for risk management functions. This transaction information is included in Nasdaq's real-time database of correspondent trading activity. Submission of complete clearing information to ACT is essential in order for Nasdaq to be able to generate accurate ACT risk management function reports and alerts.

Nasdaq is proposing this revision to respond to arguments that have been made by member firms that participation in ACT risk management is optional. Nasdaq believes those member firms have based their position on an erroneous interpretation of a sentence in a Notice to Members (''NTM'') issued in 1990 announcing SEC approval of the ACT risk management functions. In pertinent part, NTM 90–80 states:

> Using ACT Risk Management, *clearing firms can choose* to monitor purchase and sale activity, establish dollar thresholds for the trading day, examine large trades, establish and delete clearing relationships, and develop an internal database through a real-time data feed of correspondent activity. (Emphasis added.)

This sentence establishes that clearing firms can choose to use any of the available ACT risk management functions to monitor correspondent activity; it does not mean that participation in ACT risk management is optional. Nasdaq's long-standing position is that clearing firm participation in ACT risk management is mandatory. However, to resolve any ambiguities, Nasdaq is proposing to revise NASD Rule 6150, ACT Risk Management Functions, to make this requirement explicit.

2. *Statutory Basis*

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system and, in general, to protect investors and the public interest. The proposed rule change also is consistent with Section 15A(b)(5) of the Act[10] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78o–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (9) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–45 and should be submitted by November 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 00–28507 Filed 11–6–00; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment.

The specific amendments proposed in this notice are summarized as follows: (1) proposed amendment to address aggravating conduct associated with the unlawful supplementation of the salary of certain federal employees and to consolidate §§ 2C1.3 (Conflict of Interest), 2C1.4 (Payment or Receipt of Unauthorized Compensation), and 2C1.5 (Payments to Obtain Public Office) to simplify overall guideline application for covered offenses; (2) proposed amendment to § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) to increase the base offense level and to replace the minimum offense level for manufacturing offenses with a two-level enhancement; (3) proposed amendment to § 2H3.1 (Interception of Communications or Eavesdropping) to address several offenses relating to the unlawful disclosure and/or inspection of tax return information; and (4) proposed amendments that address four circuit conflicts as follows: (A) proposed amendment to § 1B1.2 (Applicable Guidelines) to provide that a factual statement made by a defendant at a plea colloquy is not a stipulation for purposes of § 1B1.2(a) unless that statement is agreed to as part of the plea agreement; (B) two options for amending § 2A2.2 (Aggravated Assault) to clarify that (i) both the base offense level and the weapon use enhancement in § 2A2.2(b)(2) shall apply to aggravated assaults that involve a dangerous weapon with intent to cause bodily injury; and (ii) instruments, such as a car or chair, that ordinarily are not used as weapons may qualify as dangerous weapons for purposes of § 2A2.2(b)(2) if the defendant involves them in the offense with the intent to cause bodily injury; (C) proposed amendment to § 2F1.1 (Fraud and Deceit) to provide for application of the enhancement in § 2F1.1(b)(4)(A) if either (i) the defendant falsely represented that the defendant was an employee of a covered organization or a government agency; or (ii) the defendant, an employee of a covered organization or a government agency, represented that the defendant was acting solely for the benefit of the organization or agency when, in fact, the defendant intended to divert all or part of that benefit (for example, for the defendant's personal gain); and (D) proposed amendment to § 3B1.2 (Mitigating Role) to provide that a defendant in a drug trafficking offense whose role was limited to transporting or storing drugs and who was accountable only for the drugs the defendant personally transported or stored, is not precluded from receiving a mitigating role adjustment, even in a single defendant case.

DATES: Written public comment should be received by the Commission not later than January 8, 2001.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, D.C. 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions for how the Commission should respond to those issues.

Reports and other additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's website at www.ussc.gov.

Authority: 28 U.S.C. 994 (a), (o), (p), (x); USSC Rules of Practice and Procedure 4.3, 4.4.

Diana E. Murphy,

Chair.

Proposed Amendment: Unauthorized Compensation

1. Synopsis of Proposed Amendment

This proposed amendment addresses the issue of whether, and to what extent, the guideline offense levels should be increased in § 2C1.4, the guideline for offenses in 18 U.S.C. 209 involving the unlawful supplementation of the salary of various federal employees. The proposed amendment (A) adds a cross reference to the bribery and gratuity guidelines, in order to account for aggravating conduct; and (B) consolidates the unauthorized compensation guideline (§ 2C1.4) with the conflict of interest guideline (§ 2C1.3) and the guideline covering payments to obtain public office (§ 2C1.5), to promote ease of application.

The Commission began to focus on this issue in 1998 when it promulgated an amendment to § 2C1.4 to delete outdated, erroneous background commentary. That commentary, first written in 1987, described the offenses covered by the guideline as misdemeanors punishable by imprisonment for not more than one year. In fact, however, the penalties for 18 U.S.C. 209 offenses were changed in 1989. The applicable penalties, under 18 U.S.C. 216, became (1) imprisonment for not more than one year; or (2) imprisonment for not more than five years, if the defendant willfully engaged in the conduct constituting the offense.

The increased statutory penalties under 18 U.S.C. 216 implicate the question of whether guideline penalties under §§ 2C1.3 and 2C1.4 should be increased correspondingly, particularly if the current guideline penalty structure inadequately takes into account aggravating conduct associated with these offenses.

The guideline covering offenses in 18 U.S.C. 209, § 2C1.4, has a base offense level of level 6 and no additional

enhancements that take into account aggravating conduct. From FY91 through FY99, a total of 73 cases were sentenced under § 2C1.4. Because of the low offense levels associated with this guideline, all of the defendants sentenced under § 2C1.4 received probation.

Moreover, the increased statutory penalty in 18 U.S.C. 216 (namely, the five-year statutory maximum for willful conduct) applies not only to offenses under 18 U.S.C. 209 but also to bribery, graft, and conflict of interest offenses under 18 U.S.C. 203, 204, 205, 207, and 208, all of which are covered by the conflict of interest guideline, § 2C1.3. That guideline has a base offense level of level 6 and a four-level enhancement if the offense involved actual or planned harm to the government. From FY91 through FY99, a total of 71 cases were sentenced under § 2C1.3, and only 10 of those cases received the enhancement for actual or planned harm to the government.

Commission staff review of the cases sentenced under §§ 2C1.3 and 2C1.4 revealed that many of those cases actually involved a bribe or a gratuity. In other words, many of these defendants likely could have been charged under a bribery or gratuity statute (most likely 18 U.S.C. 201) and sentenced under the more serious bribery (§ 2C1.1) or gratuity (§ 2C1.2) guideline but were convicted under the less serious statutes and sentenced under the less severe guidelines (i.e., §§ 2C1.3 and 2C1.4).

The following proposed amendment is intended to address these issues by (A) adding a cross reference from § 2C1.4 to the bribery and gratuity guidelines, in order to account for aggravating conduct; and (B) consolidating the unauthorized compensation guideline with the conflict of interest guideline and the guideline covering payments to obtain public office, to promote ease of application. First, in order to more adequately account for aggravating conduct prevalent in these cases (i.e., the presence of a bribe or a gratuity), the proposed amendment provides a cross reference to § 2C1.1 (in the case of a bribe) or § 2C1.2 (in the case of a gratuity), which will apply on the basis of the underlying conduct; i.e., as a sentencing factor rather than a count of conviction factor.

Second, in order to simplify overall guideline operation, the proposed amendment consolidates §§ 2C1.3 (Conflict of Interest), 2C1.4 (Payment or Receipt of Unauthorized Compensation), and 2C1.5 (Payments to Obtain Public Office). Although the elements of the offenses of conflict of interest (currently covered by § 2C1.3) and unauthorized compensation (currently covered by § 2C1.4) differ in some ways, the gravamen of the offenses is similar—unauthorized receipt of a payment in respect to an official act. The base offense levels for both guidelines are identical. However, the few cases in which these guidelines were applied usually involved a conflict of interest offense that was associated with a bribe or gratuity.

The guideline covering payments to obtain public office, § 2C1.5, is also consolidated under the proposed amendment. Offenses involving payment to obtain public office generally, but not always, involve the promised use of influence to obtain public appointive office. Also, such offenses need not involve a public official (see, for example, the second paragraph of 18 U.S.C. 211). The current offense level for all such offenses is level 8. The two statutes to which § 2C1.5 applies (18 U.S.C. 210 and 211) are both Class A misdemeanors. Under the proposed consolidation, the base offense level would be level 6, but the higher base offense level of § 2C1.5 would be taken into account by a two-level enhancement in subsection (b)(1)(B) covering conduct under 18 U.S.C. 210 and the first paragraph of 18 U.S.C. 211. There is one circumstance in which a lower offense level may result and one circumstance in which a higher offense level may result. The offense level for conduct under the second paragraph of 18 U.S.C. 211 (the prong of § 211 that does not pertain to the promise or use of influence) is reduced from level 8 to level 6. On the other hand, conduct that involves a bribe of a government official will result in an increased offense level (level 10 or greater, compared to level 8) under the proposed cross reference.

Proposed Amendment

Section 2C1.3 is amended in the title by inserting ''; Payment or Receipt of Unauthorized Compensation; Payments to Obtain Public Office'' after ''Interest''.

Section 2C1.3(b) is amended by striking subdivision (1) in its entirety and inserting the following:

''(1) (Apply the greater):

(A) if the offense involved actual or planned harm to the government, increase by 4 levels; or

(B) if the offense involved (i) the payment, offer, or promise of any money or thing of value in consideration for the use of, or promise to use, any influence to procure an appointive federal position for any person; or (ii) the solicitation or receipt of any money or thing of value in consideration of the promise of support, or use of influence, in obtaining an appointive federal position for any person, increase by 2 levels.''.

Section 2C1.3 is amended by adding after subsection (b) the following new subsection:

''(c) Cross Reference

(1) If the offense involved a bribe or gratuity, apply § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) or § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate, if the resulting offense level is greater than determined above.''.

The Commentary to § 2C1.3 captioned ''Statutory Provisions'' is amended by inserting '', 209, 210, 211, 1909'' after ''208''.

The Commentary to § 2C1.3 captioned ''Application Note'' is amended in Note 1 by inserting ''Abuse of Position of Trust.—'' before ''Do not''.

The Commentary to § 2C1.3 is amended by striking the background note in its entirety.

Sections 2C1.4 and 2C1.5 are deleted in their entirety.

Proposed Amendment: Counterfeiting Offenses

2. Synopsis of Proposed Amendment

This proposed amendment (A) increases the base offense level in § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) from level 9 to level 10; (B) replaces the minimum offense level of level 15 for manufacturing offenses with a two-level enhancement; and (C) proposes to delete commentary that suggests that the manufacturing adjustment does not apply if the defendant ''merely photocopies''.

First, the amendment increases the base offense level from level 9 to level 10. Setting the base offense level at level 10 for counterfeiting crimes promotes proportionality in sentencing for counterfeiting vis-a-vis other, similar economic crimes. For example, fraud crimes sentenced under § 2F1.1 (Fraud and Deceit) receive a base offense level of level 6 and almost invariably (roughly 85% of the time) two additional levels for ''more than minimal planning.'' Thus, before any ''loss'' enhancement is applied, fraud defendants are routinely at a minimum of level 8. Placing the base offense level for counterfeiting at level 10 recognizes that counterfeiting causes greater harm than fraud in its most basic form in that counterfeiting undermines public confidence in the currency and causes the government to spend great sums of money to build

anti-counterfeiting safeguards into the currency.

Second, the amendment replaces the minimum offense level of level 15 for manufacturing offenses with a two-level enhancement. Replacing the minimum offense level of level 15 with a two-level enhancement has a double benefit. First, it eliminates the cliff inherent in setting a sentencing minimum. Specifically, the existing minimum of level 15 for manufacturing activity takes all defendants who engage in manufacturing to level 15 regardless of the economic harm caused. This means that the manufacturer of twenty dollars worth of counterfeit, who many would contend does not deserve to be sentenced at offense level 15, receives the same sentence as the manufacturer of seventy thousand dollars worth of counterfeit. In the context of a system which recognizes the magnitude of economic harm caused as a prime determinant of relative culpability, this disproportionate grouping of all manufacturers at level 15 is neither logical nor desirable.

A second benefit of this change is that, unlike the current guideline, which provides no incremental punishment for manufacturers of more than seventy thousand dollars in counterfeit, the proposed two-level enhancement provides reasonable incremental punishment for all manufacturers. Such a result also fosters the central goal of proportionate sentencing.

Third, the amendment proposes to delete the language in Application Note 4 that suggests, as a minority of courts have interpreted it, that the manufacturing adjustment does not apply if the defendant ''merely photocopies''. That application note was intended to make the minimum offense level for manufacturing offenses inapplicable to notes that are so obviously counterfeit that they are unlikely to be accepted. Particularly with the advent of digital technology, it cannot be said that photocopying necessarily produces a note so obviously counterfeit as to be impassible.

Proposed Amendment

Section 2B5.1(a) is amended by striking ''9'' and inserting ''10''.

Section 2B5.1(b)(2) is amended by striking ''and the offense level as determined above is less than 15, increase to level 15'' and inserting ''increase by 2 levels''.

The Commentary to § 2B5.1 captioned ''Application Notes'' is amended in Note 4 by striking ''merely photocopy notes or otherwise''.

Issue for comment: The Commission invites comment on whether it should amend § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) to include an enhancement (e.g., a two-level enhancement) for counterfeiting offenses that involve ''sophisticated means''. If so, what conduct should constitute ''sophisticated means'' in the context of counterfeiting offenses? For example, should the use of technology, such as digital counterfeiting, generally be considered sophisticated? Alternatively, are there particular forms of technology, such as particular forms of digital counterfeiting, that would be considered sophisticated for purposes of an enhancement?

Proposed Amendment: Tax Privacy

3. Synopsis of Proposed Amendment

This amendment proposes to address several offenses relating to unlawful disclosure and/or inspection of tax return information. The amendment proposes to (A) amend the Statutory Index to refer most of those offenses to the guideline covering eavesdropping and interception of communications, § 2H3.1; and (B) amend § 2H3.1 to add a three-level decrease in the base offense level for the least serious types of offense behavior.

The pertinent offenses are:

(A) 26 U.S.C. 7213(a)(1)–(3), and (5), which makes it unlawful for federal and state employees and certain other people willfully to disclose any tax return or tax return information (for a maximum term of imprisonment of five years);

(B) 26 U.S.C. 7213(d), which makes it unlawful for any person willfully to divulge tax-related computer software (for a maximum term of imprisonment of five years);

(C) 26 U.S.C. 7213A, which makes it unlawful for federal employees and certain other persons willfully to inspect any tax return or tax return information (for a maximum term of imprisonment of one year); and

(D) 26 U.S.C. 7216, which makes it unlawful for any person engaged in the business of preparing tax returns knowingly or recklessly to disclose any information furnished to that person in connection with preparation of a return (for a maximum term of imprisonment of one year).

The following proposed amendment refers these offenses to § 2H3.1 and provides for a three-level downward adjustment in the base offense level for the least serious types of offense behavior, *i.e.,* the inspection (but not disclosure) of tax return information, and the reckless or knowing disclosure of information collected by a tax preparer in preparation of a tax return. The proposed amendment also (A) adds, in bracketed form, an application note to make clear that an adjustment for abuse of position of trust may apply; and (B) makes a technical change in subsection (b)(1) that is not intended to have substantive effect.

Proposed Amendment

Section 2H3.1 is amended in the title by striking ''or'' and inserting a semicolon after ''Communications''; and by inserting ''; Disclosure of Tax Return Information'' after ''Eavesdropping''.

Section 2H3.1 is amended by striking subsection (a) in its entirety and inserting the following:

''(a) Base Offense Level:

(1) 9; or

(2) 6, if the offense involved only (A) inspection, but not disclosure, of a tax return or tax return information; or (B) a knowing or reckless disclosure of information furnished to a tax return preparer in connection with the preparation of a tax return.''.

Section 2H3.1(b)(1) is amended by striking ''conduct'' and inserting ''offense''.

The Commentary to § 2H3.1 captioned ''Statutory Provisions'' is amended by inserting ''26 U.S.C. §§ 7213(a)(1)–(a)(3), (a)(5), (d), 7213A, 7216;'' after ''2511;''.

The Commentary to § 2H3.1 captioned ''Application Note'' is amended by striking ''Note'' and inserting ''Notes''; by redesignating Note 1 as Note 2; and by inserting the following as new Note 1:

''1. Definitions.—For purposes of this guideline, 'tax return' and 'tax return information' have the meaning given the terms 'return' and 'return information' in 26 U.S.C. § 6013(b)(1) and (2), respectively.''.

The Commentary to § 2H3.1 captioned ''Application Notes'' (as re-captioned by this amendment) is amended in redesignated Note 2 (formerly Note 1) by inserting ''Satellite Cable Transmissions.—'' before ''If the''.

[The Commentary to § 2H3.1 captioned ''Application Notes'' (as re-captioned by this amendment) is amended by adding at the end the following:

''3. Abuse of Position of Trust.—A defendant who used a special skill or abused a position of trust in the commission of the offense may be subject to an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). For example, a federal or state employee who unlawfully disclosed a tax return or tax return information in violation of 26 U.S.C.

7213(a) or (b) may have occupied a position of public trust, as described in Application Note 1 of § 3B1.3, and may have used that position to significantly facilitate the commission of the offense.''.]

The Commentary to § 2H3.1 captioned ''Background'' is amended by adding at the end the following additional paragraph:

''This section also refers to conduct relating to the disclosure and inspection of tax returns and tax return information, which is proscribed by 26 U.S.C. 7213(a)(1)–(3), (5), (d), 7213A, and 7216. These statutes provide for a maximum term of imprisonment of five years for most types of disclosure of tax return information.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''26 U.S.C. 7212(b)'' the following new lines:

''26 U.S.C. 7213(a)(1) 2H3.1
26 U.S.C. 7213(a)(2) 2H3.1
26 U.S.C. 7213(a)(3) 2H3.1
26 U.S.C. 7213(a)(5) 2H3.1
26 U.S.C. 7213(d) 2H3.1
26 U.S.C. § 7213A 2H3.1''; and by inserting after the line referenced to ''26 U.S.C. 7215'' the following new line:
''26 U.S.C. 7216 2H3.1''.

Proposed Amendment: Circuit Conflict Concerning Stipulations

4. Synopsis of Proposed Amendment:

This proposed amendment addresses the circuit conflict regarding whether admissions made by the defendant during his guilty plea hearing, without more, can be considered ''stipulations'' for purposes of § 1B1.2(a). *Compare, e.g., United States* v. *Nathan,* 188 F. 3d 190, 201 (3d Cir. 1999) (statements made by defendants during the factual-basis hearing for a plea agreement do not constitute ''stipulations'' for the purpose of this enhancement; a statement is a stipulation only if it is part of a defendant's written plea agreement or if both the government and the defendant explicitly agree at a factual-basis hearing that the facts being placed on the record are stipulations that might subject the defendant to § 1B1.2(a)), *with United States* v. *Loos,* 165 F. 3d 504, 508 (7th Cir. 1998) (the objective behind § 1B1.2(a) is best answered by interpreting ''stipulations'' to mean any acknowledgment by the defendant that the defendant committed the acts that justify use of the more serious guideline, not in the formal agreement).

The proposed amendment represents a narrow approach to the majority view that a factual statement made by the defendant during the plea colloquy must be made as part of the plea agreement in order to be considered a stipulation for purposes of § 1B1.2(a). This approach lessens the possibility that the plea agreement will be modified during the course of the plea proceeding without providing the parties, especially the defendant, with notice of the defendant's potential sentencing range.

Proposed Amendment

The Commentary to § 1B1.2 captioned ''Application Notes'' is amended in Note 1 in the third sentence of the first paragraph of Note 1 by inserting ''(written or made orally on the record)'' after ''agreement''.

The Commentary to § 1B1.2 captioned ''Application Notes'' is amended in Note 1 by striking the first two sentences of the third paragraph and inserting: ''As set forth in the first paragraph of this note, an exception to this general rule is that if a plea agreement (written or made orally on the record) contains a stipulation that establishes a more serious offense than the offense of conviction, the guideline section applicable to the stipulated offense is to be used. A factual statement made by the defendant during the plea proceeding is not a stipulation for purposes of subsection (a) unless such statement was agreed to as part of the plea agreement.''.

The Commentary to § 1B1.2 captioned ''Application Notes'' is amended in Note 1 in the third paragraph by striking ''The sentence that may'' and inserting ''The sentence that shall''.

The Commentary to § 1B1.2 captioned ''Application Notes'' is amended in Note 1 in the second sentence of the fourth paragraph by striking ''cases where'' and inserting ''a case in which''.

Proposed Amendment: Circuit Conflict Concerning Aggravated Assault

5. Synopsis of Proposed Amendment

This proposed amendment addresses the circuit conflict regarding whether the four-level enhancement in subsection (b)(2)(B) of § 2A2.2 (Aggravated Assault) for use of a dangerous weapon during an aggravated assault is impermissible double counting in a case in which the weapon that was used was a non-inherently dangerous weapon. *Compare e.g., United States* v. *Williams,* 954 F.2d 204, 205–08 (4th Cir. 1992) (applying the dangerous weapon enhancement for defendant's use of a chair did not constitute impermissible double counting even though the use of the chair increased the defendant's offense level twice: first by triggering application of the aggravated assault guideline and second as the basis for the dangerous weapon enhancement), *with United States* v. *Hudson,* 972 F.2d 504, 506–07 (2d Cir. 1992) (in a case in which the use of an automobile caused the crime to be classified as an aggravated assault, the court may not enhance the base offense level under § 2A2.2(b) for use of the same non-inherently dangerous weapon).

This amendment presents two options. Both options address the circuit conflict by clarifying in the aggravated assault guideline that (A) both the base offense level of level 15 and the weapon use enhancement in subsection (b)(2) shall apply to aggravated assaults that involve a dangerous weapon with intent to cause bodily harm; and (B) instruments, such as a car or chair, that ordinarily are not used as weapons may qualify as a dangerous weapon for purposes of subsection (b)(2) when the defendant involves them in the offense with the intent to cause bodily harm.

The difference between the options is that, unlike Option One, Option Two proposes other substantive changes in the aggravated assault guideline to address additional problems with the guideline. Specifically, Option Two attempts more explicitly and thoroughly than Option One to address one of the key issues underlying the circuit conflict, *i.e.,* what conduct is incorporated in the base offense level. The aggravated assault guideline covers three types of aggravated assault: felonious assaults that involve any one of the following: (A) Serious bodily injury; (B) a dangerous weapon with intent to cause bodily harm; and (C) intent to commit another felony. See Application Note 1 of § 2A2.2. Unlike the current guideline, which has one base offense level of level 15 for all types of aggravated assault, Option Two provides for each type of aggravated assault a base offense level that is intended to cover that type of assault in its most basic form, unaccompanied by further aggravated conduct. Accordingly, Option Two provides two alternative base offense levels: (A) Level 19, if the offense involved serious bodily injury; and (B) level 15, otherwise (*i.e.,* if the offense involved either an intent to commit another felony or a dangerous weapon with the intent to cause bodily injury).

The base offense level of level 19 for offenses under 18 U.S.C. 113(a)(6) (assaults resulting in serious bodily injury) achieves the same offense level as should be achieved under the current guideline by application of the base offense level and the serious bodily injury enhancement in subsection (b)(3)(B). However, FY 1999 data show

that 16 percent of the 63 cases that involved a conviction under 18 U.S.C. 113(a)(6) either received no bodily injury enhancement or received an enhancement lower than the four-level enhancement required for serious bodily injury. Therefore, either there may be confusion about what conduct the base offense level incorporates for these types of aggravated assaults or application of the serious bodily injury enhancement is being avoided in cases in which it is warranted. Incorporating the serious bodily injury enhancement into the base offense level may help to ameliorate these concerns.

Proposed Amendment

Option 1

The Commentary to § 2A2.2 captioned ''Application Notes'' is amended in Note 1 by inserting ''Definitions.—For purposes of this guideline:'' before '' 'Aggravated assault' ''; by striking ''do bodily harm'' and inserting ''cause bodily injury''; by striking the comma after ''frighten)'' and inserting ''with that weapon;''; by striking the comma before ''or (C)'' and inserting a semicolon; and by adding at the end the following paragraphs:

'Brandished,' 'bodily injury,' 'firearm,' 'otherwise used,'' 'permanent or life-threatening bodily injury,' and 'serious bodily injury,' have the meaning given those terms in § 1B1.1, Application Note 1.

''Dangerous weapon' has the meaning given that term in § 1B1.1, Application Note 1. For purposes of this guideline, and pursuant to that application note, 'dangerous weapon' includes any instrument that is not ordinarily used as a weapon (*e.g.,* a car, a chair, or an ice pick) if such an instrument is involved in the offense with the intent to commit bodily injury.

'More than minimal planning,' has the meaning given that term in § 1B1.1, Application Note 1.

The Commentary to § 2A2.2 captioned ''Application Notes'' is amended by striking Notes 2 and 3 in their entirety and inserting the following:

''2. Aggravating Factors.—This guideline covers felonious assaults that are more serious than minor assaults because of the presence of certain aggravating factors, *i.e.,* serious bodily injury, the involvement of a dangerous weapon with intent to cause bodily injury, and the intent to commit another felony.

An assault that involves the presence of a dangerous weapon is aggravated in form when the presence of the dangerous weapon is coupled with the intent to cause bodily injury. In such a case, the base offense level and the weapon use enhancement in subsection (b)(2) take into account different aspects of the offense. The base offense level takes into account the presence of the dangerous weapon (regardless of the manner in which the weapon was involved) and the fact that the defendant intended to cause bodily injury. Subsection (b)(2), on the other hand, takes into account the manner in which the dangerous weapon was involved in the offense. Accordingly, in a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and subsection (b)(2).

3. More than Minimal Planning.—For purposes of subsection (b)(1), waiting to commit the offense when no witnesses were present would not alone constitute more than minimal planning. However, luring the victim to a specific location or wearing a ski mask to prevent identification would constitute more than minimal planning.''.

The Commentary to § 2A2.2 captioned ''Background'' is amended in the first paragraph by adding at the end the following:

''This guideline also covers attempted manslaughter and assault with intent to commit manslaughter. Assault with intent to commit murder is covered by § 2A2.1 (Assault with Intent to Commit Murder). Assault with intent to commit rape is covered by § 2A3.1 (Criminal Sexual Abuse).''; and by striking the second paragraph in its entirety and inserting the following:

''There are a number of federal provisions that address varying degrees of assault and battery. For example, if the assault is upon a federal officer while engaged in or on account of the performance of official duties, the maximum term of imprisonment pursuant to 18 U.S.C. 111(a)(2) is three years. If a deadly or dangerous weapon is used in the assault on a federal officer, or if the assault results in bodily injury, the maximum term of imprisonment is ten years. If a dangerous weapon is used to assault a person who is not a federal officer, and the weapon was used with the intent to do bodily harm, without just cause or excuse, the maximum term of imprisonment pursuant to 18 U.S.C. 113(a)(3) also is ten years. If an assault results in serious bodily injury, the maximum term of imprisonment pursuant to 18 U.S.C. 113(a)(6) is ten years, unless the injury constitutes maiming by scalding, corrosive, or caustic substances pursuant to 18 U.S.C. 114, in which case the maximum term of imprisonment is twenty years.''.

Option 2:

Section 2A2.2 is amended by striking subsection (a) in its entirety and inserting the following: ''(a) Base Offense Level (Apply the greater):

(1) 19, if the offense involved serious bodily injury; or

(2) 15, otherwise.''.

Section 2A2.2 is amended by striking subsection (b)(3) in its entirety and inserting the following:

''(3) (A) If subsection (a)(1) applies, and the victim sustained (i) permanent or life-threatening bodily injury, increase by 2 levels; or (ii) an injury that is between serious bodily injury and permanent or life-threatening bodily injury, increase by 1 level. However, the cumulative enhancements from this subdivision and subsection (b)(2) shall not exceed 5 levels.

(B) If subsection (a)(2) applies, and the victim sustained (i) bodily injury, increase by 2 levels; or (ii) an injury between bodily injury and serious bodily injury, increase by 3 levels.''.

The Commentary to § 2A2.2 captioned ''Application Notes'' is amended in Note 1 by inserting 'Definitions.'For purposes of this guideline:'' before '''Aggravated assault'''; by striking ''do bodily harm'' and inserting ''cause bodily injury''; by striking the comma after ''frighten)'' and inserting ''with that weapon;''; by striking the comma before ''or (C)'' and inserting a semicolon; and by adding at the end the following paragraphs:

'Brandished,' 'bodily injury,' 'firearm,' 'otherwise used,' 'permanent or life-threatening bodily injury,' and 'serious bodily injury,' have the meaning given those terms in § 1B1.1, Application Note 1.

'Dangerous weapon' has the meaning given that term in § 1B1.1, Application Note 1. For purposes of this guideline, and pursuant to that application note, 'dangerous weapon' includes any instrument that is not ordinarily used as a weapon (*e.g.,* a car, a chair, or an ice pick) if such an instrument is involved in the offense with the intent to commit bodily injury.

'More than minimal planning,' has the meaning given that term in § 1B1.1, Application Note 1.

The Commentary to § 2A2.2 captioned ''Application Notes'' is amended by striking Notes 2 and 3 in their entirety and inserting the following:

''2. Aggravating Factors.—This guideline covers felonious assaults that are more serious than minor assaults because of the presence of certain aggravating factors, *i.e.,* serious bodily injury, the involvement of a dangerous weapon with intent to cause bodily injury, and/or the intent to commit another felony.

An assault that involves the presence of a dangerous weapon is aggravated in form when the presence of the dangerous weapon is coupled with the intent to cause bodily injury. In such a case, the base offense level and the weapon use enhancement in subsection (b)(2) take into account different aspects of the offense. The base offense level takes into account the presence of the dangerous weapon (regardless of the manner in which the weapon was involved) and the fact that the defendant intended to cause bodily injury. Subsection (b)(2), on the other hand, takes into account the manner in which the dangerous weapon was involved in the offense. Accordingly, in a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and subsection (b)(2).

3. More than Minimal Planning.—For purposes of subsection (b)(1), waiting to commit the offense when no witnesses were present would not alone constitute more than minimal planning. However, luring the victim to a specific location or wearing a ski mask to prevent identification would constitute more than minimal planning.''.

The Commentary to § 2A2.2 captioned ''Background'' is amended in the first paragraph by adding at the end the following:

''This guideline also covers attempted manslaughter and assault with intent to commit manslaughter. Assault with intent to commit murder is covered by § 2A2.1 (Assault with Intent to Commit Murder). Assault with intent to commit rape is covered by § 2A3.1 (Criminal Sexual Abuse).''; and by striking the second paragraph in its entirety and inserting the following:

''There are a number of federal provisions that address varying degrees of assault and battery. For example, if the assault is upon a federal officer while engaged in or on account of the performance of official duties, the maximum term of imprisonment pursuant to 18 U.S.C. 111(a)(2) is three years. If a deadly or dangerous weapon is used in the assault on a federal officer, or if the assault results in bodily injury, the maximum term of imprisonment is ten years. If a dangerous weapon is used to assault a person who is not a federal officer, and the weapon was used with the intent to do bodily harm, without just cause or excuse, the maximum term of imprisonment pursuant to 18 U.S.C. § 113(a)(3) also is ten years. If an assault results in serious bodily injury, the maximum term of imprisonment pursuant to 18 U.S.C. 113(a)(6) is ten years, unless the injury constitutes maiming by scalding, corrosive, or caustic substances pursuant to18 U.S.C. § 114, in which case the maximum term of imprisonment is twenty years.''.

Proposed Amendment: Circuit Conflict Concerning Certain Fraudulent Misrepresentations

6. Synopsis of Proposed Amendment

This proposed amendment resolves a circuit conflict regarding the scope of the enhancement in subsection (b)(4)(A) of § 2F1.1 (Fraud and Deceit) for misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency. Specifically, the conflict concerns whether the misrepresentation applies only in cases in which the defendant does not have any authority to act on behalf of the covered organization or government agency or if it applies more broadly (i.e., to cases in which the defendant, who has a legitimate connection to the covered organization or government agency, misrepresents that the defendant was acting solely on behalf of the organization or agency). *Compare e.g., United States* v. *Marcum* 16 F.3d 599 (4th Cir. 1994) (enhancement appropriate even though defendant did not misrepresent his authority to act on behalf of the organization but rather only misrepresented that he was conducting an activity wholly on behalf of the organization), *with United States* v. *Frazier,* 5 F.3d 1105 (10th Cir. 1995) (application of the enhancement is limited to cases in which the defendant exploits his victim by claiming to have authority which in fact does not exist).

The proposed amendment provides for application of the enhancement if (A) the defendant falsely represented that the defendant was an employee of a covered organization or a government agency; or (B) the defendant was an employee of a covered organization or a government agency who represented that the defendant was acting solely for the benefit of the organization or agency when, in fact, the defendant intended to divert all or part of that benefit (for example, for the defendant's personal gain). Under either scenario, it is the representation that enables the defendant to commit the offense. To avoid double counting in the case of an employee described in clause (B) who also holds a position of trust, the proposed amendment provides an application note instructing the court not to apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) if the same conduct forms the basis both for the enhancement in § 2F1.1(b)(4)(A) and the adjustment in § 3B1.3.

The proposed amendment also addresses the issue of the embezzler who works for a covered organization or government agency. The proposed amendment provides that embezzlement of funds by an employee of a covered organization or government agency, without more, is not sufficient to trigger application of the enhancement. However, such an employee who also holds a position of trust may be subject to an adjustment pursuant to § 3B1.3.

Proposed Amendment

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended by striking Note 5 in its entirety and inserting the following:

5. Misrepresentation.—Subsection (b)(4)(A) applies in any case in which (A) the defendant represented that the defendant was an employee or authorized agent of a charitable, educational, religious, or political organization, or government agency when, in fact, the defendant was not such an employee or agent; or (B) the defendant was an employee or agent of the organization or agency and represented that the defendant was acting solely to obtain a benefit for the organization or agency, when in fact, the defendant intended to divert all or part of that benefit (e.g., for the defendant's personal gain). Subsection (b)(4)(A) would apply, for example, to the following:

(A) A defendant who solicits contributions for a non-existent famine relief organization.

(B) A defendant who solicits donations from church members by falsely claiming to be a fund raiser for a religiously affiliated school.

(C) A defendant, chief of a local fire department, who conducts a public fund raiser representing that the purpose of the fund raiser is to procure sufficient funds for a new fire engine when, in fact, the defendant diverts some of the funds for the defendant's personal benefit.

If the conduct that forms the basis for an enhancement under subsection (b)(4)(A) is the only conduct that forms the basis for an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill), do not apply an adjustment under § 3B1.3.

The embezzlement of funds alone is not sufficient to warrant application of subsection (b)(4)(A). The embezzled funds must have been solicited pursuant to a misrepresentation that the defendant was acting to obtain a benefit for the organization or agency. However, if a defendant who embezzles funds

holds a position of public or private trust, § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.''.

Proposed Amendment: Circuit Conflict Concerning Certain Drug Defendants and Mitigating Role

7. Synopsis of Proposed Amendment

This amendment proposes to resolve a circuit conflict regarding whether application of § 3B1.2 (Mitigating Role) is precluded (i.e., without the necessity of applying the guideline to the facts) in the case of a single defendant drug courier if the defendant's base offense level is determined solely by the quantity personally handled by the defendant and that quantity constitutes all of the defendant's relevant conduct. *Compare e.g., United States* v. *Isaza-Zapata*, 148 F.3d 236, 241 (3d. Cir. 1998) (defendant who pleaded guilty to importing heroin was sentenced based on amounts in his personal possession, but if he can meet the requirements of § 3B1.2 he is entitled to the reduction upon appropriate proof) *with United States* v. *Isienyi*, 207 F.3d 390 (7th Cir. 2000) (defendant pleaded guilty to one count of importing a specified quantity of heroin; held defendant ineligible for a mitigating role adjustment when his offense level consisted only of amounts he personally handled).

The proposed amendment adopts the view that such a defendant, in a single defendant case, is not precluded from receiving a mitigating role adjustment.

In addition to resolving the circuit conflict, the proposed amendment (A) incorporates commentary from the Introduction to Chapter Three, Part B (Role in the Offense) that there must be more than one participant before application of a mitigating role adjustment may be considered; (B) incorporates the definition of ''participant'' found in the aggravating role guideline; (C) amends commentary to indicate that the mitigating role adjustment ordinarily is not warranted if the defendant receives a lower offense level than warranted by the actual criminal conduct because, for example, the defendant was convicted of a less serious offense or otherwise was held accountable under a plea for a lesser quantity of drugs than warranted by the defendant's actual conduct; (D) deletes commentary language that the minimal role adjustment is intended to be used infrequently; and (E) makes technical amendments to the guideline (such as the addition of headings for, and the reordering of, application notes in the commentary) that are intended to have no substantive impact on the guideline.

Proposed Amendment

The Commentary to § 3B1.2 captioned ''Application Notes'' is amended in Note 1 by inserting ''Minimal Participant.—'' before ''Subsection (a)''; and by inserting ''described in Application Note 3(A)'' before ''who plays''.

The Commentary to § 3B1.2 captioned ''Application Notes'' is amended in Note 3 by striking ''For purposes of § 3B1.2(b), a minor participant means any participant'' and inserting ''Minor Participant.—Subsection (b) applies to a defendant described in Application Note 3(A)''.

The Commentary to § 3B1.2 is amended by striking Notes 2 and 4 in their entirety; by redesignating Notes 1 and 3 as Notes 4 and 5, respectively; and by inserting before redesignated Note 4 (formerly Note 1) the following:

''1. Definition.—For purposes of this guideline, 'participant' has the meaning given that term in Application Note 1 of § 3B1.1 (Aggravating Role).

2. Requirement of Multiple Participants.—This guideline is not applicable unless more than one participant was involved in the offense. See the Introductory Commentary to this Part (Role in the Offense). Accordingly, an adjustment under this guideline may not apply to a defendant who is the only defendant convicted of an offense unless that offense involved other participants in addition to the defendant and the defendant otherwise qualifies for such an adjustment.

3. Applicability of Adjustment.—

(A) Substantially Less Culpable than Average Participant.—This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant.

However, a reduction for a mitigating role under this section ordinarily is not warranted in the case of a defendant who has received an offense level lower than the offense level warranted by the defendant's actual criminal conduct (because, for example, the defendant was convicted of a less serious offense or was held accountable for a quantity of drugs less than what the defendant otherwise would have been accountable under § 1B1.3 (Relevant Conduct)). In such a case, the defendant is not substantially less culpable than a defendant whose only conduct involved the less serious offense. For example, if a defendant whose actual conduct involved a minimal role in the distribution of 25 grams of cocaine (an offense having a Chapter Two offense level of level 14 under § 2D1.1) is convicted of simple possession of cocaine (an offense having a Chapter Two offense level of level 6 under § 2D2.1), no reduction for a mitigating role is warranted because the defendant is not substantially less culpable than a defendant whose only conduct involved the simple possession of cocaine.

(B) Fact-Based Determination.—The determination whether to apply subsection (a) or subsection (b), or an intermediate adjustment, involves a determination that is heavily dependent upon the facts of the particular case. As with any other factual issue, the court, in weighing the totality of the circumstances, is not required to find, based solely on the defendant's bare assertion, that such a role adjustment is warranted.

(C) Applicability to Certain Defendants.—A defendant who is convicted of a drug trafficking offense, whose role in that offense was limited to transporting or storing drugs and who, based on the defendant's criminal conduct, is accountable under § 1B1.3 (Relevant Conduct) only for the quantity of drugs the defendant personally transported or stored is not precluded from receiving an adjustment under this guideline.''.

The Commentary to § 3B1.2 is amended by striking the background in its entirety.

Issues for Comment: The Commission invites comment on the following:

(1) With respect to a defendant whose role in a drug offense is limited to transporting or storing drugs, should the Commission, as an alternative to the proposed amendment, preclude such a defendant from receiving any mitigating role adjustment under § 3B1.2? Alternatively, should the Commission provide that such a defendant may qualify only for a minor role adjustment, but not a minimal role adjustment?

(2) Should the example in proposed Application Note 3(C) (*i.e.,* that a defendant whose role in a drug trafficking offense is limited to transporting or storing drugs and who is accountable under § 1B1.3 (Relevant Conduct) only for the quantity of drugs the defendant personally transported or stored is not precluded from receiving a mitigating role adjustment) be broadened to make clear that the rule is intended to cover defendants convicted of offenses other than drug trafficking offenses who have a similarly limited role in the offense? Specifically, should the example be expanded to make clear that the rule is intended to apply to a defendant who has a similarly limited role in any offense and who is accountable under § 1B1.3 only for that

portion of the offense for which the defendant was personally involved?

[FR Doc. 00–28564 Filed 11–6–00; 8:45 am]

BILLING CODE 2210–40–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before January 8, 2001.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to James Rivera, Senior Program Analyst, Office of Disaster, Small Business Administration, 409 3rd Street, S. W., Suite 6050.

FOR FURTHER INFORMATION CONTACT: James Rivera, Senior Program Analyst, 202–205–6734 or Curtis B. Rich, Management Analyst, (202)205–7030.

SUPPLEMENTARY INFORMATION:

Title: Disaster Business Loan Application.

Form No's: 5, 739A and 1368.

Description of Respondents: Small Businesses.

Annual Responses: 16,853.

Annual Burden: 48,561.

Title: Disaster Survey Worksheet.

Form No: 987.

Description of Respondents: Individuals, Businesses, and Public Officials within an area requesting a Disaster Declaration.

Annual Responses: 4,000.

Annual Burden: 332.

Curtis B. Rich,

Acting Chief, Administrative Information Branch.

[FR Doc. 00–28452 Filed 11–6–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9J35]

State of Alaska

Kenai Peninsula Borough and the contiguous Boroughs of Matanuska-Susitna and Lake and Peninsula, together with the Regional Educational Attendance Area #10 (Chugach) and the Municipality of Anchorage, in the State of Alaska, constitute an economic injury disaster area due to severe storms and flooding in September of 1995 that resulted in a low return of sockeye salmon to their spawning grounds in the lower Kenai River during the year 2000. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on July 24, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: October 24, 2000.

Kris Swedin,

Acting Administrator.

[FR Doc. 00–28453 Filed 11–6–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3291; Amendment #3]

State of Idaho

In accordance with information received from the Federal Emergency Management Agency, dated October 20, 2000, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage caused by this disaster from October 31, 2000 to November 30, 2000.

All other information remains the same, i.e., the deadline for filing applications for economic injury is June 1, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 25, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–28451 Filed 11–6–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 3450]

Proposed Protocol on Rail Equipment to the Draft Convention Sponsored by UNIDROIT on International Mobile Equipment Finance; Meeting Notice

AGENCY: Department of State.

ACTION: The International Finance Study Group of the State Department's Advisory Committee on Private International Law will meet to review a proposed protocol on rail equipment to the draft UNIDROIT convention on equipment finance, and its effect on cross-border financing and trade involving the railway industry. The meeting will be held in Washington, D.C. on Tuesday, November 14, 2000 at the Association of American Railroads Conference Center (4th floor).

Agenda

The meeting will cover the purpose and concepts of the proposed UNIDROIT Convention on international interests in mobile equipment; the application of asset-based financing to railway equipment; the recent meeting of the ICAO Legal Committee at Montreal on the proposed Convention in relation to aircraft and the draft Aircraft Equipment Protocol, and other international developments relevant to rail finance.

Comments will be requested on draft provisions of the proposed Rail Equipment Protocol. The intersection with recent revisions to the Uniform Commercial Code in the United States will be examined, along with personal property laws of Canada, Mexico and other countries as time permits, as well as related draft conventions and model national laws on secured financing, including work underway at UNCITRAL (the United Nations Commission on International Trade Law) on receivables financing and the OAS (Organization of American States) on a model Inter-American national law on secured financing.

Background

The United States has been an active participant in negotiations on a proposed multilateral convention (UNIDROIT Convention) to provide for the creation and enforceability of

international secured finance interests in mobile equipment, including, at this stage, aircraft, to be followed by rail equipment and space and satellite equipment. A Rail Working Group authorized by UNIDROIT has undertaken work on the current draft protocol on provisions specific to rail equipment financing. Provision may be made at a future date for protocols on other categories of equipment, such as containers, construction and agricultural equipment, certain types of vessels, etc. Other international bodies participate as appropriate. Completion of the basic Convention and aircraft protocol is expected by mid-2001. Completion of the protocol on rail equipment is expected to follow.

The proposed Convention and equipment specific protocols together are intended to provide comprehensive international rules on financing interests in such equipment and could thus stimulate the development of these industries in many countries as well as increase the capacity of many countries to finance such equipment through private sector capital markets. This can enhance infrastructure growth, as well as reduce reliance on direct government funding or use of sovereign debt, which in turn would facilitate privatization and market development.

Key features of the draft Convention include the creation of internationally enforceable interests pursuant to the Convention; providing for regional or international computer-based registry systems for notice of finance interests; provisions on assignments of such interests; priorities based on filing; and optional provisions on key finance issues such as default remedies, insolvency, etc. Proposed new registration systems for rail finance authorized under the protocol are intended to facilitate processes, equivalent to that utilized in North America, to support asset-based finance in other regions, and may provide for linkage between registration systems to facilitate cross-border finance and the export of such equipment.

Attendance

The meeting will be held on Tuesday, November 14, 2000, from 10 a.m. to 3 p.m. at the offices of the Association of American Railroads (AAR), Conference Center (4th floor) 50 ''F'' Street, NW, Washington, D.C. 20001. The meeting is open to the public. Persons wishing to attend should contact Peter Bloch, Department of Transportation, Office of General Counsel, (202) 366–9183, fax 366–9188; Louis P. Warchot at AAR at 202–639–2500, fax 639–2868; or Harold Burman, Department of State, Office of Legal Adviser (L/PIL), at 202–776–8421, fax 776–8482, email pildb@his.com, not later than Friday, November 10.

Documents

Basic Convention drafts on mobile equipment and the aircraft protocol are available at www.UNIDROIT.org, scroll to ''news''. Revised versions will be available shortly which reflect recent changes; the changes do not affect the basic structure or the purpose of the operative provisions. The draft Rail Equipment Protocol is available from the AAR or the Office of Legal Adviser, or may be provided to attendees by fax on request.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law, United States Department of State.

[FR Doc. 00–28645 Filed 11–3–00; 1:21 pm]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Committee of Chairs of the Industry Sector and Functional Advisory Committees

AGENCY: Office of the United States Trade Administrative

ACTION: Notice of Meeting.

SUMMARY: The Committee of Chairs of the Industry Sector and Functional Advisory Committees will hold a meeting on November 28, 2000, from 2:00 p.m. to 4:00 p.m. The meeting will be closed to the public from 2:00 p.m. to 3:15 p.m., and opened to the public from 3:15 p.m. to 4:00 p.m. to discuss the review of the Trade Advisory Committee System.

DATES: The meeting is scheduled for November 28, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Office of the U.S. Trade Representative, Conference Room 1, located at 1724 F Street, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Sylvia Prosak, (202) 482–3268, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, or Dominic Bianchi, Office of the United States Trade Representative, 1724 F. St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the Committee of Chairs will present their report on recommendations for reform of the Trade Advisory System.

Dominic Bianchi,

Acting Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 00–28518 Filed 11–6–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Southcentral, Alaska

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Amended Notice of Intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this amended notice to advise the public that an environmental impact statement will not be prepared for the proposed Copper River Highway project in Southcentral, Alaska.

ADDRESSES: Federal Highway Administration, Alaska Division, 709 West 9th Street, Room 851, P.O. Box 21648, Juneau, Alaska 99802–1648.

FOR FURTHER INFORMATION CONTACT: Tim Haugh, Environmental/Right-of-Way Specialist, Federal Highway Administration, Alaska Division Office, P.O. Box 21648, Juneau, Alaska, 99802–1648.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF) have agreed to terminate the preparation of the Copper River Highway Environmental Impact Statement (EIS). This EIS was to study a proposed highway route, along the old Copper River and Northwest Railroad right-of-way, which would connect the City of Cordova to the Alaskan highway system. In September 2000, the Alaska Department of Transportation and Public Facilities made a decision to not pursue the proposed highway project, thus this notice is to rescind the earlier notice, which was published in the **Federal Register** on February 27, 1992. Letters describing the termination of the Copper River Highway Environmental Impact Statement will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed an interest in or are known to have an interest in this action. This information will be published in various newspapers throughout the State of

Alaska in affected regions and posted on-line on the Alaska Department of Transportation and Public Facilities home page (www.dot.state.ak.us). No formal public meetings or hearings are scheduled. Comments concerning the proposed action should be directed to the Federal Highway Administration at the address provided above.

Dated: October 30, 2000.

David C. Miller,

Division Administrator.

[FR Doc. 00–28457 Filed 11–6–00; 8:45 am]

BILLING CODE 4910–EM–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–00–8228]

Session of the United Nations Economic Commission for Europe World Forum for the Harmonization of Vehicle Regulations

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

ACTION: Notice regarding upcoming UN/ECE WP.29 Session in Geneva, Switzerland.

SUMMARY: The UN/ECE World Forum for the Harmonization of Vehicle Regulations (UN/ECE WP.29) will hold its one hundred and twenty second session on November 7–10, 2000. The purpose of this notice is to inform the public that NHTSA will not be ready at that session in Geneva to submit its recommendations concerning the establishment of priorities under the 1998 Global Agreement. Further, NHTSA has decided that holding a public meeting to discuss the upcoming November session is not warranted.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Abraham, Director, Office of International Policy and Harmonization, NPP–01, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2114. Fax: (202) 366–2559.

SUPPLEMENTARY INFORMATION:

I. NHTSA's Final Recommendations

The United Nations Economic Commission for Europe (UN/ECE) Agreement Concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts Which Can Be Fitted and/or Used on Wheeled Vehicles (1998 Global Agreement) has entered into force on August 25, 2000. In anticipation of the agreement's entry into force, the National Highway Traffic Safety Administration (NHTSA) issued a notice on July 12, 2000, seeking public comments on its preliminary recommendations for the first motor vehicle safety technical regulations or aspects of regulations to be considered for establishment under the 1998 Global Agreement.

In the notice (published July 18, 2000; 65 Fed. Reg. 44565), NHTSA categorized its recommendations into two main groups: (1) priority recommendations and (2) other recommendations. The priority items included generally those foreign standards and/or aspects of those standards that may represent best current safety practices from existing national and regional regulations, and whose addition to the existing Federal Motor Vehicle Safety Standard (FMVSS) would improve the level of vehicle safety in the U.S. In the notice, the agency stated that, in allocating its resources, it will give priority to the recommendations in this category.

The ''Other Recommendations'' group comprised those U.S. standards or aspects of those standards that may represent best current safety practices and should be therefore considered by other contracting parties to the 1998 Global Agreement in the establishment of global technical regulations.

In addition to the above mentioned categories, the notice also referred to the suggestions that had been received by the United Nations' Economic Commission for Europe World Forum for Harmonization of Vehicle Regulations (WP.29) from the governments of Japan and the Russian Federation and various industry and consumer groups. These suggestions are posted in the NHTSA docket (NHTSA–00–7638).

In the notice, NHTSA sought comments on its preliminary recommendations. It specifically asked whether any changes should be made to its list of preliminary recommendations and whether any of the standards listed in the proposals submitted to WP.29 by other governments and by non-governmental organizations should be added to NHTSA's list. In addition, NHTSA asked whether the agency's rulemaking priority activities under the Vehicle Safety Act and those under WP.29 should be linked, and if so, to what extent?

NHTSA received comments from Advocates for Highway and Auto Safety, the Alliance of Automobile Manufacturers, Flat Glass Manufacturers Association of Japan, Honda, the International Organization of Motor Vehicle Manufacturers (OICA), the Rubber Manufacturers Association, and Toyota.

NHTSA had anticipated completing its consideration of the public comments and publishing a revised list of recommendations prior to the November 7–10, 2000 meeting of WP.29 so that it could formally present its recommendations to WP.29 at that meeting. However, the agency has not completed its analysis of the comments and will not be ready to make such a proposal at the November 2000 meeting. The agency anticipates completing its analysis and publishing the final list prior to the March 2001 meeting and then submitting it at that meeting.

II. Upcoming November 7–10, 2000 WP.29 Meeting

In its Statement of Policy on Agency Policy Goals and Public Participation in the Implementation of the 1998 Agreement on Global Technical Regulations (published August 23, 2000; 65 Fed. Reg. 51236), NHTSA stated that it would hold periodic public meetings on its activities under the 1998 Global Agreement. It said further that if the extent of recent and anticipated significant developments concerning those activities so warrant, NHTSA would hold a public meeting within the 60-day period before each of the three sessions of WP.29 held annually.

NHTSA decided that holding a public meeting before the November WP.29 meeting was not warranted. Although NHTSA anticipates that the first meeting of the Executive Committee of the 1998 Global Agreement will take place during this session, that meeting will not address the setting of priorities or the establishing of particular standards under that Agreement. The meeting will focus instead on discussing the administrative procedures that will be followed in implementing the 1998 Global Agreement such as the working of the Compendium, meeting time for the Executive Committee, etc. The technical regulations listed on the agenda are those being considered under the 1958 Agreement. For information purposes, NHTSA has placed the agenda for the November 2000 meeting in the docket for this notice.

Issued on November 2, 2000.

Julie Abraham,

Director, Office of International Policy and Harmonization.

[FR Doc. 00–28532 Filed 11–02–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33950]

Jefferson Terminal Railroad Co.—Acquisition and Operation Exemption—Crown Enterprises, Inc.

Jefferson Terminal Railroad Co. (Jefferson), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Crown Enterprises, Inc. (Crown) [1] and operate approximately 1.2 miles of rail line (line). The line runs from crossing number Conrail 534 350 T (Jefferson Avenue) through crossing number 859 375 A (Freud Avenue) to the Detroit River in the area of track identified as the Conrail Shared Assets Dearborn Division Terminal East Branch between Jefferson Avenue milepost 0.0TE, through the Freud Street Crossings, mileposts 0.40TE, 0.38TE, and 0.36TE, and continuing on to the Detroit River, in Detroit, MI.[2]

The transaction was expected to be consummated immediately after the effective date of the exemption. The earliest the transaction could be consummated was October 26, 2000, 7 days after the exemption was filed.[3]

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding 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. 33950, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Daniel C. Sullivan, Esq., Sullivan & Hincks, 122 W. 22nd Street, Suite 350, Oak Brook, IL 60523.

Board decisions and notices are available on our website at ''*www.stb.dot.gov.*''

Decided: October 31, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–28393 Filed 11–6–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Jefferson identifies Crown as an affiliate company.

[2] Jefferson reports that the line is located in the rail complex formerly known as the River Yard but that it was designated as a Shared Asset Area pursuant to a transaction approved by the Board, and consummated by the parties on June 1, 1999. *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998).

[3] Jefferson notes that, as the owner of a lateral branch line, it has made application to Conrail, Inc. (Conrail) under 49 U.S.C. 11103 to reopen a pre-existing switch immediately south of Freud Avenue and west of Canal Street to allow Jefferson to connect with Conrail. Jefferson further notes that it will commence operations upon the reopening of the switch by Conrail. Jefferson also anticipates eventual use of a car ferry to move at least new automobiles across the Detroit River between the United States and Canada.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 05 (Rev. 18)]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of authority.

SUMMARY: The specific order of succession and designation to act as Commissioner of Internal Revenue Service. The text of the delegation order appears below.

FOR FURTHER INFORMATION CONTACT: Joann L. Buck, Chief of Staff, Room 3310, 1111 Constitution Avenue, NW., Washington, DC 20037, (202) 622–1320 (not a toll-free call).

Delegation of Authority

[Order Number 05 (Rev. 18)]

Effective Date: October 2, 2000.

Order of Succession and Designation

To Act as Commissioner of Internal Revenue

Authority: To act as and to perform the functions of the Commissioner of Internal Revenue in the event of an enemy attack on the United States, the disability of the Commissioner, his/her absence from the main Treasury relocation Site, or if there is a vacancy in the office, thus insuring the continuity of the functions of the office.

Delegated to: The following officials in the specific sequence listed:

Deputy Commissioner
Assistant Deputy Commissioner (Operations)
Assistant Deputy Commissioner (Modernization)
Chief, Communications and Liaison
Commissioner, Small Business/Self-Employed Division
Commissioner, Wage and Investment Division
Commissioner, Tax Exempt/Government Entities Division
Commissioner, Large/Mid-Size Business Division
Deputy Commissioner, Small Business/Self-Employed Division
Deputy Commissioner, Wage and Investment Division
Deputy Commissioner, Tax Exempt/Government Entities Division
Deputy Commissioner, Large/Mid-Size Business Division
Chief, Agency-Wide Shared Services
Chief, Appeals
Chief, Criminal Investigation
Chief Information Officer

Redelegation: In the absence of these officials, the first available Compliance Director.

Sources of Authority: Treasury Order 150–10, Treasury Order 150–25.

This Order supersedes Delegation Order No. 5 (Rev. 17), effective October 15, 1999.

Dated: October 4, 2000.

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 00–28526 Filed 11–6–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 264]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of authority.

SUMMARY: Authority to Offer and Accept Settlement Offers and to Execute Closing Agreements Made under the Targeted Jobs Tax Credit Initiative.

FOR FURTHER INFORMATION CONTACT: Robert Wheeler, Health and Welfare Branch, Office of Division Counsel/Associate Chief Counsel (Tax-Exempt and Government Entities), CC:TEGE:EB:HW, Room 5203, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–6060 (not a toll-free call).

Delegation of Authority

[Order No.: 264]

Effective Date: September 15, 2000.

Authority To Offer and Accept Settlement Offers and To Execute Closing Agreements Made Under the Targeted Jobs Tax Credit Initiative

Authority: In cases under their jurisdiction, to accept or make settlement offers and to execute closing agreements to effect such settlement offers, regardless of liability sought to be compromised, made under

Announcement 2000–58, subject to the prior written review and approval by the Retail Industry Technical Advisor (or his or her designee).

Delegated to: Examination Branch Chiefs in the District offices and Territory Managers in Large and Mid-Sized Business and Small Business/Self-Employed divisions.

Redelegation: This authority may not be redelegated.

Sources of Authority: Treasury Order Nos. 150–07, 150–09, and 150–10 and the authority contained in IRC 7121 to offer and accept written settlement offers and execute closing agreements, relating to federal tax matters that are the subject of Announcement 2000–58, Targeted Jobs Tax Credit Settlement Initiative, 2000–30 I.R.B. 135 (July 24, 2000).

Ratification: To the extent that authority previously exercised consistent with this Order may require ratification, it is hereby approved and ratified.

Dated: October 5, 2000.

Stuart L. Brown,

Chief Counsel.

Dated: October 16, 2000.

Bob Wenzel,

Deputy Commissioner, Operations.

[FR Doc. 00–28527 Filed 11–6–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Bond of Indemnity to the United States of America.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Special Bond of Indemnity to the United States of America.

OMB Number: 1535–0062.

Form Number: PD F 2966.

Abstract: The information is requested to support a request for refund of the purchase price of savings bonds purchased in a chain letter scheme.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 665.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28482 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request By Owner For Reissue of United States Savings Bonds/Notes To Add Beneficiary Or Coowner, Eliminate Beneficiary Or Decedent, Show Change Of Name, And/Or Correct Error In Registration.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request By Owner For Reissue Of United States Savings Bonds/Notes To Add Beneficiary Or Coowner, Eliminate Beneficiary Or Decedent, Show Change Of Name, And/Or Correct Error In Registration.

OMB Number: 1535–0023.

Form Number: PD F 4000.

Abstract: The information is requested to support a request for reissue and to indicate the new registration required.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 600,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 300,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28483 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application by Preferred Creditor for Disposition Without Administration Where Deceased Owner's Estate Includes United States Registered Securities And/Or Related Checks In An Amount Not Exceeding $500.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION: *Title:* Application By Preferred Creditor For Disposition Without Administration Where Deceased Owner's Estate Includes United States Registered Securities And/Or Related Checks In An Amount Not Exceeding $500.

OMB Number: 1535–0042.

Form Number: PD F 2216.

Abstract: The information is requested to support a request for payment by a preferred creditor of a decedent's estate.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or Businesses.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 835.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28484 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Authorization for purchase and request for change of United States Savings Bonds.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Authorization For Purchase And Request For Change United States Savings Bonds.

OMB Number: 1535–0111.

Form Numbers: SB 2104, 2152, 2153, 2205, 2253, 2272, and 2305.

Abstract: The information is requested to support a request by employees to authorize employers to allot funds from their pay for the purchase of savings bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 1,600,000.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 33,333.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of

information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28485 Filed 11–06–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing the offering of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION: *Title:* Regulations Governing The Offering Of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

OMB Number: 1535–0127.

Abstract: The information is requested to establish an investor account, issue and redeem securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business.

Estimated Number of Respondents: 37.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 20.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28486 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing U.S. Treasury Certificates of Indebtedness—State and Local Government Series.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION: *Title:* Regulations Governing United States Treasury Certificates Of Indebtedness—State and Local Government Series, Unites States Treasury Notes—State and Local Government Series, and United States Treasury Bonds—State and Local Government Series.

OMB Number: 1535–0091.

Abstract: The information is requested to establish an investor account, issue and redeem securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or local governments.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 167.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28487 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Subscription For Purchase and Issue of U.S. Treasury Securities, State and Local Government Series.

DATES: Written comments should be received on or before January 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION: *Title:* Subscription For Purchase And Issue Of U.S. Treasury Securities—State And Local Government Series.

OMB Number: 1535–0092.

Form Number: PD F 4144

Abstract: The information is requested to establish accounts for the owners of securities of State and Local Government Series.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or Local Government.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–28488 Filed 11–6–00; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Tuesday,
November 7, 2000

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determinations of Whether Designation of Critical Habitat is Prudent for 81 Plants and Proposed Designations for 76 Plants From the Islands of Kauai and Niihau, Hawaii; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG71

Endangered and Threatened Wildlife and Plants; Determinations of Whether Designation of Critical Habitat Is Prudent for 81 Plants and Proposed Designations for 76 Plants From the Islands of Kauai and Niihau, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of determinations of whether designation of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service, have reconsidered our findings concerning whether designating critical habitat for 81 federally protected plant species currently found on the islands of Kauai and Niihau is prudent. A total of 95 species historically found on these two islands were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1996. Some of these species may also occur on other Hawaiian islands. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the species.

Due to litigation, we reconsidered our previous prudency determinations for the 95 plants. From this review, we are proposing that critical habitat is prudent for 76 of these species because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks of designation. We are proposing that the designation of critical habitat is not prudent for five species. The remaining 14 species historically found on Kauai and/or Niihau, no longer occur on these islands. However, these species do occur on other islands, so proposed prudency determinations will be made in future rules addressing plants on those islands.

This proposed rule also proposes designation of critical habitat for the 76 species. Twenty-three critical habitat units, covering a total of 24,539.23 hectares (60,636.42 acres), are proposed for designation on the islands of Kauai and Niihau.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the proposed designations. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We must receive comments from all interested parties by December 7, 2000. Public hearing requests must be received by December 22, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to KAandNIcrithab pr@fws.gov.

(3) You may hand-deliver written comments to our Pacific Islands Office at 300 Ala Moana Blvd., Room 3–122, Honolulu, HI.

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 at the Pacific Islands Office.

FOR FURTHER INFORMATION CONTACT: Christa Russell, Coordinator for Listing and Recovery of Plants and Invertebrates, Pacific Islands Office (see **ADDRESSES** section) (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

We, the U.S. Fish and Wildlife Service (Service), have reconsidered our findings concerning whether designating critical habitat for 81 federally protected plants from the islands of Kauai and Niihau, Kauai County, Hawaii, is prudent. In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are 95 plant species that, at the time of listing, were found on the islands of Kauai and Niihau (Table 1). Currently, 55 of these species are endemic to the islands of Kauai and/or Niihau, while 24 species are known from one or more other islands, as well as Kauai and/or Niihau. Two species (*Melicope quadrangularis* and *Phyllostegia waimeae*) are thought to be extinct since they have not been seen recently in the wild and no viable genetic material of these species is known to exist. The remaining 14 species, *Acaena exigua, Achyranthes mutica, Ctenitis squamigera, Diellia erecta, Diplazium molokaiense, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Mariscus pennatiformis, Phlegmariurus mannii, Phlegmariurus nutans, Silene lanceolata, Solanum incompletum*, and *Vigna o-wahuensis*, are known only from historical records (pre-1970) on Kauai and/or Niihau, or from undocumented observations, or are no longer extant in the wild on these islands. These species do occur on other islands, however.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 95 SPECIES FROM KAUAI AND NIIHAU

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
Acaena exigua (liliwai)	H				C		
Achyranthes mutica (NCN)	H				C		
Adenophorus periens (NCN)	C	H	C	R	R	C	
Alectryon macrococcus (mahoe)	C	C	C		C		
Alsinidendron lychnoides (kuawawaunohu)	C						
Alsinidendron viscosum (NCN)	C						
Bonamia menziesii (NCN)	C	C	H	C	C	C	
Brighamia insignis (olulu)	C						Ni(C).
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Chamaesyce halemanui (akoko)	C						
Ctenitis squamigera (pauoa)	H	C	H	C	C		
Cyanea asarifolia (haha)	C						
Cyanea recta (haha)	C						

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 95 SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
Cyanea remyi (haha)	C						
Cyanea undulata (haha)	C						
Cyperus trachysanthos (pu ukaa)	C	C	H	H			Ni(C).
Cyrtandra cyaneoides (mapele)	C						
Cyrtandra limahuliensis (haiwale)	C						
Delissea rhytidosperma (NCN)	C						
Delissea rivularis (NCN)	C						
Delissea undulata (NCN)	C				H	C	Ni(H).
Diellia erecta (NCN)	H	C	C	H	C	C	
Diellia pallida (NCN)	C						
Diplazium molokaiense (NCN)	H	H	H	H	C		
Dubautia latifolia (kahalapehu)	C						
Dubautia pauciflorula (naenae)	C						
Euphorbia haeleeleana (akoko)	C	C					
Exocarpos luteolus (heau)	C						
Flueggea neowawraea (mehamehame)	C	C	H		C	C	
Gouania meyenii (NCN)	C	C					
Hedyotis cookiana (awiwi)	C	H	H			H	
Hedyotis st.-johnii (NCN)	C						
Hesperomannia lydgatei (NCN)	C						
Hibiscadelphus woodii (hau kuahiwi)	C						
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka(R).
Hibiscus clayi (kokio ulaula)	C						
Hibiscus waimeae ssp. *hannerae* (kokio keokeo)	C						
Ischaemum byrone (Hilo ischaemum)	R	H	C		C	C	
Isodendrion laurifolium (aupaka)	C	C					
Isodendrion longifolium (aupaka)	C	C					
Isodendrion pyrifolium (wahine noho kula)		H	H	H	H	C	Ni(H).
Kokia kauaiensis (kokio)	C						
Labordia lydgatei (kamakahala)	C						
Labordia tinifolia var. *wahiawaensis* (kamakahala)	C						
Lipochaeta fauriei (nehe)	C						
Lipochaeta micrantha (nehe)	C						
Lipochaeta waimeaensis (nehe)	C						
Lobelia niihauensis (NCN)	C	C					Ni(H).
Lysimachia filifolia (NCN)	C	C					
Mariscus pennatiformis (NCN)	H	H			C	H	NW (C).
Melicope haupuensis (alani)	C						
Melicope knudsenii (alani)	C				C		
Melicope pallida (alani)	C	C					
Melicope quadrangularis (alani)	H						
Munroidendron racemosum (NCN)	C						
Myrsine linearifolia (kolea)	C						
Nothocestrum peltatum (aiea)	C						
Panicum niihauense (NCN)	C						Ni(H).
Peucedanum sandwicense (makou)	C	C	C		C		
Phlegmariurus mannii (wawaeiole)	H				C	C	
Phlegmariurus nutans (wawaeiole)	H	C					
Phyllostegia knudsenii (NCN)	C						
Phyllostegia waimeae (NCN)	H						
Phyllostegia wawrana (NCN)	C						
Plantago princeps (ale)	C	C	C		C	H	
Platanthera holochila (NCN)	C	H	C		C		
Poa mannii (NCN)	C						
Poa sandvicensis (NCN)	C						
Poa siphonoglossa (NCN)	C						
Pritchardia aylmer-robinsonii (wahane)							Ni(C).
Pritchardia napaliensis (loulu)	C						
Pritchardia viscosa (loulu)	C						
Pteralyxia kauaiensis (kaulu)	C						
Remya kauaiensis (NCN)	C						
Remya montgomeryi (NCN)	C						
Schiedea apokremnos (NCN)	C						
Schiedea helleri (NCN)	C						
Schiedea kauaiensis (NCN)	C						
Schiedea membranacea (NCN)	C						
Schiedea nuttallii (NCN)	C	C	R		R		
Schiedea spergulina var. *leiopoda* (NCN)	C						

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 95 SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
Schiedea spergulina var. *spergulina* (NCN)	C						
Schiedea stellarioides (NCN)	C						
Sesbania tomentosa (ohai)	C	C	C	H	C	C	NW, Ka, Ni (H).
Silene lanceolata (NCN)	H	C	C	H		C	
Solanum incompletum (popolo ku mai)	H		H	H	H	C	
Solanum sandwicense (popolo aiakeakua)	C	H					
Spermolepis hawaiiensis (NCN)	C	C	C	C	C	C	
Stenogyne campanulata (NCN)	C						
Vigna o-wahuensis (NCN)		H	C	C	C	C	Ni (H), Ka (C).
Viola helenae (NCN)	C						
Viola kauaiensis var. *wahiawaensis* (nani wai ale)	C						
Wilkesia hobdyi (iliau)	C						
Xylosma crenatum (NCN)	C						
Zanthoxylum hawaiiense (ae)	C		C	H	C	C	

KEY
C (Current)—population last observed within the past 30 years.
H (Historical)—population not seen for more than 30 years.
R (Reported)—reported from undocumented observations.

The plants considered in this rule were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. These not-prudent determinations, along with the not-prudent determinations for 150 other Hawaiian plants, were challenged in *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii. 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. To comply with the Court's order, between now and April 30, 2002, we plan to publish seven rules that will include proposed determinations of whether critical habitat is prudent, along with designations if appropriate. Each rule, arranged by island or island group (Kauai and Niihau; Maui and Kahoolawe; Lanai; Molokai; Northwest Hawaiian Islands; Hawaii; Oahu), will contain the proposed prudency determination and, when appropriate, proposed designations of critical habitat for each plant species known to occur from that island or group of islands. This determination and proposed rule for 79 plants currently found on the islands of Kauai and Niihau responds to the court order. The proposed prudency determinations for *Melicope quadrangularis* and *Phyllostegia waimeae*, which appear to be no longer extant in the wild, will also be made in this rule. The proposed prudency determinations and, if appropriate, critical habitat designation for the 14 species that no longer occur on Kauai and/or Niihau, but do occur on other islands, will be made in subsequent rules (Table 2).

TABLE 2.—LIST OF PROPOSED RULES IN WHICH PRUDENCY DETERMINATIONS AND CRITICAL HABITAT DESIGNATIONS/NON DESIGNATIONS WILL BE PROPOSED FOR THE 14 SPECIES THAT NO LONGER OCCUR ON KAUAI OR NIIHAU

Species	Proposed rule in which prudency will be proposed	Proposed rule in which critical habitat designations/non designations will be discussed
Acaena exigua	Maui and Kahoolawe	Maui and Kahoolawe.
Achranthes mutica	Hawaii	Hawaii.
Ctenitis squamigera	Maui and Kahoolawe	Maui and Kahoolawe; Lanai; Oahu.
Diellia erecta	Maui and Kahoolawe	Maui and Kahoolawe; Molokai; Hawaii; Oahu.
Diplazium molokaiense	Maui and Kahoolawe	Maui and Kahoolawe.
Hibiscus brackenridgei	Maui and Kahoolawe	Maui and Kahoolawe; Lanai; Hawaii; Oahu.
Ischaemum byrone	Maui and Kahoolawe	Maui and Kahoolawe; Molokai; Hawaii.
Isodendrion pyrifolium	Hawaii	Hawaii.
Mariscus pennatiformis	Maui and Kahoolawe	Maui and Kahoolawe; NW Hawaiian Islands; Hawaii.
Phlegmariurus mannii	Maui and Kahoolawe	Maui and Kahoolawe; Hawaii.
Phlegmariurus nutans	Oahu	Oahu.
Silene lanceolata	Molokai	Molokai; Hawaii; Oahu.
Solanum incompletum	Hawaii	Hawaii.
Vigna o-wahuensis	Maui and Kahoolawe	Maui and Kahoolawe; Lanai; Molokai; Hawaii.

The Islands of Kauai and Niihau

Because of its age and relative isolation, levels of floristic diversity and endemism are higher on Kauai than on any other island in the Hawaiian archipelago. However, the vegetation of Kauai has undergone extreme alterations because of past and present land use. Land with rich soils was

altered by the early Hawaiians, and more recently, converted to agricultural use or pasture (Gagne and Cuddihy 1999). Intentional or inadvertent introduction of nonnative plant and animal species has also contributed to the reduction of native vegetation on the island of Kauai. Native forests are now limited to the upper elevation mesic (moist) and wet regions within Kauai's conservation district. The land that supports the 79 extant plant taxa is owned by various private parties, the State of Hawaii (including State parks, forest reserves, and natural area reserves), and the United States of America. Most of the taxa included in this proposed rule persist on steep slopes, precipitous cliffs, valley headwalls, and other regions where unsuitable topography has prevented agricultural development or where inaccessibility has limited encroachment by nonnative plant and animal species.

Niihau's relative isolation and severe environmental conditions have produced a few endemic species. Unfortunately, human disturbance, primarily ungulate ranching, has drastically changed the vegetation and hydrologic parameters of the island, leaving few of the native vegetation communities. Niihau has been privately owned since 1864 and access has been and continues to be restricted (Department of Geography 1998). Therefore, current information on plant locations and population status is extremely limited.

Discussion of the 79 Extant Plant Taxa

Species Endemic to Kauai and Niihau

Alsinidendron lychnoides

Alsinidendron lychnoides, a member of the pink family (Caryophyllaceae), is a weakly climbing or sprawling woody, at least at the base, subshrub with a dense covering of fine glandular hairs throughout. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by the weakly climbing or sprawling habit, color of the sepals, number of flowers per cluster, and size of the leaves. It is closely related to *Alsinidendron viscosum*, which differs primarily in having narrower leaves, fewer capsule valves, and fewer flowers per cluster (Wagner *et al.* 1999).

This species was observed with fruits during February (USFWS 1998a). No additional life history information for this species is currently available.

Historically, *Alsinidendron lychnoides* was found on the east rim of Kalalau Valley near Keanapuka, the western and southeastern margins of the Alakai Swamp, and southwest of the Swamp near Kaholuamano on the island of Kauai. Currently, there are a total of four populations with a total of six individual plants (HINHP Database 1999). This species is extant on State-owned land in the Alakai Swamp, including the Alakai Wilderness Preserve, and on State-owned land on the west and east rims of Kalalau Valley (Geographic Decision Systems International (GDSI) 1999). This latter population occurs on the boundary of Hono O Na Pali Natural Area Reserve (NAR) and Na Pali Coast State Park (61 FR 53070; GDSI 1999).

Alsinidendron lychnoides typically grows in montane wet forests dominated by *Metrosideros polymorpha* (ohia) and *Cheirodendron* sp. (olapa), or by *M. polymorpha* and *Dicranopteris linearis* (uluhe), trailing on the ground or on other vegetation, and at elevations between 1,100 and 1,320 m (3,610 and 4,330 ft). Associated plant species include *Carex* sp. (No Common Name (NCN)), *Cyrtandra* sp. (haiwale), *Machaerina* sp. (uki), *Vaccinium* sp. (ohelo), *Peperomia* sp. (ala ala wai nui), *Hedyotis terminalis* (manono), *Astelia* sp. (painiu), and *Broussaisia arguta* (kanawao) (61 FR 53070).

The major threats to this species are competition from the aggressive alien plant species *Rubus argutus* (prickly Florida blackberry); habitat degradation by feral pigs (*Sus scrofa*); trampling by humans; risk of extinction from naturally occurring events (such as landslides or hurricanes); and by reduced reproductive vigor due to the small number of extant individuals (61 FR 53070).

Alsinidendron viscosum

Alsinidendron viscosum, a member of the pink family (Caryophyllaceae), is a weakly climbing or sprawling subshrub densely covered with fine glandular hairs. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by the weakly climbing or sprawling habit, color of the sepals, number of flowers per cluster, and size of the leaves. It is closely related to *Alsinidendron lychnoides*, which differs primarily in having wider leaves and more capsule valves and flowers per cluster (Wagner *et al.* 1999).

Alsinidendron viscosum was observed in flower during January, February, and April 1995 (USFWS 1998a). No additional life history information for this species is currently available.

Historically, *Alsinidendron viscosum* was found at Kaholuamano, Kokee, Halemanu, Nawaimaka, and Waialae areas of northwestern Kauai. Currently, there are a total of four populations containing a total of 98 individuals on the island of Kauai (HINHP Database 1999). These populations are reported on the ridge between Waialae and Nawaimaka Valleys, in the same general area on a north-facing ridge in Nawaimaka Valley, along the Mohihi-Waialae Trail, and along the Ditch Trail in the Kokee area on State and privately owned lands (61 FR 5307; GDSI 1999).

Alsinidendron viscosum is typically found at elevations between 820 and 1,200 m (2,700 and 3,940 ft), on steep slopes in *Acacia koa* (koa)-*Metrosideros polymorpha* lowland or montane mesic or wet forest. Associated plant species include *Alyxia olivaeformis* (maile), *Bidens cosmoides* (poola nui), *Bobea* sp. (ahakea), *Carex* sp., *Coprosma* sp. (pilo), *Dodonaea viscosa* (aalii), *Gahnia* sp. (NCN), *Ilex anomala* (aiea), *Melicope* sp. (alani), *Pleomele* sp. (hala pepe), *Psychotria* sp. (kopiko), and *Schiedea stellarioides* (61 FR 53070).

The major threats to this species are destruction of habitat by feral pigs and goats (*Capra hircus*); competition with the alien plant species *Rubus argutus, Lantana camara* (lantana), and *Melinis minutiflora* (molasses grass); and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and from reduced reproductive vigor, due to the small number of extant populations and individuals (61 FR 53070).

Brighamia insignis

Brighamia insignis, a member of the bellflower family (Campanulaceae), is an unbranched plant with a succulent stem that is bulbous at the bottom and tapers toward the top, ending in a compact rosette of fleshy leaves. This short-lived perennial species is a member of a unique endemic Hawaiian genus with only one other species, *B. rockii*, presently known only from Molokai, from which it differs by the color of its petals, its shorter calyx lobes, and its longer flower stalks (59 FR 9304; Lammers 1999).

Current reproduction is not thought to be sufficient to sustain populations, with poor seedling establishment due to competition with alien grasses as the limiting factor (59 FR 9304). Pollination by native sphingid moths (Sphingidae family) is likely; however, pollination failure is common, due to either a lack of pollinators or a reduction in genetic variability. The flower structure appears to favor outcrossing (pollination between different parent plants). Some vegetative cloning has been observed and flower and leaf size appear to be dependent on moisture availability (59 FR 9304). Seeds of this species are undoubtedly dispersed by gravity.

Although they may be blown for short distances, they are not obviously adapted for wind dispersal, being ovoid to ellipsoid, smooth, and lacking any sort of wing or outgrowth (USFWS 1995).

Historically, *Brighamia insignis* was known from the headland between Hoolulu and Waiahuakua Valleys along the Na Pali Coast on the island of Kauai, and from Kaali Spring on the island of Niihau. Currently, there are a total of five populations containing a total of 45–65 individuals on the islands of Kauai and Niihau (HINHP Database 1999). It is reported on State and privately owned lands along the Na Pali Coast within or on the boundary of the Hono O Na Pali NAR, in Hoolulu, Waiahuakua, and the Haupu Range on the island of Kauai, and on the island of Niihau (GDSI 1999; HINHP Database 1999; Steve Perlman, National Tropical Botanical Garden (NTBG), pers. comm. 2000; USFWS 1995).

Brighamia insignis is found from sea level to 480 m (1,575 ft) elevation on rocky ledges with little soil or on steep sea cliffs in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in.). Associated native plant taxa include *Artemisia* sp. (ahinahina), *Chamaesyce celastroides* (akoko), *Canthium odoratum* (alahee), *Eragrostis variabilis* (kawelu), *Heteropogon contortus* (pili grass), *Hibiscus kokio* (kokio), *Hibiscus saintjohnianus* (kokio), *Lepidium serra* (anaunau), *Lipochaeta succulenta* (nehe), *Munroidendron racemosum*, and *Sida fallax* (ilima) (59 FR 9304).

The major threats to this plant are browsing and habitat degradation by feral goats; human disturbance; fire; the Carmine spider mite (*Tetranychus cinnabarinus*); a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of individuals; restricted distribution; reduced reproductive vigor; and competition from alien plant species such as *Melinis minutiflora, Setaria gracilis* (yellow foxtail), *Sporobolus africanus* (smutgrass), *Lantana camara, Psidium cattleianum* (strawberry guava), *Psidium guajava* (common guava), *Kalanchoe pinnata* (air plant), *Ageratum conyzoides* (maile hohono), and *Stachytarpheta dichotoma* (owi) (59 FR 9304).

Chamaesyce halemanui

Chamaesyce halemanui, a member of the spurge family (Euphorbiaceae), is a scandent (climbing) shrub. It is distinguished from closely related species by its decussate leaves, persistent stipules, more compact flower clusters, shorter stems on cyathia, and smaller capsules (57 FR 20580; Koutnik 1987; Koutnik and Huft 1999).

Little is known about the life history of *Chamaesyce halemanui*. Although the plant is a short-lived perennial, its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Chamaesyce halemanui* was found in Kauhao and Makaha Valleys in the Na Pali-Kona Forest Reserve, Mahanaloa Valley in Kuia NAR, the Halemanu drainage in Kokee State Park, and Olokele Canyon on the island of Kauai (HINHP Database 1999; Ken Wood, NTBG, *in litt.* 1999). Currently, there is a total of seven populations, with 88 to 139 individuals, at Kohua Ridge, Makaha Valley, Waialae Ridge, and the Halemanu drainage, all State-owned land (HINHP Database 1999; K. Wood, *in litt.* 1999; GDSI 1999).

Chamaesyce halemanui is typically found on the steep slopes of gulches in mesic *Acacia koa* forests at an elevation of 660 to 1,100 m (2,165 to 3,610 ft). Associated native species include *Metrosideros polymorpha, Alphitonia ponderosa* (kauila), *Antidesma platyphyllum* (hame), *Bobea brevipes* (ahakea lau lii), *Cheirodendron trigynum* (olapa), *Coprosma* sp., *Diospyros sandwicensis* (lama), *Dodonaea viscosa, Elaeocarpus bifidus* (kalia), *Hedyotis terminalis, Kokia kauaiensis, Melicope haupuensis, Pisonia* sp. (papala kepau), *Pittosporum* sp. (ho awa), *Pleomele aurea* (hala pepe), *Psychotria mariniana* (kopiko), *P. greenwelliae* (kopiko), *Pouteria sandwicensis* (alaa), *Santalum freycinetianum* (iliahi), and *Styphelia tameiameiae* (pukiawe) (57 FR 20580).

The major threats to this species are competition from alien plants, such as *Lantana camara, Psidium cattleianum*, and *Stenotaphrum secundatum* (St. Augustine grass); habitat degradation by feral pigs; restricted distribution; small population size; increased potential for extinction resulting from naturally occurring events, such as landslides or hurricanes; and depressed reproductive vigor (57 FR 20580).

Cyanea asarifolia

Cyanea asarifolia, a member of the bellflower family (Campanulaceae), is a sparingly branched shrub. This short-lived perennial species is distinguished from others of the genus that grow on Kauai by the shape of the leaf base, the leaf width in proportion to the length, and the presence of a leaf stalk (59 FR 9304; Lammers 1999).

Little is known about the life history of *Cyanea asarifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Cyanea asarifolia* was known only from above the bed of Anahola Stream on Kauai (HINHP Database 1999). Currently, two populations with a total of 9 to 11 total individuals are reported from the headwaters of the Wailua River in central Kauai on State-owned land (HINHP Database 1999; GDSI 1999).

This species typically grows in pockets of soil on sheer rock cliffs in lowland wet forests at an elevation of approximately 330 to 730 m (1,080 to 2,400 ft). Associated plant taxa include ferns, *Hedyotis elatior* (awiwi), *Machaerina angustifolia* (uki), *Metrosideros polymorpha, Touchardia latifolia* (olona), and *Urera glabra* (opuhe) (59 FR 9304).

The major threats to this species are a risk of extinction from naturally occurring events, such as hurricanes and rock slides, and/or reduced reproductive vigor due to the small number of existing individuals; introduced slugs; rodents (*Rattus rattus* and *Mus musculus*); and habitat degradation by feral pigs (59 FR 9304).

Cyanea recta

Cyanea recta, a member of the bellflower family (Campanulaceae), is an unbranched shrub with densely hairy flowers. This short-lived perennial species is distinguished from other species in the genus that grow on Kauai by the following collective characteristics: horizontal or ascending inflorescence, narrowly elliptic leaves 12 to 28 cm (4.7 to 11 in.) long, flat leaf margins, and purple berries (Lammers 1999).

No life history information for this species is currently available.

Historically, *Cyanea recta* was found in upper Hanalei Valley, Waioli Valley, Hanapepe Valley, Kalalau cliffs, Wainiha Valley, Makaleha Mountains, Limahuli Valley, Power line Trail, and the Lehua Makanoe-Alakai area on the island of Kauai. Currently, there is a total of eight populations, with between 599 and 609 individuals, on State and private lands in the following areas: upper Waioli Valley, Wainiha Valley, Makaleha Mountains, Limahuli Valley, and the Wahiawa Bog area, Iliiliula drainage, and the back of Hanalei Valley (GDSI 1999; HINHP Database 1999).

Cyanea recta grows in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland, usually in gulches or on slopes, and typically from 400 to 1,200 m (1,310 to 3,940 ft) elevation. Associated native plant species include *Dicranopteris linearis, Psychotria* sp.,

Antidesma sp. (hame), *Cheirodendron platyphyllum* (lapalapa), *Cibotium* sp. (hapuu), and *Diplazium* sp. (NCN) (61 FR 53070).

The major threats to this species are bark removal and other damage by rats (*Rattus* sp.); habitat degradation by feral pigs; browsing by goats; unidentified slugs that feed on the stems; and competition with the alien plant species *Blechnum occidentale* (blechnum fern), *Lantana camara, Rubus rosaefolius* (thimbleberry), *Clidemia hirta* (Koster's curse), *Crassocephalum crepidioides* (NCN), *Deparia petersenii* (NCN), *Erechtites valerianaefolia* (fireweed), *Melastoma candidum* (NCN), *Paspalum conjugatum* (Hilo grass), *Sacciolepis indica* (Glenwood grass), and *Youngia japonica* (Oriental hawksbeard) (61 FR 53070).

Cyanea remyi

Cyanea remyi, a member of the bellflower family (Campanulaceae), is a shrub with generally unbranched, unarmed (lacking prickles) stems which are hairy toward the base. This short-lived perennial species is distinguished from others in the genus that grow on Kauai by its shrubby habit, relatively slender, unarmed stems, smooth or minutely toothed leaves, densely hairy flowers, the shape of the calyx lobes, length of the calyx and corolla, and length of the corolla lobe relative to the floral tube (Lammers 1999).

No life history information for this species is currently available.

Currently, there are seven known populations with a total of 294–384 plants on the island of Kauai (HINHP Database 1999; K. Wood, *in litt.* 1999). *Cyanea remyi* is reported from Waioli Valley, at the base of Mount Waialeale, in the Wahiawa Mountains near Hulua, on the summit plateau of the Makaleha Mountains, and in Limahuli Valley, on State and privately owned lands (Lammers and Lorence 1993; HINHP Database 1999; K. Wood, *in litt.* 1999; GDSI 1999).

Cyanea remyi is usually found in lowland wet forest or shrubland at an elevation of 360 to 930 m (1,180 to 3,060 ft). Associated plant species include *Antidesma* sp., *Cheirodendron* sp., *Diospyros* sp. (lama), *Broussaisia arguta, Metrosideros polymorpha, Freycinetia arborea* (ieie), *Hedyotis terminalis, Machaerina angustifolia, Perrottetia sandwicensis* (olomea), *Psychotria hexandra* (kopiko), and *Syzygium sandwicensis* (ohia ha) (61 FR 53070).

The major threats to this species are competition with the alien plant species *Erechtites valerianaefolia, Paspalum conjugatum, Psidium cattleianum, Rubus rosaefolius,* and *Melastoma candidum;* habitat degradation by feral pigs; browsing by feral goats; predation by rats; unidentified slugs that feed on the stems; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of remaining populations (61 FR 53070).

Cyanea undulata

Cyanea undulata is an unbranched (or the stem is occasionally forked) shrub or undershrub with fine rust-colored hairs covering the lower surface of the leaves (Lammers 1999).

Native members of the Campanulaceae (bellflower) family, including the genus *Cyanea,* are generally believed to have adapted to pollination by native nectar-eating passerine birds, such as the Hawaiian ''honeycreepers.'' The long, tubular, slightly curved flowers of *C. undulata* fit this model, but field observations are lacking. The fleshy orange fruits of this species are adapted for bird dispersal like other species of *Cyanea.* Although recognized as a short-lived perennial species, specific details of the life history of this species, such as growth rates, age plants begin to flower, and longevity of plants, are unknown. *Cyanea undulata* is found in pristine, undisturbed, and uninvaded sites, often on shady stream banks or on steep to vertical slopes that are prone to erosion or landslides (Lorence and Flynn 1991; USFWS 1994).

Historically, *Cyanea undulata* was known only from the Wahiawa Bog area on Kauai. Currently, one population with a total of 28 plants is reported on privately owned land between 630 to 800 m (2,070 to 2,625 ft) elevation along the bank of a tributary of the Wahiawa Stream in the Wahiawa Drainage (HINHP Database 1999; GDSI 1999).

The primary threats to this species include competition with the alien plant species *Psidium cattleianum, Melastoma candidum, Rhodomyrtus tomentosa* (rose myrtle), *Clidemia hirta, Melaleuca quinquenervia* (paperbark tree), *Stachytarpheta dichotoma, Rubus rosaefolius, Elephantopus mollis* (NCN), *Erechtites valerianefolia, Youngia japonica, Pluchea carolinensis* (sourbush), *Oplismenus hirtellus* (basketgrass), *Paspalum conjugatum, Paspalum urvillei* (Vasey grass), *Sacciolepis indica, Setaria gracilis, Deparia petersenii,* and *Cyathea cooperi* (Australian tree fern); trampling by feral pigs; landslides; seed predation by rats; herbivory by introduced slugs; loss of pollinators; hurricanes; decreased reproductive vigor; restricted distribution; and extinction due to unforseen circumstances because of small population size (USFWS 1994; 56 FR 47695).

Cyrtandra cyaneoides

Cyrtandra cyaneoides, a member of the African violet family (Gesneriaceae), is an erect or ascending, fleshy, usually unbranched shrub with opposite toothed leaves which have impressed veins on the lower surface that are sparsely covered with long hairs. This short-lived perennial species differs from others of the genus that grow on Kauai by being a succulent, erect or ascending shrub and having a bilaterally symmetrical calyx that is spindle-shaped in bud and falls off after flowering, leaves with a wrinkled surface, 40 to 55 cm (16 to 22 in.) long and 22 to 35 cm (9 to 14 in.) wide, and berries with shaggy hairs (Wagner *et al.* 1999).

No life history information for this species is currently available.

Historically, *Cyrtandra cyaneoides* was known to occur only along the trail to Waialae Valley on Kauai (61 FR 53070). It is currently known from four populations on private and State lands with a total of 352 to 452 individuals at Namolokama above Lumahai Valley, the Makaleha Plateau, Wainiha Valley, and upper Waioli Valley (GDSI 1999; HINHP Database 1999).

Cyrtandra cyaneoides typically grows on steep slopes or cliffs near streams or waterfalls in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *M. polymorpha* and *Dicranopteris linearis* between 550 and 1,220 m (1,800 and 4,000 ft) elevation. Associated native species include *Perrottetia sandwicensis, Pipturus* sp. (mamaki), *Bidens* sp. (ko oko olau), *Psychotria* sp., *Pritchardia* sp. (loulu), *Freycinetia arborea, Cyanea* sp. (haha), *Cyrtandra limahuliensis, Diplazium sandwichianum* (NCN), *Gunnera* sp.(ape ape), *Coprosma* sp., *Stenogyne* sp. (NCN), *Machaerina* sp., *Boehmeria grandis* (akolea), *Pipturus* sp., *Cheirodendron* sp., *Hedyotis terminalis,* and *Hedyotis tryblium* (NCN) (61 FR 53070).

The major threats to this species are competition with alien plant species such as *Paspalum conjugatum, Rubus rosaefolius, Deparia petersenii,* and *Drymaria cordata* (pipili); predation of seeds by rats; reduced reproductive vigor and a risk of extinction from naturally occurring events, such as landslides and hurricanes, due to the small number of populations; and habitat degradation by feral pigs (61 FR 53070).

Cyrtandra limahuliensis

Cyrtandra limahuliensis, a member of the African violet family (Gesneriaceae), is an unbranched or few-branched shrub with moderately or densely hairy leaves. The following combination of characteristics distinguishes this short-lived perennial species from others of the genus: the leaves are usually hairy (especially on lower surfaces), the usually symmetrical calyx is tubular or funnel-shaped and encloses the fruit at maturity, and the flowers are borne singly (Wagner *et al.* 1999).

Little is known about the life history of *Cyrtandra limahuliensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Cyrtandra limahuliensis* was known from three locations on Kauai: Wainiha Valley, Lumahai Valley, and near Kilauea River (HINHP Database 1999). Currently, a total of 13 populations containing 928–1,029 plants are reported on private and State lands in Wainiha Valley, Limahuli Valley, Waipa Valley, on Mount Kahili, along the north fork of Wahiawa Stream, along Anahola Stream, Waioli Valley, and near Powerline Trail. However, it has been estimated that the total number of plants on Kauai may be as high as a few thousand (HINHP Database 1999; GDSI 1999).

This species typically grows along streams in lowland wet forests at elevations between 245 and 915 m (800 and 3,000 ft). Associated taxa include *Antidesma* sp., *Cyrtandra kealiea* (haiwale), *Pisonia* sp., *Pipturus* sp., *Cibotium glaucum* (hapuu), *Eugenia* sp. (nioi), *Hedyotis terminalis, Dubautia* sp. (na ena e), *Boehmeria grandis, Touchardia latifolia, Bidens* sp., *Hibiscus waimeae* (kikio ke okeo), *Charpentiera* sp. (papala), *Urera glabra, Pritchardia* sp., *Cyanea* sp., *Perrottetia sandwicensis, Metrosideros polymorpha, Dicranopteris linearis, Gunnera kauaiensis* (apeape), and *Psychotria* sp. (59 FR 9304).

The major threats to this species are competition from alien plant species *(Psidium cattleianum, Paspalum conjugatum, Melastoma candidum, Psidium guajava, Hedychium flavescens* (yellow ginger), *Rubus rosaefolius, Youngia japonica, Erechtites valerianefolia, Blechnum occidentale*, and *Clidemia hirta*); habitat degradation by feral pigs; natural landslides; and hurricanes (59 FR 9304).

Delissea rhytidosperma

Delissea rhytidosperma, a member of the bellflower family (Campanulaceae), is a branched shrub with lance-shaped or elliptic toothed leaves. This short-lived perennial species differs from other taxa of the genus by the shape, length, and margins of the leaves and by having hairs at the base of the anthers (Lammers 1999).

Little is known about the life history of *Delissea rhytidosperma*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Delissea rhytidosperma* was known from as far north as Wainiha and Limahuli Valleys, as far east as Kapaa and Kealia, and as far south as Haupu Range and between the elevations of 120 and 915 m (400 and 3,000 ft) on the island of Kauai (HINHP Database 1999). Currently, three populations, on State and private lands, with a total of 20 individuals are reported from the Haupu range, Mahanaloa Valley, and Limahuli Valley (HINHP Database 1999; GDSI 1999).

This species generally grows in diverse lowland mesic forests or Acacia koa-dominated lowland dry forests that have well-drained soils with medium-to fine-textured subsoil. Associated native plant taxa includes *Euphorbia haeleeleana, Psychotria hobdyi* (kopiko), *Pisonia* sp., *Pteralyxia* sp. (kaulu), *Dodonaea viscosa, Cyanea* sp., *Hedyotis* sp. (NCN), *Dianella sandwicensis* (ukiuki), *Diospyros sandwicensis, Styphelia tameiameiae*, and *Nestegis sandwicensis* (olopua) (59 FR 9304).

The major threats to this species are predation and/or habitat degradation by mule or black-tailed deer (*Odocoileus hemionus columbianus*), feral pigs, and goats; herbivory by rats and introduced slugs; fire; and competition with the alien plants *Lantana camara, Passiflora ligularis* (sweet granadilla), *Cordyline fruticosa* (ti), and *Passiflora mollissima* (banana poka); and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; USFWS 1995).

Delissea rivularis

Delissea rivularis, a member of the bellflower family (Campanulaceae), is a shrub, unbranched or branched near the base, with hairy stems and leaves arranged in a rosette at the tips of the stems. This short-lived perennial species is distinguished from others of the genus by the color, length, and curvature of the corolla, shape of the leaves, and presence of hairs on the stems, leaves, flower clusters, and corolla (Lammers 1999).

No life history information for this species is currently available.

Historically, *Delissea rivularis* was found at Waiakealoha waterfall, Waialae Valley, Hanakoa Valley, and Kaholuamanu on the island of Kauai (61 FR 53070). Currently, this species is known from two populations with a total of 40 individuals (HINHP Database 1999; K. Wood, *in litt.* 1999). One population is reported in the upper Hanakoa Valley stream area on State land within the Hono O Na Pali NAR between 1,100 to 1,220 m (3,610 to 4,000 ft) elevation, while the other is reported in the upper Hanakapiai drainage, on privately owned land (HINHP Database 1999; GDSI 1999; K. Wood *in litt.* 1999).

Delissea rivularis is found on steep slopes in *Metrosideros polymorpha-Cheirodendron trigynum* montane wet or mesic forest, near streams. Associated native species include *Broussaisia arguta*, *Carex* sp., *Coprosma* sp., *Melicope clusiifolia* (kolokolo mokihana), *Melicope anisata* (mokihana), *Psychotria hexandra*, *Dubautia knudsenii* (na ena e), *Diplazium sandwichianum*, *Hedyotis foggiana* (NCN), *Ilex anomala*, and *Sadleria* sp. (amau) (61 FR 53070).

The major threats to this species are competition with the encroaching alien plant *Rubus argutus*; habitat destruction by feral pigs; predation by rats; and reduced reproductive vigor and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of remaining individuals (61 FR 53070; USFWS 1998a).

Diellia pallida

Diellia pallida, a member of the spleenwort family (Aspleniaceae), is a plant that grows in tufts of three to four light green, lance-shaped fronds along with a few persistent dead ones. This short-lived perennial species differs from others of this endemic Hawaiian genus by the color and sheen of the midrib, the presence and color of scales on the midrib, and the frequent fusion of sori (Wagner 1952, 1987).

Little is known about the life history of *Diellia pallida*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Diellia pallida was known historically from Halemanu on the island of Kauai (59 FR 9304). Currently, there is a total of five populations with 20–25 individuals in Koaie Canyon, Mahanaloa Valley, and Makaha Valley, all on State-owned land (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species grows on bare soil on steep, rocky, dry slopes in lowland mesic forests, from 520 to 915 m (1,700 to 3,000 ft) in elevation. Associated native plant taxa include *Acacia koa*, *Alectryon macrococcus*, *Antidesma platyphyllum*, *Metrosideros polymorpha*, *Myrsine lanaiensis* (kolea), *Zanthoxylum dipetalum* (ae), *Tetraplasandra kauaiensis* (ohe ohe), *Psychotria mariniana*, *Carex meyenii* (NCN), *Diospyros hillebrandii* (lama), *Hedyotis knudsenii* (NCN), *Canthium odoratum*, *Pteralyxia kauaiensis*, *Nestegis sandwicensis*, *Alyxia olivaeformis*, *Wilkesia gymnoxiphium* (iliau), *Alphitonia ponderosa*, *Styphelia tameiameiae*, and *Rauvolfia sandwicensis* (hao) (59 FR 9304).

The major threats to this species include competition with the alien plants *Lantana camara*, *Melia azedarach* (Chinaberry), *Stenotaphrum secundatum*, *Oplismenus hirtellus*, *Aleurites moluccana* (kukui) and *Cordyline fruticosa*; predation and habitat degradation by feral goats, pigs, and deer; fire; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304).

Dubautia latifolia

Dubautia latifolia, a member of the aster family (Asteraceae), is a diffusely branched, woody perennial vine with leaves which are conspicuously net-veined, with the smaller veins outlining nearly square areas. A vining habit, distinct petioles, and broad leaves with conspicuous net veins outlining squarish areas separate this from closely related species (Carr 1982b, 1985, 1999a).

Individual plants of this species do not appear to be able to fertile themselves. Since at least some individuals of *Dubautia latifolia* require cross-pollination, the wide spacing of individual plants (*e.g.*, each 0.5 km (0.3 mi) apart) may pose a threat to the reproductive potential of the species. The very low seed set noted in plants in the wild indicates a reproductive problem, possibly asynchronous flowering. Seedling establishment is also rare and young plants are rarely seen. *Dubautia latifolia* experiences seasonal vegetative decline during the spring and summer, often losing most of its leaves. New growth and flowering occur in the fall with fruits developing in November. Pollinators and seed dispersal agents are unknown (Carr 1982b; USFWS 1995).

Historically, *Dubautia latifolia* was found in the Makaha, Awaawapuhi, Waialae, Kawaiula, and Kauhao Valleys of the Na Pali-Kona Forest Reserve, Nualolo Trail and Valley in Kuia NAR, Halemanu in Kokee State Park, along Mohihi Road in both Kokee State Park and Na Pali-Kona Forest Reserve, along the Mohihi-Waialae Trail on Mohihi and Kohua ridges in both Na Pali-Kona Forest Reserve and Alakai Wilderness Preserve, and at Kaholuamanu on the island of Kauai (Carr 1982b; HINHP Database 1999; GDSI 1999). Currently, there are a total of 24 populations containing between 59–70 individuals on State and privately owned lands in all of the aforementioned areas, except Halemanu and Kaholuamanu (HINHP Database 1999 GDSI 1999; K. Wood, *in litt.* 1999).

This species typically grows on gentle to steep slopes in well drained soil and in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha*, at elevations of 800 to 1,220 m (2,625 to 4,000 ft). Commonly associated native species are *Pouteria sandwicensis*, *Dodonaea viscosa*, *Nestegis sandwicensis*, *Diplazium sandwichianum*, *Elaeocarpus bifidus*, *Claoxylon sandwicense* (po ola), *Bobea* sp., *Pleomele* sp., *Antidesma* sp., *Cyrtandra* sp., *Xylosma* sp. (maua), *Alphitonia ponderosa*, *Coprosma waimeae* (olena), *Dicranopteris linearis*, *Hedyotis terminalis*, *Ilex anomala*, *Melicope anisata*, *Psychotria mariniana*, and *Scaevola* sp. (naupaka) (59 FR 9304).

The threats to this species include competition from the alien plants *Passiflora mollissima*, *Rubus argutus*, *Lonicera japonica* (Japanese honeysuckle), *Acacia mearnsii* (black wattle), *Hedychium* sp. (ginger), *Erigeron karvinskianus* (daisy fleabane), and *Psidium cattleianum*; damage from trampling and grazing by feral pigs and deer; vehicle traffic and road maintenance; seasonal dieback; small number of extant individuals; and restricted distribution (59 FR 9304).

Dubautia pauciflorula

Dubautia pauciflorula, a member of the aster family (Asteraceae), is a somewhat sprawling shrub or erect small tree with narrowly lance-shaped or elliptic leaves clustered toward the ends of the stems. The tiny, 2–4 flowered heads distinguish this short-lived perennial species from its relatives (Carr 1985, 1999a).

Few details are known about the life history of any *Dubautia* species under natural conditions. Certain species produce viable seed when self-pollinated (self-fertile), although others fail to do so (self-infertile). Low pollinator numbers resulting in reduced cross-pollination and consequently low numbers of viable seeds could explain the small population sizes. Because of their structure and small size, flowers of *D. pauciflorula* are presumably pollinated by small generalist insects, although field observations are lacking. The bristle-like pappus crowning the fruit probably represents an adaptation for wind dispersal. Very little is known about the life cycle of this species, including growth rates, longevity of the plants, and number of years the plants remain reproductive (56 FR 47695; Carr 1985; USFWS 1994).

Historically and currently, this species is found only on State and privately owned lands in the Wahiawa Drainage on Kauai (HINHP Database 1999; GDSI 1999). There are a total of four populations containing 52 individual plants. These populations are found in lowland wet forest at elevations between 670–700 m (2,200–2,300 ft) (HINHP Database 1999).

The threats to this plant include direct competition with the alien plant species such as *Psidium cattleianum* and *Melastoma candidum*, and potential threats from *Rhodomyrtus tomentosa*, *Clidemia hirta*, *Melaleuca quinquenervia*, *Stachytarpheta dichotoma*, *Rubus rosaefolius*, *Elephantopus mollis*, *Erechtites valerianefolia*, *Youngia japonica*, *Pluchea carolinensis*, *Oplismenus hirtellus*, *Paspalum conjugatum*, *Paspalum urvillei*, *Sacciolepis indica*, *Setaria gracilis*, *Deparia petersenii*, and *Cyathea cooperi*; trampling by feral pigs; landslides and erosion; restricted distribution; and hurricanes (56 FR 47695; USFWS 1994).

Exocarpos luteolus

Exocarpos luteolus, a member of the sandalwood family (Santalaceae), is a moderately to densely branched shrub with knobby branches and leaves which are either minute scales or typical leaves. This short-lived perennial species is distinguished from others of the genus by its generally larger fruit with 4 indentations and by the color of the receptacle and fruit (Wagner *et al.* 1999).

Little is known about the life history of *Exocarpos luteolus.* This species tends to grow at habitat edges where there is adequate light (USFWS 1995). Flowering cycles, pollination vectors, seed dispersal agents, longevity, other specific environmental requirements, and limiting factors are unknown.

Historically, *Exocarpos luteolus* was known from three locations on Kauai: Wahiawa Bog, Kaholuamanu, and Kumuwela Ridge (HINHP Database

1999). Currently, there is a total of nine populations containing 69–70 individual plants (HINHP Database 1999; K. Wood, *in litt.* 1999). This species has a scattered distribution on State and privately owned lands and is reported on Kumuwela Ridge; in Kauaikanana Valley; near Honopu Trail; Waialae; on the rim of Kalalau Valley within or on the boundary of Kokee State Park; on Kamalii Ridge in Kealia Forest Reserve; in the Na Pali Kona Forest Reserve; Alakai Swamp; and in the Wahiawa Mountains (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species is found at elevations between 475 and 1,290 m (1,560 and 4,220 ft) in a variety of habitats: wet areas bordering swamps; on open, dry ridges; and lowland or montane, *Metrosideros polymorpha*-dominated wet forest communities (59 FR 9304). Associated species include *Acacia koa*, *Cheirodendron trigynum*, *Pouteria sandwicensis*, *Dodonaea viscosa*, *Pleomele aurea*, *Psychotria mariniana*, *Psychotria greenwelliae*, *Bobea brevipes*, *Hedyotis terminalis*, *Elaeocarpus bifidus*, *Melicope haupuensis*, *Dubautia laevigata* (na ena e), *Dianella sandwicensis*, *Poa sandvicensis*, *Schiedea stellarioides*, *Peperomia macraeana* (ala ala wai nui), *Claoxylon sandwicense*, *Santalum freycinetianum*, *Styphelia tameiameiae*, and *Dicranopteris linearis* (59 FR 9304; USFWS 1995).

The major threats to this species are feral goats and pigs; competition with the alien plants *Erigeron karvinskianus*, *Acacia mearnsii*, *Corynocarpus laevigata* (karakanut), *Myrica faya* (firetree), and *Rubus argutus*; seed predation by rats; fire; and erosion (59 FR 9304; USFWS 1995).

Hedyotis st.-johnii

Hedyotis st.-johnii, a member of the coffee family (Rubiaceae), is a succulent perennial herb with slightly woody, trailing, quadrangular stems and fleshy leaves clustered towards the base of the stem. This species is distinguished from related species by its succulence, basally clustered fleshy leaves, shorter floral tube, and large leafy calyx lobes when in fruit (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis st.-johnii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Currently, there are a total of six populations, containing 223–278 individuals, on State owned land on the Na Pali coast of Kauai: between Kalalau and Honopu beaches, in Nualolo Valley, Nualolo Kai, at Milolii Beach, and in Polihale (HINHP Database 1999; GDSI 1999).

This plant grows in the crevices of north-facing, near-vertical coastal cliff faces within the spray zone (below 75 m (250 ft)). The associated vegetation is sparse dry coastal shrubland and includes species such as the native *Myoporum sandwicense* (naio), *Eragrostis variabilis*, *Lycium sandwicense* (ohelo kai), *Heteropogon contortus*, *Artemisia australis* (ahinahina), and *Chamaesyce celastroides* (56 FR 49639).

The major threats to this species are herbivory and habitat degradation by feral goats; competition from alien plant species, especially *Pluchea carolinensis*; landslides; fire; trampling and grazing by cattle (*Bos taurus*); and a risk of extinction due to naturally occurring events, such as landslides or hurricanes, as well as decreased reproductive vigor because of the small population sizes and restricted distribution (56 FR 49639; USFWS 1995).

Hesperomannia lydgatei

Hesperomannia lydgatei, a member of the aster family (Asteraceae) is a sparsely branched small long-lived perennial tree with alternately arranged, lance-shaped or elliptic leaves (Wagner *et al.* 1999).

Little is known about the life history of *Hesperomannia lydgatei.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Hesperomannia lydgatei* was found in the Wahiawa Mountains of Kauai. Currently, this species is known from State and privately owned lands in the Wahiawa and Waioli Stream areas. There are a total of four populations containing a total of 214 individual plants (GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999).

Hesperomannia lydgatei is found at elevations between 410–915 m (1,345–3,000 ft) along stream banks in rich brown soil and silty clay in *Metrosideros polymorpha* or *M. polymorpha-Dicranopteris linearis* lowland wet forest with one or more of the following associated native plant species: *Adenophorus* sp. (Pendant fern), *Antidesma* sp., *Broussaisia arguta*, *Cheirodendron* sp., *Elaphoglossum* sp. (Ekaha), *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia lydgatei*, *Machaerina angustifolia*, *Peperomia* sp., *Pritchardia* sp., *Psychotria hexandra*, and *Syzygium sandwicensis* (HINHP Database 1999; USFWS 1994).

Threats to the species include alien plants; feral goats; rats; landslides; and erosion (USFWS 1994).

Hibiscadelphus woodii

Hibiscadelphus woodii, a member of the mallow family (Malvaceae), is a small branched, long-lived perennial tree with a rounded crown. *H. woodii* differs from the other Kauai species by differences in leaf surface and characteristics of the whirled leaves or bract and flower color (Lorence and Wagner 1995; Bates 1999).

Flowering material has been collected in March, April, and September, but no fruit set has been observed in spite of efforts to manually outcross and bag the flowers. A museum specimen of a liquid-preserved flower has been identified that contains three adult Nitidulidae beetles, probably an endemic species. The damage by these larvae may be responsible for the observed lack of fruit set in *Hibiscadelphus woodii* (Lorence and Wagner 1995; USFWS 1998a). No additional life history information for this species is currently available.

Hibiscadelphus woodii has been found only at the site of its original discovery on State owned land in Kalalau Valley, within the Na Pali Coast State Park on Kauai; only nine trees of this species are known (HINHP Database 1999; K. Wood, *in litt.* 1999; GDSI 1999).

Hibiscadelphus woodii is found at elevations around 915 m (3,000 ft) on basalt talus or cliff walls in *Metrosideros polymorpha* montane mesic forest. These forests contain one or more of the following associated native plant species: *Bidens sandwicensis* (ko oko olau), *Artemisia australis*, *Melicope pallida*, *Dubautia* sp., *Lepidium serra*, *Lipochaeta* sp. (nehe), *Lysimachia glutinosa* (kolokolo kuahiwi), *Carex meyenii*, *Chamaesyce celastroides* var. *hanapepensis*, *Hedyotis* sp., *Nototrichium* sp. (kului), *Panicum lineale* (NCN), *Myrsine* sp. (kolea), and the federally endangered species *Stenogyne campanulata*, *Lobelia niihauensis*, and *Poa mannii* (61 FR 53070; HINHP Database 1999; Lorence and Wagner 1995).

Major threats to *Hibiscadelphus woodii* are habitat degradation by feral goats and pigs; competition from the alien plant species *Erigeron karvinskianus*; nectar robbing by Japanese white-eye (*Zosterops japonicus*), an introduced bird; and a risk of extinction from naturally occurring events (*e.g.*, rock slides) and reduced reproductive vigor due to the small number of existing individuals at the only known site (61 FR 53070; Lorence and Wagner 1995).

Hibiscus clayi

Hibiscus clayi, a member of the mallow family (Malvaceae), is a long-lived perennial shrub or small tree. This species is distinguished from other native Hawaiian members of the genus by the lengths of the calyx, calyx lobes, and capsule and by the margins of the leaves (Bates 1999).

Little is known about the life history of *Hibiscus clayi*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Hibiscus clayi* was known from scattered locations on Kauai: the Kokee region on the western side of the island, Moloaa Valley to the north, Nounou Mountain in Wailua to the east, and as far south as Haiku near Halii Stream (HINHP Database 1999). At this time, only the population on State and privately owned lands in the Nounou Mountains, with a total of four trees, is known to be extant (HINHP Database 1999; GDSI 1999).

Hibiscus clayi generally grows on slopes (230 to 350 m (750 to 1,150 ft) elevation) in *Acacia koa* or *Diospyros* sp.-*Pisonia* sp.-*Metrosideros polymorpha* lowland dry or mesic forest with *Hedyotis acuminata* (au), *Pipturus* sp., *Psychotria* sp., *Cyanea hardyi* (haha), *Artemisia australis,* or *Bidens* sp. (59 FR 9304; HINHP Database 1999).

The major threat to this species is competition with alien plants, principally *Psidium cattleianum.* In addition, *Araucaria columnaris* (Norfolk Island pine) has been planted in the area of the Nounou Mountain population. This aggressive alien tree may prevent regeneration of native plants in the understory. The close proximity of most of the *Hibiscus clayi* plants to a hiking trail makes them susceptible to human disturbance. Feral pigs also pose a potential threat to the species. Lastly, the small total number of existing individuals makes the species susceptible to extinction due to naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor (59 FR 9304; HINHP Database 1999).

Hibiscus waimeae ssp. hannerae

Hibiscus waimeae ssp. *hannerae,* a member of the mallow family (Malvaceae), is a gray-barked tree with star-shaped hairs densely covering its leaf and flower stalks and branchlets. The long-lived perennial species is distinguished from others of the genus by the position of the anthers along the staminal column, length of the staminal column relative to the petals, color of the petals, and length of the calyx. Two subspecies, ssp. *hannerae* and ssp. *waimeae,* both endemic to Kauai, are recognized. Subspecies *hannerae* is distinguishable from ssp. *waimeae* by its larger leaves and smaller flowers (Bates 1999).

No life history information for this species is currently available.

Historically, *Hibiscus waimeae* ssp. *hannerae* was known from Kalihiwai and adjacent valleys, Limahuli Valley, and Hanakapiai Valley (Bates 1999; HINHP Database 1999). This subspecies is no longer extant at Kalihiwai. Currently, there are two populations containing 27 individuals on State and privately owned lands in the Limahuli and Hanakapiai Valleys (HINHP Database 1999; GDSI 1999).

Hibiscus waimeae ssp. *hannerae* grows between 190 and 560 m (620 and 1,850 ft) elevation. It is found in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or in *Pisonia* sp.-*Charpentiera elliptica* (papala) lowland wet or mesic forest with *Antidesma* sp., *Psychotria* sp., *Pipturus* sp., *Bidens* sp., *Bobea* sp., *Sadleria* sp., *Cyrtandra* sp. *Cyanea* sp., *Cibotium* sp., *Perrottetia sandwicensis,* and *Syzygium sandwicensis* (USFWS 1998a; Bates 1999; HINHP Database 1999).

Major threats to *Hibiscus waimeae* ssp. *hannerae* are habitat degradation by feral pigs, competition with alien plant species, and a risk of extinction from naturally occurring events (e.g., landscapes and hurricanes) and/or reduced reproductive vigor due to the small number of remaining populations (61 FR 53070; HINHP Database 1999).

Kokia kauaiensis

Kokia kauaiensis, a member of the mallow family (Malvaceae), is a small tree. This long-lived perennial species is distinguished from others of this endemic Hawaiian genus by the length of the bracts surrounding the flower head, number of lobes and the width of the leaves, the length of the petals, and the length of the hairs on the seeds (Bates 1999).

No life history information for this species is currently available.

Historically, *Kokia kauaiensis* was found at seven scattered populations on northwestern Kauai (HINHP Database 1999). Currently, there are a total of 11 populations with 179 to 184 individuals, found in Paaiki, Mahanaloa, Kuia, Kalalau, and Pohakuao Valleys, Na Pali Coast State Park, and the Koaie Stream branch of Waimeae Canyon, all on State-owned land (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

Kokia kauaiensis typically grows in diverse mesic forest between 350 to 660 m (1,150 to 2,165 ft) elevation. Associated species include *Bobea* sp., *Acacia koa, Diospyros sandwicensis, Hedyotis* sp., *Pleomele* sp., *Xylosma* sp., *Isodendrion* sp. (aupaka), *Pisonia* sp., *Nestegis sandwicensis, Syzygium sandwicensis, Antidesma* sp., *Alyxia olivaeformis, Pouteria sandwicensis, Streblus pendulinus* (aiai), *Canthium odoratum, Nototrichium* sp., *Pteralyxia kauaiensis, Dicranopteris linearis, Hibiscus* sp. (aloalo), *Flueggea neowawraea, Rauvolfia sandwicensis, Melicope* sp., *Diellia laciniata* (palapalai lau lii), *Tetraplasandra* sp. (ohe ohe), *Chamaesyce celastroides, Lipochaeta fauriei, Dodonaea viscosa, Santalum* sp. (iliahi), *Claoxylon* sandwicense, and *Metrosideros polymorpha* (USFWS 1998a; Bates 1999; HINHP Database 1999; K. Wood, *in litt.* 1999).

Competition with and habitat degradation by invasive alien plant species, substrate loss from erosion, habitat degradation and browsing by feral goats and deer, and seed predation by rats are the major threats affecting the survival of *Kokia kauaiensis* (Wood and Perlman 1993; USFWS 1998a; HINHP Database 1999).

Labordia lydgatei

Labordia lydgatei, a member of the Logania family (Loganiaceae), is a much-branched perennial shrub or small tree with sparsely hairy, square stems. The small size of the flowers and capsules borne on sessile inflorescences distinguish it from other members of the genus growing in the same area (Wagner *et al.* 1999).

Immature fruits were seen on two plants during surveys in 1991 and 1992 by botanists from NTBG, and remnants of old fruiting bodies were seen on another, suggesting that the plants are self-fertile. It is also suspected that the fruits of this species are adapted for bird dispersal. Due to a lack of bird or other native pollinators, pollination may be inhibited (USFWS 1994). Microhabitat requirements for seed germination and growth may also be extremely specific. Virtually nothing is known about the life history or ecology of this species.

This species was originally known from the Wahiawa Drainage, Waioli Stream Valley, and Makaleha Mountains on Kauai (HINHP Database 1999). *Labordia lydgatei* is currently known from six populations, consisting of 37 individual plants, located on State and privately owned lands along one of the tributaries of the Wahiawa Stream, as well as in Limahuli and Lumahai Valleys (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

Labordia lydgatei is found in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest at elevations between 635 and 855 m (2,080 to 2800 ft). Associated native plants include *Psychotria* sp., *Hedyotis terminalis* sp., *Cyanea* sp., *Cyrtandra* sp., *Labordia hirtella* (NCN), *Antidesma platyphyllum* var. *hildebrandi, Syzygium sandwicensis, Ilex anomala,* and *Dubautia knudsenii* (USFWS 1994; HINHP Database 1999; K. Wood, *in litt.* 1999).

Competition from alien plants poses the greatest threat to the survival of *Labordia lydgatei* (56 FR 47695). Additional threats include habitat degradation from feral pigs; rats, a potential seed predator; landslides and erosion; and a lack of dispersal, germination or pollination agents (USFWS 1994).

Labordia tinifolia var. *wahiawaensis*

Labordia tinifolia var. *wahiawaensis,* a member of the Logania family (Loganiaceae), is a shrub or small tree with hairless, cylindrical young branches. This long-lived perennial species differs from others of the genus by having a long common flower cluster stalk, hairless young stems and leaf surfaces, transversely wrinkled capsule valves, and corolla lobes usually 1.7 to 2.3 mm (0.1 in.) long (Wagner *et al.* 1999). Three varieties of *Labordia tinifolia* are recognized: var. *lanaiensis* on Lanai and Molokai; var. *tinifolia* on Kauai, Oahu, Molokai, Maui, and Hawaii; and var. *wahiawaensis,* endemic to Kauai. Variety *wahiawaensis* is distinguished from the other two by its larger corolla (Wagner *et al.* 1999).

No life history information for this subspecies is currently available.

Labordia tinifolia var. *wahiawaensis* is only known from one population with a total of 20–30 individual plants on private land in the Wahiawa Drainage in the Wahiawa Mountains from (GDSI 1999; HINHP Database 1999).

Labordia tinifolia var. *wahiawaensis* grows along streambanks in lowland wet forests dominated by *Metrosideros polymorpha* at elevations between 300 to 920 m (985 to 3,020 ft), with *Cheirodendron* sp., *Dicranopteris linearis, Cyrtandra* sp., *Antidesma* sp., *Psychotria* sp., *Hedyotis terminalis,* or *Athyrium microphyllum* (HINHP Database 1999).

The primary threats to the remaining individuals of *Labordia tinifolia* var. *wahiawaensis* are competition with alien plants, habitat degradation by feral pigs, trampling by humans, and a risk of extinction from catastrophic random events or reduced reproductive vigor due to the small number of individuals in a single population (61 FR 53070).

Lipochaeta fauriei

Lipochaeta fauriei, a member of the aster family (Asteraceae), is a perennial herb with somewhat woody, erect or climbing stems. This short-lived perennial species differs from other species on Kauai by having a greater number of disk and ray flowers per flower head, longer ray flowers, and longer leaves and leaf stalks (Gardner 1976, 1979; USFWS 1995; Wagner *et al.* 1985, 1999).

Little is known about the life history of *Lipochaeta fauriei.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Lipochaeta fauriei* is known from Olokele Canyon on Kauai (Gardner 1979, HINHP Database 1999). This species is now also found on State and privately owned lands in Poopooiki, Haeleele, and Hikimoe Valleys (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999). Currently there is a total of four populations with 132 individuals (HINHP Database 1999; K. Wood, *in litt.* 1999). A population in Koaie Canyon previously thought to be *L. fauriei* was later identified as *L. subcordata* (USFWS 1995).

This species grows most often in moderate shade to full sun and is usually found on the sides of steep gulches in diverse lowland mesic forests between 480 and 900 m (1,575 and 2,950 ft) elevation (Wagner *et al.* 1999). Associated native plant taxa include *Myrsine lanaiensis, Euphorbia haeleeleana, Acacia koa, Pleomele aurea, Sapindus oahuensis* (lonomea), *Nestegis sandwicensis, Dodonaea viscosa, Psychotria mariniana, Psychotria greenwelliae, Kokia kauaiensis, Diospyros* sp. and *Hibiscus waimeae* (HINHP Database 1999; K. Wood, *in litt.* 1999).

Major threats to *Lipochaeta fauriei* are predation and habitat degradation by feral goats and pigs, and competition with invasive alien plants. Fire is also a significant threat to *L. fauriei* due to the invasion of *Melinis minutiflora,* a fire-adapted grass that creates unnaturally high fuel loads. The small total number of individuals makes the species susceptible to extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor (59 FR 9304; USFWS 1995; HINHP Database 1999).

Lipochaeta micrantha

Lipochaeta micrantha, a member of the aster family (Asteraceae), is a somewhat woody short-lived perennial herb. The small number of disk florets separates this species from the other members of the genus on the island of Kauai. The two recognized varieties of this species, var. *exigua* and var. *micrantha,* are distinguished by differences in leaf length and width, degree of leaf dissection, and the length of the ray florets (Gardner 1976, 1979; Wagner *et al.* 1999).

Little is known about the life histories of *Lipochaeta micrantha* var. *exigua* or *L. m.* var. *micrantha.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Lipochaeta micrantha* var. *exigua* was only known from the Haupu Range on Kauai. Currently, three populations of *L. m.* var. *exigua,* with 102–112 individuals, are known from privately owned land in the vicinity of Haupu Range and southwest of Hokunui summit (HINHP 1999; GDSI 1999). Historically, *L. m.* var. *micrantha* was known from Olokele Canyon, Hanapepe Valley, and the Koloa District on Kauai (HINHP Database 1999). Currently, this variety is only known from three populations totalling 56 to 66 individuals in the Koaie branch of Waimeae Canyon (State owned land) (HINHP 1999; GDSI 1999).

Lipochaeta micrantha var. *exigua* grows on cliffs, ridges, or slopes in grassy, shrubby or dry mixed communities between 305–430 m (1,000–1,400 ft) elevation with *Artemisia australis, Bidens sandvicensis, Plectranthus parviflorus* (ala ala wai nui), *Chamaesyce celastroides, Diospyros* sp., *Canthium odoratum, Neraudia* sp., *Pipturus* sp., *Hibiscus kokio, Sida fallax, Eragrostis* sp. (kawelu), *and Lepidium bidentatum* (anaunau) (USFWS 1995; HINHP 1999). *Lipochaeta micrantha* var. *micrantha* grows on basalt cliffs, stream banks, or level ground in mesic or diverse *Metrosideros polymorpha-Diospyros* sp. forest between 610–720 m (2,000–2,360 ft) elevation with *Lobelia niihauensis, Chamaesyce celastroides* var. *hanapepensis, Neraudia kauaiensis, Rumex* sp. (dock or sorrel), *Nototrichium* sp., *Artemisia* sp., *Dodonaea viscosa, Antidesma* sp., *Hibiscus* sp., *Xylosma* sp., *Pleomele* sp., *Melicope* sp., *Bobea* sp., and *Acacia koa* (USFWS 1995; HINHP 1999).

The major threats to both varieties of *Lipochaeta micrantha* are habitat degradation by feral pigs and goats, and

competition with alien plant species, such as *Lantana* camara, *Pluchea carolinensis, Erigeron karvinskianus,* and *Stachytarpheta dichotoma.* The species is also threatened by extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing populations (Lorence and Flynn 1991; USFWS 1995; HINHP Database 1999).

Lipochaeta waimeaensis

Lipochaeta waimeaensis, a member of the aster family (Asteraceae), is a low growing, somewhat woody, short-lived perennial herb. This species is distinguished from other *Lipochaeta* on Kauai by leaf shape and the presence of shorter leaf stalks and ray florets (Gardner 1976, 1979; Wagner *et al.* 1999).

Little is known about the life history of *Lipochaeta waimeaensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Lipochaeta waimeaensis is known only from the original site of discovery along the rim of Kauai's Waimeae Canyon on State and privately owned lands. There are no more than 100 individuals (HINHP Database 1999; GDSI 1999).

This population grows on eroded soil on a precipitous, shrub-covered gulch in a diverse lowland mesic forest between 350 and 400 m (1,150 and 1,310 ft) elevation with *Dodonaea viscosa* and *Lipochaeta connata* (nehe) (HINHP Database 1999; Wagner *et al.* 1999).

The major threats to *Lipochaeta waimeaensis* are competition from alien plants and habitat destruction by feral goats, whose presence exacerbates the existing soil erosion problem at the site. The single population, and thus the entire species, is threatened by extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304).

Melicope haupuensis

Melicope haupuensis, a member of the citrus family (Rutaceae), is a small long-lived perennial tree. Unlike other taxa of this genus on Kauai, the exocarp and endocarp are hairless and the sepals are covered with dense hairs (Stone *et al.* 1999).

Little is known about the life history of *Melicope haupuensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

For 62 years, *Melicope haupuensis* was known only from the site of its original discovery on the north side of Haupu Ridge on Kauai (HINHP Database 1999). This population is now gone. The species is now known from single trees at three separate locations on State owned land (along the banks of Koaie Stream in Waimeae Canyon, Awaawapuh, and Honopu) (GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999).

Melicope haupuensis grows on moist talus slopes in *Metrosideros polymorpha*-dominated lowland mesic forests or *Metrosideros polymorpha-Acacia koa* montane mesic forest at elevations between 375 and 1,075 m (1,230 to 3,530 ft). Associated species include *Dodonaea viscosa, Diospyros* sp., *Psychotria mariniana, P. greenwelliae, Melicope ovata* (alani), *M. anisata, M. barbigera* (alani), *Dianella sandwicensis, Pritchardia minor* (loulu), *Tetraplasandra waimeae* (oheohe), *Claoxylon sandwicensis, Cheirodendron trigynum, Pleomele aurea, Cryptocarya mannii* (holio), *Pouteria sandwicensis, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus,* and *Antidesma* sp. (HINHP Database 1999).

Habitat degradation by feral goats and competition with invasive alien plant taxa are the major threats to *Melicope haupuensis.* In addition, this species may be susceptible to the black twig borer (*Xylosandrus compactus*). The existence of only three known trees constitutes an extreme threat of extinction from naturally occurring events, such as landslides or hurricanes, or reduced reproductive vigor (59 FR 9304; Hara and Beardsley 1979; Medeiros *et al.* 1986; HINHP Database 1999).

Munroidendron racemosum

Munroidendron racemosum, a member of the ginseng family (Araliaceae), is a small tree with a straight gray trunk crowned with spreading branches. This long-lived perennial species is the only member of a genus endemic to Hawaii. The genus is distinguished from other closely related Hawaiian genera of the family by its distinct flower clusters and corolla (Constance and Affolter 1999).

Reproduction occurs year-round, with flowers and fruits found throughout the year. Self pollination is assumed to occur since viable seeds have been produced by isolated individuals. Pollinators have not been observed, but insect pollination is likely. Dispersal mechanisms are unknown (USFWS 1995).

Historically, *Munroidendron racemosum* was known from scattered locations throughout the island of Kauai (HINHP Database 1999). Populations are now known from the Na Pali Coast within Na Pali Coast State Park and Hono O Na Pali NAR, in the Poomau and Koaie branches of Waimeae Canyon, in the Haupu Range area, and on Nounou Mountain. There are currently 15 known populations with a total of 58 to 98 individuals on State and privately owned lands (HINHP Database 1999; GDSI 1999).

Munroidendron racemosum is typically found on steep exposed cliffs or on ridge slopes in coastal to lowland mesic forests between 120 and 400 m (395 and 1,310 ft) elevation (Lowrey 1999). Associated plant taxa include *Pisonia umbellifera* (papala kepau), *Canavalia galeata* (awikiwiki), *Sida fallax, Brighamia insignis, Canthium odoratum, Psychotria* sp., *Nestegis sandwicensis, Tetraplasandra* sp., *Bobea timonioides* (ahakea), *Rauvolfia sandwicensis, Pleomele* sp., *Pouteria sandwicensis,* and *Diospyros* sp. (59 FR 9304; Gagne and Cuddihy 1999; HINHP Database 1999).

The major threat to *Munroidendron racemosum* is competition with alien plant species, such as *Aleurites moluccana, Psidium guajava, Lantana camara,* and *Leucaena leucocephala.* Other threats include habitat degradation by feral goats, fire, and fruit predation by rats. In addition, a mature, cultivated tree was observed being killed by an introduced insect of the long-horned beetle family (Cerambycidae) and there is the potential of the beetle attacking and damaging or killing wild trees. Because each population of this species contains only a small number of trees, and the total number of individuals is less than 100, the species is threatened by extinction from naturally occurring events, such as landslides or hurricanes, and reduced reproductive vigor (59 FR 9304; USFWS 1995; HINHP Database 1999).

Myrsine linearifolia

Myrsine linearifolia, a member of the myrsine family (Myrsinaceae), is a branched shrub. This long-lived perennial species is distinguished from others of the genus by the shape, length, and width of the leaves, length of the petals, and number of flowers per cluster (Wagner *et al.* 1999).

No life history information for this species is currently available.

Historically, *Myrsine linearifolia* was found at scattered locations on Kauai: Olokele Valley, Kalualea, Kalalau Valley, Kahuamaa Flat, Limahuli-Hanakapiai Ridge, Koaie Stream, Pohakuao, Namolokama Summit

Plateau, and Haupu (HINHP Database 1999). There are currently eight populations with 360 to 421 individuals on State and privately owned lands (GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999). The populations are found in Kalalau Valley, Kahuamaa Flat, Limahuli Valley, Hanakapiai Ridge, Koaie Stream, Pohakuao, Namolokama Summit Plateau, and the Wahiawa Drainage (HINHP Database 1999; K. Wood, *in litt.* 1999).

Myrsine linearifolia typically grows from 585 to 1,280 m (1,920 to 4,200 ft) elevation, in diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest, with *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominant species (Wood and Perlman 1993; HINHP Database 1999). Plants growing in association with this species include *Dubautia* sp., *Cryptocarya mannii, Sadleria pallida* (amau), *Myrsine* sp., *Syzygium sandwicensis, Machaerina angustifolia, Freycinetia arborea, Hedyotis terminalis, Cheirodendron* sp., *Bobea brevipes, Nothocestrum* sp. (aiae), *Melicope* sp., *Eurya sandwicensis* (anini), *Psychotria* sp., *Lysimachia* sp. (kolokolo kuahiwi), and native ferns (61 FR 53070; HINHP Database 1999; K. Wood, *in litt.* 1999).

Competition with alien plants, such as *Erigeron karvinskianus, Lantana camara, Rubus argutus, Psidium cattleianum, Rubus rosaefolius,* and *Kalanchoe pinnata,* and habitat degradation by feral pigs and goats are the major threats to *Myrsine linearifolia* (61 FR 53070).

Nothocestrum peltatum

Nothocestrum peltatum, a member of the nightshade family (Solanaceae), is a small tree with ash-brown bark and woolly stems. The usually peltate leaves and shorter leaf stalks separate this species from others in the genus (Symon 1999).

Although plants of this long-lived perennial species have been observed flowering, they rarely set fruit. This could be the result of a loss of pollinators, reduced genetic variability, or an inability to fertilize itself (59 FR 9304). Little else is known about the life history of *Nothocestrum peltatum.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Nothocestrum peltatum* was known from Kauai at Kumuwela, Kaholuamanu, and the region of Nualolo (HINHP Database 1999). This species is now known from a total of nine populations with 19 individuals, located near the Kalalau Lookout area, Kalalau Valley, Awaawapuhi and Makaha Valleys, Waimeae Canyon, Nualolo, and Kawaiula, all on State owned land; the species may occur on or near land under Federal jurisdiction in Kokee State Park (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species generally grows in rich soil on steep slopes in montane mesic or lowland mesic or wet forest dominated by *Acacia koa* or a mixture of *Metrosideros polymorpha* and *A. koa* between 915 and 1,220 m (3,000 and 4,000 ft) elevation. Associated plants include *Antidesma* sp., *Dicranopteris linearis, Bobea brevipes, Elaeocarpus bifidus, Alphitonia ponderosa, Melicope anisata, M. barbigera, M. haupuensis, Pouteria sandwicensis, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis, Claoxylon sandwicensis, Cheirodendron trigynum, Psychotria mariniana, P. greenwelliae, Hedyotis terminalis, Ilex anomala, Xylosma* sp., *Cryptocarya mannii, Coprosma* sp., *Pleomele aurea, Diplazium sandwicensis, Broussaisia arguta,* and *Perrottetia sandwicensis* (Sohmer and Gustafson 1987; HINHP Database 1999; K. Wood, *in litt.* 1999).

Competition with alien plants, such as *Passiflora mollissima, Lantana camara, Rubus argutus,* and *Erigeron karvinskianus,* and habitat degradation by feral pigs, deer, and red jungle fowl (*Gallus gallus*) constitute the major threats to *Nothocestrum peltatum.* This species is also threatened by fire, risk of extinction from naturally occurring events (*e.g.,* landslides or hurricanes), and reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; HINHP Database 1999).

Panicum niihauense

Panicum niihauense, a member of the grass family (Poaceae), is a perennial bunchgrass with unbranched culms (aerial stems). This short-lived perennial species is distinguished from others in the genus by the shape of the inflorescence branches, which are erect, and the arrangement of the spikelets, which are densely clustered (Davids 1999).

Little is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Panicum niihauense was known historically from Niihau and one location on Kauai (HINHP Database 1999). Currently this species is only known from the Polihale State Park area on State and privately owned land, and may occur on or near the federally owned Pacific Missile Range Facility (PMRF) on Kauai (GDSI 1999). The single population of 23 individuals is found scattered in sand dunes in a coastal shrubland at elevations of 100 m (330 ft) or less (HINHP Database 1999). Associated plant taxa include *Dodonaea viscosa, Cassytha filiformis* (kaunaoa pehu), *Sporobolus* sp., *Scaevola sericea* (naupaka kahakai), *Sida fallax,* and *Vitex rotundifolia* (kolokolo kahakai) (HINHP Database 1999).

Primary threats to *Panicum niihauense* are destruction by off-road vehicles, competition with alien plant taxa, and a risk of extinction from naturally occurring events (e.g., landslides or hurricanes) and reduced reproductive vigor due to the small number of individuals in the one remaining population (61 FR 53108; HINHP Database 1999).

Phyllostegia knudsenii

Phyllostegia knudsenii, a member of the mint family (Lamiaceae), is an erect herb or vine. This short-lived perennial species is distinguished from others in the genus by its specialized flower stalk; it differs from the closely related *P. floribunda* by often having four flowers per group (Wagner *et al.* 1999).

No life history information for this species is currently available.

Until 1993, *Phyllostegia knudsenii* was only known from the site of its original discovery made in the 1800s from the woods of Waimeae on Kauai (Sherff 1935; HINHP Database 1999; Wagner *et al.* 1999). There are currently two known populations with a total of 8 to 17 individuals on State owned land in Koaie Canyon (HINHP Database 1999; GDSI 1999; K. Wood, in litt. 1999).

Phyllostegia knudsenii is found in *Metrosideros polymorpha* lowland mesic or wet forest between 865–975 m elevation (2,840–3,200 ft) (HINHP Database 1999). Associated species include *Perrottetia sandwicensis, Cyrtandra kauaiensis* (hai wale), *Cyrtandra paludosa* (hai wale), *Elaeocarpus bifidus, Claoxylon sandwicensis, Cryptocarya mannii, Ilex anomala, Myrsine linearifolia, Bobea timonioides, Selaginella arbuscula* (lepelepeamoa), *Diospyros sp., Zanthoxylum dipetalum, Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis,* and *Pritchardia minor* (61 FR 53070).

Major threats to *Phyllostegia knudsenii* include habitat degradation by feral pigs and goats, competition with alien plants, and a risk of extinction from naturally occurring events (e.g., landslides and hurricanes) and reduced reproductive vigor due to the small number of individuals in the only known population (61 FR 53070; USFWS 1998a).

Phyllostegia wawrana

Phyllostegia wawrana, a member of the mint family (Lamiaceae), is a perennial vine that is woody toward the base and has long, crinkly hairs along the stem. This short-lived perennial species can be distinguished from the related *P. floribunda* and *P. knudsenii,* by its less specialized flower stalk (Wagner *et al.* 1999).

Seeds were observed in the wild in August (USFWS 1998a). No additional life history information for this species is currently available.

Phyllostegia wawrana was reported to be found at Hanalei on Kauai in the 1800s and along Kokee Stream in 1926. Currently, populations are reported in the Makaleha Mountains, Honopu Valley, and Hanakoa Valley. A total of four populations with 29–49 individuals are found on State and privately owned lands. In addition, this species may occur on or near land under Federal jurisdiction in Kokee State Park (HINHP Database 1999; GDSI 1999).

This species grows between 780 and 1,200 m elevation (2,560 to 3,940 ft) in *Metrosideros polymorpha*-dominated lowland or montane wet or mesic forest with *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominant species (HINHP Database 1999). Associated species include *Delissea rivularis, Diplazium sandwichianum, Vaccinium* sp., *Broussaisia arguta, Myrsine lanaiensis, Psychotria* sp., *Dubautia knudsenii, Scaevola procera* (naupaka kuahiwi), *Gunnera* sp., *Pleomele aurea, Claoxylon sandwicense, Elaphoglossum* sp., *Hedyotis* sp., *Sadleria* sp., and *Syzygium sandwicensis* (61 FR 53070; HINHP Database 1999).

Major threats to *Phyllostegia wawrana* include habitat degradation by feral pigs and competition with alien plant species, such as *Rubus rosaefolius, Passiflora mollissima, Rubus argutus, Melastoma candidum, Erigeron karvinskianus,* and *Erechtites valerianefolia* (61 FR 53070; USFWS 1998a).

Poa mannii

Poa mannii, a member of the grass family (Poaceae), is a perennial grass with short rhizomes (underground stems) and erect, tufted culms. All three native species of *Poa* in the Hawaiian Islands are endemic to the island of Kauai. *Poa mannii* is distinguished from both *P. siphonoglossa* and *P. sandvicensis* by its fringed ligule and from *P. sandvicensis* by its shorter panicle branches (O'Connor 1999).

Little is known about the life history of *Poa mannii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, this species was found in Olokele Gulch on Kauai (O'Connor 1999). Currently, there is a total of six populations with 163–168 individuals on State owned land in Kalalau Valley, Makaha Valley, Koaie Valley, and Waialae Valley (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species typically grows on cliffs, rock faces, or stream banks in lowland or montane wet, mesic, or dry *Metrosideros polymorpha* forests or *Acacia koa-M. polymorpha* montane mesic forest at elevations between 460 and 1,150 m (1,510 and 3,770 ft). Associated species include *Chamaesyce celastroides* var. *hanapepensis, Artemisia australis, Bidens sandwicensis, Lobelia sandwicensis* (NCN), *Wilkesia gymnoxiphium, Eragrostis variabilis, Panicum lineale, Mariscus phloides* (NCN), *Luzula hawaiiensis* (NCN), *Carex meyenii, C. wahuensis* (NCN), *Cyrtandra wawrae* (haiwale), *Exocarpos luteolus, Labordia helleri* (kamakahala), *Nototrichium* sp., *Hedyotis terminalis, Melicope anisata, M. barbigera, M. pallida, Pouteria sandwicensis, Schiedea membranacea, Diospyros sandwicensis, Psychotria mariniana, P. greenwelliae, Kokia kauaiensis, Alectryon macrococcus, Antidesma platyphyllum, Bidens cosmoides, Dodonaea viscosa,* and *Schiedea amplexicaulis* (NCN) (59 FR 56330; HINHP Database 1999; K. Wood, *in litt.* 1999).

Poa mannii survives only in very steep areas that are inaccessible to goats, suggesting that goat herbivory may have eliminated this species from more accessible locations, as is the case for other rare plants from northwestern Kauai. Threats to *P. mannii* include habitat damage, trampling, and browsing by feral goats, and competition with invasive alien plants. *Erigeron karvinskianus* has invaded Kalalau, Koaie, and Waialae Valleys, three of the areas where *P. mannii* occurs. *Lantana camara* threatens all known populations, and *Rubus argutus* threatens the populations in Kalalau and Waialae Valleys. *Poa mannii* is also threatened by fire, and reduced reproductive vigor and/or extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of existing populations and individuals (59 FR 56330).

Poa sandvicensis

Poa sandvicensis is a perennial grass (family Poaceae) with densely tufted, mostly erect culms. *Poa sandvicensis* is distinguished from closely related species by its shorter rhizomes, shorter culms which do not become rush-like with age, closed and fused sheaths, relatively even-edged ligules, and longer panicle branches (O'Connor 1999).

Little is known about the life history of *Poa sandvicensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, this species was known from six areas on the island of Kauai: the rim of Kalalau Valley in Na Pali Coast State Park; Halemanu and Kumuwela Ridges and Kauaikanana drainage in Kokee State Park; Awaawapuhi Trail in Na Pali-Kona Forest Reserve; Kohua Ridge/Mohihi drainage in both the Forest Reserve and Alakai Wilderness Preserve; and Kaholuamanu (57 FR 20580; Hitchcock 1922; HINHP Database 1999). Hillebrand's (1888) questionable reference to a Maui locality is most likely an error (57 FR 20580; Hitchcock 1922). Currently, there is a total of nine populations with 1,841 individuals occurring on State and privately owned lands (GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999). *Poa sandvicensis* is known to be extant at the rim of Kalalau Valley in Na Pali Coast State Park; Awaawapuhi Trail, Kumuwela Ridge and Kauaikanana drainage in Kokee State Park; and Kohua Ridge and Mohihi drainage (HINHP Database 1999).

Poa sandvicensis grows on wet, shaded, gentle to usually steep slopes, ridges, and rock ledges in semi-open to closed, mesic to wet, diverse montane forest dominated by *Metrosideros polymorpha*, at elevations of 1,035 to 1,250 m (3,400 to 4,100 ft) (HINHP Database 1999). Associated native species include *Dodonaea viscosa, Dubautia* sp., *Coprosma* sp., *Melicope* sp., *Dianella sandwicensis, Alyxia olivaeformis, Bidens* sp., *Dicranopteris linearis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Acacia koa, Psychotria* sp., *Hedyotis* sp., *Scaevola* sp., *Cheirodendron* sp., and *Syzygium sandwicensis* (57 FR 20580; HINHP Database 1999).

The greatest immediate threats to the survival of *Poa sandvicensis* are competition from alien plants, such as *Erigeron karvinskianus, Rubus argutus, Passiflora mollissima* and *Hedychium* sp.; erosion caused by feral pigs and goats; and State forest reserve trail maintenance activities and human recreation. In addition, naturally occurring events could constitute a threat of extinction or reduced reproductive vigor due to the species'

small population size with its limited gene pool (57 FR 20580; USFWS 1995).

Poa siphonoglossa

Poa siphonoglossa is a perennial grass (family Poaceae). It differs from *P. sandvicensis* principally by its longer culms, lack of a prominent tooth on the ligule, and shorter panicle branches. *Poa siphonoglossa* has extensive tufted and flattened culms that cascade from banks in masses. Short rhizomes, long culms, closed and fused sheaths, and lack of a tooth on the ligule separate *P. siphonoglossa* from *P. mannii* and other closely related species (O'Connor 1999).

Little is known about the life history of *Poa siphonoglossa.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Poa siphonoglossa* was known from five sites on the island of Kauai: Kohua Ridge in Na Pali-Kona Forest Reserve; near Kaholuamanu; Kaulaula Valley in Puu Ka Pele Forest Reserve; Kuia Valley; and Kalalau (HINHP Database 1999). Currently, there are a total of five populations with 50 individuals on State owned land in three of these historic areas: Kohua Ridge, Kuia Valley, and Kalalau (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

Poa siphonoglossa typically grows on shady banks near ridge crests in mesic *Metrosideros polymorpha* forest between about 1,000 to 1,200 m (3,280 and 3,940 ft) elevation (Hitchcock 1922; HINHP Database 1999). Associated species include native species such as *Acacia koa, Psychotria* sp., *Scaevola* sp., *Alphitonia ponderosa, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Dodonaea viscosa, Hedyotis* sp., *Melicope* sp., *Vaccinium* sp., *Styphelia tameiameiae, Carex meyenii, C. wahuensis*, and *Wilkesia gymnoxiphium* (57 FR 20580).

The primary threat to the survival of *Poa siphonoglossa* is habitat degradation and/or herbivory by feral pigs and deer. The alien plant *Rubus argutus* invading Kohua Ridge constitutes a probable threat to that population (HINHP Database 1999). A limited gene pool and potential for one disturbance event to destroy the majority of known individuals are also serious threats to this species (57 FR 20580; USFWS 1995).

Pritchardia aylmer-robinsonii

Pritchardia aylmer-robinsonii of the palm family (Arecaceae) is a fan-leaved tree about 7 to 15 m (23 to 50 ft) tall. This species is distinguished from others of the genus by the thin leaf texture and drooping leaf segments, tan woolly hairs on the underside of the petiole and the leaf blade base, stout hairless flower clusters that do not extend beyond the fan-shaped leaves, and the smaller spherical fruit (Read and Hodel 1999).

Historically, *Pritchardia aylmer-robinsonii* was found at three sites in the eastern and central portions of the island of Niihau. Trees were found on Kaali Cliff and in Mokouia and Haao Valleys at elevations between 70 and 270 m (230 and 885 ft) on privately owned land (HINHP Database 1999; GDSI 1999). The most recent observations indicate that two plants still remain on Kaali Cliff (Read and Hodel 1999).

The substrate in the seepage area where this species currently occurs is rocky talus (HINHP Database 1999). Native plants that have been found in the area include *Brighamia insignis, Cyperus trachysanthos, Lipochaeta lobata* var. *lobata* (nehe), and *Lobelia niihauensis* (HINHP Database 1999). Originally a component of the coastal dry forest, this species now occurs only in a rugged and steep area where it receives some protection from grazing animals (61 FR 41020).

The species is threatened by habitat degradation and/or herbivory by cattle, feral pigs, and goats and seed predation by rats. Small population size, limited distribution, and reduced reproductive vigor makes this species particularly vulnerable to extinction (61 FR 41020).

Pritchardia napaliensis

Pritchardia napaliensis, a member of the palm family (Arecaceae), is a small palm with about 20 leaves and an open crown. This species is distinguished from others of the genus that grow on Kauai by having about 20 flat leaves with pale scales on the lower surface that fall off with age, inflorescences with hairless main axes, and globose fruits less than 3 cm (1.2 in.) long (Read and Hodel 1999).

No life history information for this species is currently available.

Pritchardia napaliensis is known from four populations with 159–179 individuals on State owned land in Hoolulu and Waiahuakua Valleys in the Hono O Na Pali NAR and Alealau in Kalalau Valley (within or close to the boundaries of Hono O Na Pali NAR and Na Pali Coast State Park), Kauai (HINHP Database 1999; GDSI 1999; K. Wood *in litt.* 1999).

Pritchardia napaliensis typically grows in areas from 150 to about 1,160 m (500 to about 3,800 ft) elevation in a wide variety of habitats ranging from lowland dry to mesic forests dominated by *Diospyros* sp. or montane wet forests dominated by *Metrosideros polymorpha* and *Dicranopteris linearis* (61 FR 53070; HINHP Database 1999). Several associated plant species besides those mentioned above include *Rauvolfia sandwicensis, Elaeocarpus bifidus, Syzygium sandwicensis, Cibotium* sp., *Canthium odoratum, Vaccinium dentatum* (ohelo), *Dubautia knudsenii, Alsinidendron lychnoides, Poa sandvicensis, Phyllostegia electra* (NCN), *Stenogyne purpurea* (NCN), *Melicope peduncularis* (alani), *Pouteria sandwicensis, Lipochaeta connata* var. *acris* (nehe), *Nesoluma polynesicum* (keahi), *Santalum freycinetianum, Pteralyxia kauaiensis, Wilkesia gymnoxiphium, Boehmeria grandis, Pleomele* sp., *Psychotria* sp., *Cheirodendron trigynum*, and *Ochrosia* sp. (holei) (HINHP Database 1999).

Major threats to *Pritchardia napaliensis* include habitat degradation and grazing by feral goats and pigs; seed predation by rats; and competition with the alien plants, such as *Kalanchoe pinnata, Erigeron karvinskianus, Lantana camara, Psidium guajava*, and possibly *Cordyline fruticosa*. The species is also threatened by vandalism and over-collection. In 1993 near the Wailua River, the Hawaiian Department of Fish and Wildlife (DOFAW) constructed a fenced enclosure around 39 recently planted *P. napaliensis* individuals. Shortly after being planted, the fence was vandalized and the 39 plants were removed (A. Kyono, pers. comm. 2000; Craig Koga, DOFAW, *in litt.* 1999). Also, because of the small number of remaining populations and individuals, this species is susceptible to a risk of extinction from naturally occurring events, such as landslides or hurricanes, and from reduced reproductive vigor (61 FR 53070).

Pritchardia viscosa

Pritchardia viscosa, a member of the palm family (Arecaceae), is a small palm 3 to 8 m (10 to 26 ft) tall. This species differs from others of the genus that grow on Kauai by the degree of hairiness of the lower surface of the leaves and main axis of the flower cluster, and length of the flower cluster (Read and Hodel 1999).

Historically, *Pritchardia viscosa* was known only from a 1920 collection from Kalihiwai Valley on the island of Kauai (HINHP Database 1999). It was not seen again until 1987, when Robert Read observed it in the same general area as the type locality, off the Powerline Road at 510 m (1,680 ft) elevation (61 FR 53070; HINHP Database 1999). Currently, there is one population with three individuals on privately owned

land (HINHP Database 1999; GDSI 1999).

The plants are found in a *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest with *Nothocestrum* sp., *Bobea* sp., *Antidesma* sp., *Cibotium* sp., and *Psychotria* sp. (61 FR 53070).

Psidium cattleianum and alien grasses, such as *Paspalum conjugatum*, are major threats to *Pritchardia viscosa* because these alien plants are effective competitors for space, light, nutrients, and water. Rats eat the fruit of *Pritchardia viscosa* and are, therefore, a serious threat to the reproductive success of this species. At least one of the remaining mature trees has been damaged by spiked boots used either by a botanist or seed collector to scale the tree. In mid-1996, a young plant and seeds from mature *Pritchardia viscosa* plants were removed from the only known location of this species. Because of this past activity, it is reasonable to assume that these plants are threatened by over-collection and vandalism (A. Kyono, pers. comm. 2000; C. Koga, *in litt.* 1999). Also, because of the small numbers of individuals in the only known population, this species is susceptible to extinction since a single naturally occurring event (e.g., a hurricane) could destroy all remaining plants (61 FR 53070).

Pteralyxia kauaiensis

Pteralyxia kauaiensis, a member of the dogbane family (Apocynaceae), is a long-lived perennial tree 3 to 8 m (10 to 26 ft) tall. The leaves are dark green and shiny on the upper surfaces, but pale and dull on the lower surfaces. This species differs from the only other taxa of this endemic Hawaiian genus in having reduced lateral wings on the seed (Lamb 1981; St. John 1981; Wagner *et al.* 1999).

Little is known about the life history of *Pteralyxia kauaiensis.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Pteralyxia kauaiensis* was known from the Wahiawa Mountains in the southern portion of Kauai (HINHP Database 1999). This species is now known from 20 populations, with a total of 478–505 individuals in the following scattered locations on private, State lands, and perhaps on or near Federal land: Mahanaloa-Kuia Valley in Kuia NAR; Haeleele Valley; Na Pali Coast State Park; Limahuli Valley; the Koaie branch of Waimeae Canyon; Haupu Range; Wailua River; and Moloaa Forest (59 FR 9304; Wagner *et al.* 1999; HINHP Database 1999; K. Wood, *in litt.* 1999). There is also an undocumented sighting of one individual at Makaleha, above the town of Kapaa (59 FR 9304).

This taxon is typically found in diverse mesic or wet forests at an elevation of 250 to 610 m (820 to 2,000 ft) (Wagner *et al.* 1999). Associated species include *Acacia koa, Alphitonia ponderosa, Antidesma* sp., *Alectryon macrococcus, Bobea timonioides, Canthium odoratum, Cyanea* sp., *Caesalpinia kauaiensis* (uhiuhi), *Carex* sp., *Charpentiera elliptica, Claoxylon sandwicense, Delissea* sp. (NCN), *Dodonaea viscosa, Dianella sandwicensis, Diplazium sandwichianum, Diospyros* sp., *Euphorbia haeleeleana, Freycinetia arborea, Gardenia remyi* (nanu), *Gahnia* sp., *Hedyotis terminalis, Hibiscus* sp., *Kokia kauaiensis, Metrosideros polymorpha, Myrsine lanaiensis, Nesoluma polynesicum, Neraudia kauaiensis, Nestegis sandwicensis, Pisonia sandwicensis* (papala kepau), *Peperomia macraeana, Poa sandwicensis, Pipturus* sp., *Pouteria sandwicensis, Pritchardia* sp., *Psychotria mariniana, Pleomele* sp., *Rauvolfia sandwicensis, Syzygium sandwicensis, Schiedea stellarioides, Styphelia tameiameiae, Santalum freycinetianum, Tetraplasandra* sp., *Xylosma hawaiiense* (maua), and *Zanthoxylum dipetalum* (59 FR 9304; HINHP Database 1999).

The major threats to *Pteralyxia kauaiensis* are habitat destruction by feral animals and competition with introduced plants. Animals affecting the survival of this species include feral goats and pigs, and, possibly, rats, which may eat the fruit. Fire could threaten some populations. Introduced plants competing with this species include *Psidium guajava, Erigeron karvinskianus, Aleurites moluccana, Lantana camara, Psidium cattleianum*, and *Cordyline fruticosa* (59 FR 9304; USFWS 1995; HINHP Database 1999).

Remya kauaiensis

Remya kauaiensis, one of three species of a genus endemic to the Hawaiian Islands, is in the aster family (Asteraceae). *Remya kauaiensis* is a small short-lived perennial shrub, about 90 cm (3 ft) tall, with many slender, sprawling branches which are covered with a fine tan fuzz near their tips. The leaves, coarsely toothed along the edges, are green on the upper surface while the lower surface is covered with a dense mat of fine white hairs (Wagner *et al.* 1999).

Seedlings of this taxon have not been observed. Flowers have been observed in April, May, June, and August, and are probably insect-pollinated. Seeds are probably wind or water-dispersed. *Remya kauaiensis* may be self-incompatible (56 FR 1450; Herbst 1988; USFWS 1995).

Historically, this species was found in the Na Pali Kona Forest Reserve at Koaie, Mohihi, Kalalau, Makaha, Nualolo, Kawaiula, Kuia, Honopu, Awaawapuhi, Kopakaka, and Kauhao, on Kauai (HINHP Database 1999). There are currently 14 known populations with a total of 78–86 individuals on State owned land (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999). One known population of *Remya kauaiensis* grows on the steep cliffs below the rim of Kalalau Valley, which, although at the edge of a mesic forest, receives considerably more moisture than do the other populations of the species (56 FR 1450). Other populations are scattered throughout the drier ridges of Northwest Kauai and in Waimeae Canyon (HINHP Database 1999; K. Wood, *in litt.* 1999).

Remya kauaiensis grows chiefly on steep, north or northeast-facing slopes between 850 to 1,250 m (2,800 to 4,100 ft) in elevation. It is found primarily in *Acacia koa-Metrosideros polymorpha* lowland mesic forest with *Chamaesyce* sp. (akoko), *Nestegis sandwicensis, Diospyros* sp., *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Schiedea membranacea, Psychotria mariniana, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis*, and *Claoxylon sandwicensis* (56 FR 1450; Herbst 1988; HINHP Database 1999).

The primary threats to *Remya kauaiensis* include herbivory and habitat degradation by feral goats, pigs, cattle, and deer, and competition from alien plant species. Other threats include erosion, fire, and risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of remaining populations and individuals (56 FR 1450; USFWS 1995).

Remya montgomeryi

The genus *Remya,* in the aster family (Asteraceae), is endemic to the Hawaiian Islands. *Remya montgomeryi* was discovered in 1985 by Steven Montgomery on the sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley, Kauai. It is a small short-lived perennial shrub, about 90 cm (3 ft) tall, with many slender, sprawling to weakly erect, smooth branches. The leaves are coarsely toothed along the edges, and are green on the upper as well as lower surfaces (Wagner *et al.* 1999).

Seedlings of this taxon have not been observed. Flowers have been observed in April, May, June, and August, and are probably insect-pollinated. Seeds are probably wind or water-dispersed. *Remya montgomeryi* may be self-incompatible (56 FR 1450; Herbst 1988).

Remya montgomeryi is known only from Kauai. Three populations with 143 individuals are reported on State owned land on the rim of Kalalau Valley and Koaie Canyon. This species may also occur on or near land under Federal jurisdiction in Kokee State Park (Herbst 1988; GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999).

Remya montgomeryi grows between elevation of 850 to 1,250 m (2,800 to 4,100 ft), primarily on steep, north or northeast-facing slopes or stream banks near waterfalls in *Metrosideros polymorpha* mixed mesic forest and cliffs. Associated plants include *Lysimachia glutinosa, Lepidium serra, Boehmeria grandis, Poa mannii, Stenogyne campanulata, Myrsine linearifolia, Bobea timonioides, Ilex anomala, Zanthoxylum dipetalum, Claoxylon sandwicensis, Tetraplasandra* sp., *Artemisia* sp., *Nototrichium* sp., *Cyrtandra* sp., *Dubautia plantaginea* (na ena e), *Sadleria* sp., *Cheirodendron* sp., *Scaevola* sp., and *Pleomele* sp. (HINHP Database 1999; K. Wood, *in litt.* 1999).

The primary threats to *Remya montgomeryi* are herbivory and habitat degradation by feral goats, pigs, cattle, and deer, and competition from alien plant species. Other threats include erosion, fire, and an increased risk of extinction from naturally occurring events (e.g., landslides or hurricanes) by virtue of the extremely small size of the populations and their limited distribution. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals (56 FR 1450; USFWS 1995).

Schiedea apokremnos

Schiedea apokremnos is a low, branching short-lived perennial shrub 20 to 50 cm (8 to 20 in.) tall, of the pink family (Caryophyllaceae). The leaves are oppositely arranged, oblong, and somewhat fleshy and glabrous. *Schiedea apokremnos* is distinguished from related species by shorter sepals, nectaries, and capsules (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea apokremnos.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Schiedea apokremnos has been collected from Nualolo Kai, Kaaweiki Ridge, and along a 10.5 km (6.5 mi) long section of the Na Pali coast including Milolii Valley, Kalalau Beach, Kaaalahina and Manono ridges, Haeleele ridge, and, as far north as, Pohakuao Valley, all on the island of Kauai (HINHP Database 1999). Currently, the species is extant at all locations except Nualolo Kai, although the Kalalau and Milolii populations have not been revisited for over six years. The Kaaweiki population is in Puu Ka Pele Forest Reserve and the Haeleele ridge population is in Polihale State Park, while all others are in Na Pali Coast State Park (56 FR 49639). There is currently a total of five populations containing 311 to 1,251 individuals on State owned lands (HINHP Database 1999; GDSI 1999).

Schiedea apokremnos grows in the crevices of near-vertical coastal cliff faces, from 60 to 330 m (200 to 1,080 ft) in elevation. The species grows in sparse dry coastal shrub vegetation along with *Heliotropium* sp. (ahinahina), Bidens sp., *Artemisia australis, Lobelia niihauensis, Wilkesia hobdyi, Lipochaeta connata, Myoporum sandwicense, Canthium odoratum, Peperomia* sp. and *Chamaesyce* sp. (56 FR 49639; HINHP Database 1999).

The restriction of this species to inaccessible cliffs suggests that goat herbivory may have eliminated them from more accessible locations. The greatest current threat to the survival of *Schiedea apokremnos* is still herbivory and habitat degradation by feral goats, as well as competition from the alien plants *Leucaena leucocephala* (koa haole) and *Hyptis pectinata* (comb hyptis), and trampling (trails) by humans. Given the small size of most populations, restricted distribution, and limited gene pool, depressed reproductive vigor may be serious threats to the species. Some *S. apokremnos* individuals are functionally female and must be cross-pollinated to set seed. This reproductive strategy may be ineffective in populations with few individuals (56 FR 49639; USFWS 1995). In addition, a single environmental disturbance (such as a landslide or fire) could destroy a significant percentage of the extant individuals.

Schiedea helleri

Schiedea helleri, a member of the pink family (Caryophyllaceae), is a short-lived perennial vine. The stems, smooth below and minutely hairy above, are usually prostrate and at least 15 cm (6 in.), long with internodes at least 4 to 15 cm (1.6 to 6 in.) long. The opposite leaves are somewhat thick, triangular, egg-shaped to heart-shaped, conspicuously three-veined, and nearly hairless to sparsely covered with short, fine hairs, especially along the margins. This species is the only member of the genus on Kauai that grows as a vine (Wagner *et al.* 1999).

Three plants were observed flowering in February (USFWS 1998a). No additional life history information for this species is currently available.

Schiedea helleri was originally found only at a single location above Waimeae, at Kaholuamano on the island of Kauai, over 100 years ago (HINHP Database 1999). In 1993, this species was discovered on a steep wall above a side stream off Mohihi Stream, approximately 5.6 km (3.5 mi) north of the original location (61 FR 53070). Recently, a small population was discovered along the Mohihi-Waialeale Trail, and plants were found in Nawaimaka Valley (HINHP Database 1999; K. Wood, *in litt.* 1999). There is currently a total of two populations with 53–63 individuals on State owned land (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

Schiedea helleri is found on ridges and steep cliffs in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha-Cheirodendron* sp. montane wet forest, or *Acacia koa-M. polymorpha* montane mesic forest between 1,065–1,100 m (3,490–3,610 ft) elevation (HINHP Database 1999; K. Wood, *in litt.* 1999). Other native plants growing in association with this species include *Dubautia raillardioides* (na ena e), *Scaevola procera, Hedyotis terminalis, Syzygium sandwicensis, Melicope clusifolia, Cibotium* sp., *Broussaisia arguta, Cheirodendron* sp., *Cyanea hirtella* (haha), *Dianella sandwicensis, Viola wailenalenae* (pamakani), and *Poa sandvicensis* (HINHP Database 1999; K. Wood, *in litt.* 1999).

Competition with the noxious alien plant *Rubus argutus* and a risk of extinction from naturally occurring events (e.g., landslides or hurricanes) and reduced reproductive vigor due to the small number of extant individuals, are serious threats to *Schiedea helleri* (61 FR 53070).

Schiedea kauaiensis

Schiedea kauaiensis, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. The green, sometimes purple-tinged leaves are opposite, narrowly egg-shaped or lance-shaped to narrowly or broadly elliptic. Lacking petals, the perfect flowers are borne in open branched inflorescences, and are moderately

covered with fine, short, curly, white hairs. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, larger leaves, the hairiness of the inflorescence, the number of flowers in each inflorescence, larger flowers, and larger seeds (Wagner *et al.* 1999).

Little is known about the life history of this taxon. Fruit and flowers have been observed in July and August, and flowering material has been collected in September (USFWS 1998a). There is no evidence of regeneration from seed under field conditions. Reproductive cycles, longevity, specific environmental requirements and limiting factors are unknown.

Historically, *Schiedea kauaiensis* was known from the northwestern side of Kauai, from Papaa to Mahanaloa. It was thought to be extinct until the two currently known populations in Mahanaloa and Kalalau Valleys, with a total of 18 individuals, were found (HINHP Database 1999; K. Wood, *in litt.* 1999). Both populations occur on State land—the Mahanaloa Valley population within Kuia NAR and the Kalalau Valley population within Na Pali Coast State Park (GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999).

Schiedea kauaiensis typically grows in diverse mesic to wet forest on steep slopes between 680–790 m elevation (2,230–2,590 ft) (HINHP Database 1999). Associated plant taxa include *Psychotria mariniana, P. hexandra, Canthium odoratum, Pisonia* sp., *Microlepia speluncae* (NCN), *Exocarpos luteolus, Diospyros* sp., *Peucedanum sandwicense,* and *Euphorbia haeleeleana* (61 FR 53108; HINHP Database 1999).

Threats to *Schiedea kauaiensis* include habitat degradation and/or destruction by feral goats, pigs, and cattle; competition from several alien plant taxa; predation by introduced slugs and snails; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the low number of individuals in only two known populations. *Schiedea kauaiensis* is also potentially threatened by fire (61 FR 53108; USFWS 1998a; HINHP Database 1999).

Schiedea membranacea

Schiedea membranacea, a member of the pink family (Caryophyllaceae), is a perennial herb. The unbranched, fleshy stems rise upwards from near the base and are somewhat sprawling. During dry seasons, the plant dies back to a woody, short stem at or beneath the ground surface. The oppositely arranged leaves are broadly elliptic to egg-shaped, generally thin, have five to seven longitudinal veins, and are sparsely covered with short, fine hairs. The perfect flowers have no petals, are numerous, and occur in large branched clusters. This short-lived perennial species differs from others of the genus that grow on Kauai by having five-to seven-nerved leaves and a herbaceous habit (Wagner *et al.* 1999).

Plants marked in Mahanaloa Gulch on Kauai in 1987 were alive in 1997, despite Hurricane Iniki. However, there was no evidence of recruitment in the population, despite the production of abundant seed during all years of observation (1987, 1994–1997) (USFWS 1998a). Introduced snails have been observed feeding on flowers and developing seed capsules, and garlic snails (*Oxychilus alliarius*) were common near the plants. It seems very likely that introduced molluscs are responsible for the failure of recruitment. Under greenhouse conditions, this species, as well as other *Schiedea* species, is extremely sensitive to slugs and snails, further suggesting that the introduction of these alien species has had detrimental effects on *Schiedea* species in natural conditions. In addition, research suggests that this species largely requires outcrossing for successful germination and survival to adulthood (USFWS 1998a). Pollinators for *Schiedea membranacea* are unknown, since none have been seen during the daytime, and none were observed during one set of night observations (USFWS 1998a).

Schiedea membranacea is known from the western side of the island of Kauai, at Mahanaloa-Kuia, Paaiki, Kalalau, Nualolo, Wainiha, and Waialae Valleys (including Kuia NAR and Na Pali Coast State Park) (61 FR 53070; Wood and Perlman 1993; HINHP Database 1999). There is currently a total of nine populations containing 199–203 individuals, on State and privately owned lands. This species may also occur on or near land under Federal jurisdiction in Kokee State Park (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species is typically found on cliffs and cliff bases in mesic or wet habitats, open to closed lowland, montane shrubland, or forest dominated by *Acacia koa, Pipturus* sp. or *Metrosideros polymorpha* between 520 and 1,160 m (1,700 and 3,800 ft) elevation. Associated native plants species include *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Hibiscus waimeae, Psychotria mariniana, Canthium odoratum, Pisonia sp., Perrottetia sandwicensis, Scaevola procera, Sadleria cyatheoides* (amau), *Diplazium sandwicensis, Thelypteris sandwicensis, Boehmeria grandis, Dodonaea viscosa, Myrsine* sp.,*Bobea brevipes, Alyxia olivaeformis, Psychotria greenwelliae, Pleomele* sp., *Alphitonia ponderosa, Joinvillea ascendens* ssp. *ascendens* (ohe), *Athyrium sandwicensis* (akolea), *Machaerina angustifolia, Cyrtandra paludosa, Touchardia latifolia, Thelypteris cyatheoides* (kikawaio), *Lepidium serra, Eragrostis variabilis, Remya kauaiensis, Lysimachia kalalauensis* (NCN), *Labordia helleri, Mariscus pennatiformis, Asplenium praemorsum* (NCN), and *Poa sandvicensis* (61 FR 53070; HINHP Database 1999).

Habitat degradation by feral goats, and pigs, and deer; competition with the alien plant species *Erigeron karvinskianus, Lantana camara, Rubus argutus, R. rosaefolius, Psidium cattleianum, Ageratina riparia* (Hamakua pamakani), and *Passiflora mollissima;* loss of pollinators; and landslides are the primary threats to *Schiedea membranacea.* Based on observations indicating that snails and slugs may consume seeds and seedlings, it is likely that introduced molluscs also represent a major threat to this species (61 FR 53070; Wood and Perlman 1993; USFWS 1998a).

Schiedea spergulina var. leiopoda and Schiedea spergulina var. spergulina

Schiedea spergulina, a member of the pink family (Caryophyllaceae), is a short-lived perennial subshrub. The opposite leaves are very narrow, one-veined, and attached directly to the stem. The flowers are unisexual, with male and female flowers on different plants. Flowers occur in compact clusters of three. The capsular fruits contain nearly smooth, kidney-shaped seeds. Of the 22 species in this endemic genus, only two other species have smooth seeds. *Schiedea spergulina* differs from those two in having very compact flower clusters. The two weakly defined varieties differ primarily in the degree of hairiness of the inflorescences, with *S. s.* var. *leiopoda* being the less hairy of the two (Wagner *et al.* 1999).

Little is known about the life histories of either *Schiedea spergulina* var. *leiopoda* or *Schiedea spergulina* var. *spergulina.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Schiedea spergulina* var. *leiopoda* was found on a ridge on the east side of Hanapepe on Kauai (HINHP Database 1999). One population with 35–50 individuals is now known to

grow in Lawai Valley on Kauai on privately owned land (HINHP Database 1999; GDSI 1999).

Schiedea spergulina var. *spergulina* was historically found in Olokele Canyon, but is now known only from Kalalau rim and Waimeae Canyon on Kauai. A total of three populations numbering over 200 individuals is reported on State and privately owned lands. However, it has been estimated that this species may number in the thousands on Kauai (USFWS 1995; HINHP Database 1999; GDSI 1999).

Both varieties of *Schiedea spergulina* are usually found on bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland mesic forest at elevations between 180 and 800 m (590 and 2,625 ft) (59 FR 9304; Wagner *et al.* 1999). Associated plants include *Bidens sandvicensis, Doryopteris* sp. (kumuniu), *Peperomia leptostachya* (ala ala wai nui), *Plectranthus parviflorus, Heliotropium* sp., and *Nototrichium sandwicense* (kului) (59 FR 9304; Lorence and Flynn 1991; USFWS 1995; HINHP Database 1999).

The major threats to *Schiedea spergulina* var. *leiopoda* are habitat destruction by feral goats and competition with alien plants such as *Leucaena leucocephala, Lantana camara,* and *Furcraea foetida* (Mauritius hemp). Individuals have also been damaged and destroyed by rock slides. This variety is potentially threatened by pesticide use in nearby sugarcane fields, as well as a risk of extinction from naturally occurring events (e.g., hurricanes) and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; Lorence and Flynn 1991; USFWS 1995).

Schiedea spergulina var. *spergulina* is threatened by competition with alien plant taxa, including *Erigeron karvinskianus, Lantana camara, Melia azedarach,* and *Triumfetta semitriloba* (Sacramento bur). The area in which this variety grows is used heavily by feral goats, and there is evidence that plants are being browsed and trampled (59 FR 9304; Lorence and Flynn 1991; HINHP Database 1999).

Schiedea stellarioides

Schiedea stellarioides, a member of the pink family (Caryophyllaceae), is a slightly erect to prostrate subshrub with branched stems. The opposite leaves are very slender to oblong-elliptic, and one-veined. This short-lived perennial species is distinguished from others of the genus that grow on Kauai by the number of veins in the leaves, shape of the leaves, presence of a leaf stalk, length of the flower cluster, and shape of the seeds (Wagner *et al.* 1999).

Plants were observed flowering in the field in February (USFWS 1995). No additional life history information for this species is currently available.

Historically, *Schiedea stellarioides* was found at the sea cliffs of Hanakapiai Beach, Kaholuamano-Opaewela region, the ridge between Waialae and Nawaimaka Valleys, and Haupu Range on the island of Kauai (HINHP Database 1999). This species is now found only at the ridge between Waialae and Nawaimaka Valleys on State land, just 0.8 kilometer (0.5 mile) northwest of the Kaholuamano-Opaewela region and in upper Kawaiiki (K. Wood, *in litt.* 1999; HINHP Database 1999). There is a total of two populations with 400 individuals on State owned land (HINHP Database 1999; K. Wood, *in litt.* 1999; GDSI 1999).

Schiedea stellarioides is found on steep slopes in closed *Acacia koa-Metrosideros polymorpha* lowland to montane mesic forest or shrubland between 610 and 1,120 m (2,000 and 3,680 ft) elevation. Associated plant species include *Nototrichium* sp., Artemisia sp., *Dodonaea viscosa, Melicope* sp., *Dianella sandwicensis, Bidens cosmoides, Mariscus* sp., and *Styphelia tameiameiae* (61 FR 53070; HINHP Database 1999).

The primary threats to this species include habitat degradation and herbivory by feral pigs and goats, competition with the alien plants *Melinis minutiflora* and *Rubus argutus,* and a risk of extinction of the two remaining population from naturally occurring events, such as landslides or hurricanes (61 FR 53070).

Stenogyne campanulata

Stenogyne campanulata, a member of the mint family (Lamiaceae), is described as a vine with four-angled, hairy stems. A short-lived perennial species, *Stenogyne campanulata* is distinguished from closely related species by its large and very broadly bell-shaped calyces that nearly enclose the relatively small, straight corollas, and by small calyx teeth that are half as long as wide (Weller and Sakai 1999).

Little is known about the life history of *Stenogyne campanulata.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Stenogyne campanulata is known from one to three populations with 22–32 individuals which were originally discovered on the cliffs of Kalalau to below Puu o Kila, on State-owned land in the Na Pali Coast State Park (GDSI 1999; HINHP Database 1999).

Stenogyne campanulata grows on the rock face of a nearly vertical, north-facing cliff in diverse lowland or montane mesic forest at an elevation of 1,085 m (3,560 ft). The associated shrubby vegetation includes native species such as *Heliotropium* sp., *Lepidium serra, Lysimachia glutinosa, Perrottetia sandwicensis,* and *Remya montgomeryi* (57 FR 20580; Weller and Sakai 1999).

The restriction of this species to virtually inaccessible cliffs suggests that herbivory by feral goats may have eliminated it from more accessible locations. Goat herbivory and habitat degradation remain the primary threat. Feral pigs have disturbed vegetation in the vicinity of these plants. Erosion caused by feral goats or pigs exacerbates the potential threat of landslides. *Erigeron karvinskianus* and *Rubus argutus* are the primary alien plants threatening *Stenogyne campanulata.* The small number of individuals and its restricted distribution are serious potential threats to the species. The limited gene pool may depress reproductive vigor, or a single environmental disturbance such as a landslide could destroy all known extant individuals (57 FR 20580).

Viola helenae

Viola helenae is a small, unbranched perennial subshrub with an erect stem in the violet family (Violaceae). The hairless leaves are clustered on the upper part of the plant and are lance-shaped with a pair of narrow, membranous stipules (leaf-like structures) below each leaf. The small, pale lavender or white flowers are produced on stems either singly or in pairs in the leaf axils. The fruit is a capsule that splits open at maturity, releasing the pale olive brown seeds (St. John 1989; Wagner *et al.* 1999).

Little is known about the life history and ecology of *Viola helenae.* Wagner *et al.* (1999) stated that the flowers are all chasmogamous (open at maturity for access by pollinators) and not cleistogamous (remain closed and self-fertilize in the bud) as in certain other violets. Therefore, it is likely that its flowers require pollination by insects for seed set. Mature flowering plants do produce seed; however, seed viability may be low and microhabitat requirements for germination and growth may be very specific. Seeds planted at NTBG on Kauai failed to germinate, although they may not have been sufficiently mature when collected and violet seeds are often very slow to germinate. The seeds are jettisoned when the capsule splits open, as in most species of the genus (USFWS 1994).

Historically, *Viola helenae* was known from four populations, two along either branch of the Wahiawa Stream on Kauai (56 FR 47695). Currently, there are five known populations, with a total of 137 individual plants, on privately owned land within the Wahiawa Drainage (GDSI 1999; HINHP Database 1999; USFWS 1994). This species is found in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest growing on stream banks or adjacent valley bottoms in light to moderate shade between 610–855 m elevation (2,000–2,800 ft) (USFWS 1994; HINHP Database 1999).

Threats include competition from alien plant species, including *Psidium cattleianum, Melastoma candidum,* potentially *Melaleuca quinquenervia, Stachytarpheta dichotoma, Rubus rosaefolius, Elephantopus mollis, Erechtites valerianefolia,* and various alien grasses; trampling and browsing damage by feral pigs; landslides and erosion; and hurricanes (56 FR 47695; USFWS 1994).

Viola kauaiensis var. *wahiawaensis*

Viola kauaiensis, a member of the violet family (Violaceae), is a short-lived perennial herb with upward curving or weakly rising, hairless, lateral stems. The species is distinguished from others of the genus by its nonwoody habit, widely spaced kidney-shaped leaves, and by having two types of flowers: conspicuous, open flowers and smaller, unopened flowers. Two varieties of the species are recognized, both occurring on Kauai: var. *kauaiensis* and var. *wahiawaensis. Viola kauaiensis* var. *wahiawaensis* is distinguished by having broadly wedge-shaped leaf bases (USFWS 1998a;Wagner *et al.* 1999).

Five Viola kauaiensis var. wahiawaensis plants were observed in flower in December 1994 (USFWS 1998a). No additional life history information for this species is currently available.

Viola kauaiensis var. *wahiawaensis* is known only from two populations in the Wahiawa Mountains of Kauai with a total of 13 individual plants on State and privately owned lands (HINHP Database 1999; GDSI 1999). This taxon is not known to have occurred beyond its current range.

Viola kauaiensis var. *wahiawaensis* is found in open montane bog or wet shrubland between 640 and 865 m (2,100 and 2,840 ft) elevation. It is found to be associated with *Metrosideros polymorpha, Dicranopteris linearis, Diplopterygium pinnatum* (NCN) and *Syzygium sandwicensis* (61 FR 53070; Lorence and Flynn 1991; USFWS 1998a; HINHP Database 1999).

The primary threats to *Viola kauaiensis* var. *wahiawaensis* are a risk of extinction from naturally occurring events, such as landslides or hurricanes, and from reduced reproductive vigor due to the small number of existing populations and individuals; habitat degradation through the rooting activities of feral pigs; and competition with alien plants, such as *Juncus planifolius* (NCN) and *Pterolepis glomerata* (NCN) (61 FR 53070; Lorence and Flynn 1991; USFWS 1994; HINHP Database 1999).

Wilkesia hobdyi

Wilkesia hobdyi, a member of the sunflower family (Asteraceae), is a short-lived perennial shrub which branches from the base. The tip of each branch bears a tuft of narrow leaves growing in whorls joined together into a short sheathing section at their bases. The cream-colored flower heads grow in clusters (St. John 1971; Carr 1982a, 1999b).

This species is probably pollinated through outcrossing and is probably self-incompatible. Insects are the most likely pollinators. In 1982, Carr reported that reproduction and seedling establishment were occurring and appeared sufficient to sustain the populations. Flowering was observed most often in the winter months, but also during June. Fruits may be dispersed when they stick to the feathers of birds. Densities reach one plant per square meter (approximately one square yard) in localized areas, and hybridization with *Wilkesia gymnoxiphium* may be occurring (Carr 1982a).

First collected in 1968 on Polihale Ridge, Kauai, this species was not formally described until 1971 (St. John 1971). Currently, there are seven populations with a total of 336 to 401 individuals (HINHP Database 1999; GDSI 1999). This species occurs on State and privately owned lands and may occur on or near land Federal land or land under Federal jurisdiction on Makaha Ridge and in Kokee State Park (GDSI 1999). There are populations in the Puu Ka Pele Forest Reserve, growing on the north-facing, nearly vertical rock outcrops near the summits of the adjacent Polihale and Kaaweiki ridges (HINHP Database 1999). There are also plants growing on a cliff face in Waiahuakua Valley, on the boundary between the Hono O Na Pali NAR and the Na Pali Coast State Park, approximately 16 km (10 mi) northeast of the other populations (HINHP Database 1999).

Wilkesia hobdyi grows on coastal dry cliffs or very dry ridges from 275 to 400 m (900 to 1,310 ft) in elevation. The associated native vegetation includes *Artemisia* sp., *Wilkesia gymnoxiphium, Lipochaeta connata, Lobelia niihauensis, Peucedanum sandwicense, Hibiscus kokio* ssp. *saint johnianus* (kokio), *Canthium odoratum, Peperomia* sp., *Myoporum sandwicense, Sida fallax, Waltheria indica* (uhaloa), *Dodonaea viscosa,* and *Eragrostis variabilis* (57 FR 27859; USFWS 1995; Wagner *et al.* 1999).

The greatest immediate threats to the survival of this species are habitat disturbance and browsing by feral goats. Although the low number of individuals and their restricted habitat could be considered a potential threat to the survival to the species, the plant appears to have vigorous reproduction and may survive indefinitely if goats were eliminated from its habitat. Fire and extinction through naturally occurring events, such as landslides or hurricanes, could also be threats to the survival of the species (57 FR 27859; USFWS 1995).

Xylosma crenatum

Xylosma crenatum is a dioecious (plant bears only male or female flowers, and must cross-pollinated with another plant to produce viable seed) long-lived perennial tree in the flacourtia family (Flacourtiaceae). The tree grows up to 14 m (45 ft) tall and has dark gray bark. The somewhat leathery leaves are oval to elliptic-oval, with coarsely toothed edges and moderately hairy undersides. More coarsely toothed leaf edges and hairy undersides of the leaves distinguish *X. crenatum* from the other Hawaiian member of this genus (Wagner *et al.* 1999).

Little is known about the life history of *Xylosma crenatum.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Xylosma crenatum* was known from two sites on Kauai: along upper Nualolo Trail in Kuia NAR and along Mohihi Road between Waiakoali and Mohihi drainages in Na Pali-Kona Forest Reserve (57 FR 20580). Currently, this species is extant on State and privately owned lands in Honopu Valley in Kokee State Park; Nawaimaka Valley in Na Pali-Kona Forest Reserve; and Mahanaloa Valley, and may occur on or near land under Federal jurisdiction in the same areas. There are a total of three populations with eight individual plants total (USFWS 1995; HINHP Database 1999; GDSI 1999).

Xylosma crenatum is known from diverse *Acacia koa-Metrosideros polymorpha* montane wet or mesic

forests and *M. polymorpha-Dicranopteris linearis* montane wet forests between 975 to 1,065 m (3,200 to 3,490 ft) elevation. The species is sometimes found along stream banks and within a planted conifer grove. The species is associated with *Tetraplasandra kauaiensis, Hedyotis terminalis, Pleomele aurea, Ilex anomala, Claoxylon sandwicense, Myrsine alyxifolia* (kolea), *Nestegis sandwicensis, Streblus pendulinus, Psychotria* sp., *Diplazium sandwichianum, Pouteria sandwicensis, Scaevola procera, Coprosma* sp., *Athyrium sandwichianum, Touchardia latifolia, Dubautia knudsenii, Cheirodendron* sp., *Lobelia yuccoides* (NCN), *Cyanea hirta* (haha), *Poa sandwicensis,* and *Diplazium sandwichianum* (57 FR 20580; USFWS 1995; HINHP Database 1999).

The small number of individuals and scattered distribution makes this species vulnerable to human or natural environmental disturbance. *Xylosma crenatum* is also threatened by competition from alien plants, particularly *Psidium guajava.* In addition, feral pigs may threaten this species (57 FR 20580; USFWS 1995; HINHP Database 1999).

Multi-Island Species

Adenophorus periens.

Adenophorus periens, a member of the Grammitis family (Grammitidaceae), is a small, pendant, epiphytic (not rooted on the ground) fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori on the pinnae, and the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens,* which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects (Linney 1989). Spores lack a thick resistant coat which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons, there seems to be no evidence of seasonality in growth or reproduction. *Adenophorus periens* appears to be susceptible to volcanic emissions and/or resultant acid precipitation (Linney 1989). Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not available.

Historically, *Adenophorus periens* was reported from Kauai, Oahu, Lanai, Maui, and Hawaii Island (59 FR 56333; HINHP Database 1999). Currently, it is known from several locations on Kauai, Molokai, and Hawaii (HINHP Database 1999). On Kauai, there is a total of seven populations on private and State owned lands, with 84–89 individuals, that occur on the boundary of Hono O Na Pali NAR and Na Pali Coast State Park at the head of Hanakoa drainage; Waioli Valley; Wainiha Valley; Kealia Forest Reserve; and in the Wahiawa drainage (GDSI 1999; HINHP Database 1999).

This species, an epiphyte usually growing on *Metrosideros polymorpha* trunks, is found in *M. polymorpha-Cibotium glaucum* lowland wet forest, open *M. polymorpha* montane wet forest, and *M. polymorpha-Dicranopteris linearis* lowland wet forests at elevations between 400 and 1,265 m (1,310 and 4,150 ft) (59 FR 56333). It is found in habitats of well-developed, closed canopy providing deep shade and high humidity (Linney 1989). Associated native species include *Athyrium sandwicensis, Broussaisia arguta, Cheirodendron trigynum, Cyanea* sp., *Cyrtandra* sp., *Freycinetia arborea, Hedyotis terminalis, Labordia hirtella, Machaerina angustifolia, Psychotria* sp., *P. hexandra,* and *Syzygium sandwicensis* (59 FR 56333; Linney 1989).

The threats to this species on Kauai include habitat degradation by feral pigs and goats, and competition with the alien plant *Psidium cattleianum* (59 FR 56333; HINHP Database 1999).

Alectryon macrococcus var. *macrococcus*

Alectryon macrococcus, a member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis,* both trees with reddish-brown branches and net-veined paper- or leather-like leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, persistent in *A. m.* var. *auwahiensis,* but only on leaves of young *A. m.* var. *macrococcus* plants. The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.5 cm (0.9 in.) or more in diameter (Wagner *et al.* 1999).

Alectryon macrococcus is a relatively slow-growing, long-lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of *Alectryon macrococcus.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown.

Currently, *Alectryon macrococcus* var. macrococcus occurs on State owned land in Waimeae Canyon and in Na Pali Coast State Park on Kauai. A total of six populations of 68–83 individuals is known (GDSI 1999; K. Wood, *in litt.* 1999). This variety is also found on Oahu, Molokai, and West Maui. (57 FR 20772). *Alectryon macrococcus* var. *auwahiensis* is found only on leeward east Maui and will be reviewed further in a subsequent rule (Medeiros *et al.* 1986; HINHP Database 1999).

The habitat of *Alectryon macrococcus* var. *macrococcus* on Kauai is *Diospyros* sp.-*Metrosideros polymorpha* lowland mesic forest, *M. polymorpha* mixed mesic forest, and *Diospyros* sp. mixed mesic forest on dry slopes or in gulches, between elevations of 360–1,070 m (1,180–3,510 ft) (57 FR 20772; Wagner *et al.* 1999). Associated native plants include *Psychotria* sp., *Pisonia* sp., *Xylosma* sp., *Streblus pendulinus, Hibiscus* sp., *Antidesma* sp., *Pleomele* sp., *Acacia koa, Melicope knudsenii, Hibiscus waimeae, Pteralyxia* sp., *Zanthoxylum* sp., *Kokia kauaiensis, Rauvolfia sandwicensis, Nestegis sandwicensis, Myrsine lanaiensis, Canthium odoratum, Canavalia* sp. (awikiwiki), *Alyxia olivaeformis, Nesoluma polynesicum, Munroidendron racemosum, Caesalpinia kauaiensis, Tetraplasandra* sp., *Pouteria sandwicensis,* and *Bobea timonioides* (57 FR 20772; HINHP Database 1999).

Alectryon macrococcus var. *macrococcus* on Kauai is threatened by feral goats and pigs; the alien plant species *Melinis minutiflora, Schinus terebinthifolius* (Christmasberry), and *Psidium cattleianum;* damage from the black twig borer; seed predation by rats and mice (*Mus domesticus*); fire; depressed reproductive vigor; seed predation by insects (probably the endemic microlepidopteran *Prays* cf. *fulvocanella*); loss of pollinators; and, due to the very small remaining number of individuals and their limited distribution, natural or human-caused environmental disturbances which could easily be catastrophic (57 FR 20772).

Bonamia menziesii

Bonamia menziesii, 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, longer stems and

petioles, and rounder leaves (Austin 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Bonamia menziesii* was known from the following general areas: scattered locations on Kauai, the Waianae Mountains of Oahu, scattered locations on Molokai, one location on West Maui, and eastern Hawaii (HINHP Database 1999). Currently, it is known from Kauai, Oahu, Lanai, Maui, and Hawaii. On Kauai, there are seven total populations with 37 individuals on State and privately owned lands in Kalalau Valley; scattered across the north coast from Paaiki Valley to Milolii Ridge; in Kawaiula Valley; in Haiku; in Hipalau Valley; in Mount Kahili; on Hono O Na Pali NAR; and in Wahiawa drainage. However, it has been estimated that the total number of populations and individuals on Kauai may be as high as a dozen populations with thousands of individuals (HINHP Database 1999; GDSI 1999; USFWS 1999; K. Wood, *in litt.* 1999).

Bonamia menziesii is found in dry, wet, or mesic forest at elevations between 150 and 850 m (500 and 2,800 ft) (59 FR 56333; Austin 1999). Associated species include *Metrosideros polymorpha, Canthium odoratum, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Hedyotis terminalis, Melicope anisata, M. barbigera, Myoporum sandwicense, Nestegis sandwicense, Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis,* and *Sapindus oahuensis* (HINHP Database 1999; USFWS 1999).

The primary threats to this species on Kauai include habitat degradation and possible predation by feral pigs and goats, deer, and cattle; competition with a variety of alien plants; and fire (59 FR 56333).

Centaurium sebaeoides

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *C. erythraea* (bitter herb), which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. It is possible that heavy rainfall induces flowering. Populations are found in dry areas, and plants are more likely to be found following heavy rains (USFWS 1999).

Historically and currently, *Centaurium sebaeoides* is known from scattered localities on the islands of Kauai, Oahu, Molokai, Lanai, and Maui (HINHP Database 1999). Currently on Kauai, there are a total of three populations with 22–52 individuals on State owned land (HINHP Database 1999; GDSI 1999). This species is found at Kalalau Beach, seacliffs at Pohakuao, and Awaawapuhi Valley (HINHP Database 1999).

Centaurium sebaeoides typically grows in volcanic or clay soils or on cliffs in arid coastal areas below 250 m (820 ft) elevation (56 FR 55770; Wagner et al. 1999). Associated species include *Artemisia* sp., *Bidens* sp., *Chamaesyce celastroides, Dodonaea viscosa, Fimbristylis cymosa* (mau u aki aki), *Heteropogon contortus, Jaquemontia ovalifolia* (pa uohi iaka), *Lipochaeta succulenta, L. heterophylla* (nehe), *L. integrifolia* (nehe), *Lycium sandwicense, Lysimachia mauritiana* (kolokolo kuahiwi), *Mariscus phloides, Panicum fauriei* (NCN), *P. torridum* (kakonakona), *Scaevola sericea, Schiedea globosa* (NCN), *Sida fallax,* and *Wikstroemia uva-ursi* (akia) (56 FR 55770; Medeiros *et al.* 1999).

The major threats to this species on Kauai include habitat degradation by feral goats and cattle; competition from the alien plant species *Casuarina equisetfolia* (paina), *Casuarina glauca* (saltmarsh), *Leucaena leucocephala, Prosopis pallida* (kiawe), *Schinus terebinthifolius, Syzygium cumini* (Java plum), and *Tournefortia argentea* (tree heliotrope); trampling by humans on or near trails; and fire (56 FR 55770; Medeiros *et al.* 1999; USFWS 1999).

Cyperus trachysanthos

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a perennial grass-like plant with a short rhizome. The culms 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, and the length of the culms (Koyama 1999).

Little is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Cyperus trachysanthos* was known on Niihau, Kauai, scattered locations on Oahu, Molokai, and Lanai (HINHP Database 1999). It is no longer extant on Molokai and Lanai. Currently, this species is reported from the Nualolo Valley on Kauai and west of Mokouia Valley on Niihau. There are two known populations, with about 300 individuals on the island of Kauai and an unknown number of individuals on Niihau (HINHP Database 1999; GDSI 1999).

Cyperus trachysanthos is usually found in wet sites (mud flats, wet clay soil, or wet cliff seeps) on coastal cliffs or talus slopes at elevations between 3 and 160 m (10 and 525 ft). *Hibiscus tiliaceus* (hau) is often found in association with this species (61 FR 53108; Koyama 1999).

On Kauai, the threats to this species are a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of populations. The threats on Niihau are unknown (61 FR 53108; USFWS 1999).

Delissea undulata ssp. *kauaiensis*

Delissea undulata, a member of the bell flower family (Campanulaceae), is an unbranched, palm-like, woody-stemmed perennial tree, with a dense cluster of leaves at the tip of the stem. One or two knob-like structures often occur on the back of the flower tube. The three recognized subspecies are distinguishable on the basis of leaf shape and margin characters: *D. undulata* ssp. *kauaiensis*, leaf blades are oval and have a flat-margin with sharp teeth; *D. undulata* ssp. *niihauensis*, leaf blades are heart shaped and have a flat-margin with shallow, rounded teeth; and *D. undulata* ssp. *undulata*, leaf blades are elliptic to lance-shaped and wavy-margin with small, sharply pointed teeth. This species is separated from the other closely related members of the genus by its large flowers and berries and broad leaf bases (Lammers 1999).

On the island of Hawaii, *Delissea undulata* ssp. *undulata* was observed in flower and fruit (immature) in August and outplanted individuals were observed in flower in July (61 FR 53124). No other life history information is currently available for any of the three varieties.

Historically and currently, *Delissea undulata* ssp. *kauaiensis* is known only from Kauai. Currently, there is one known population of five individuals on state owned land in the Kuia NAR (GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999). *Delissea undulata* ssp. *niihauensis* was known only from Niihau, but is now considered extinct (HINHP Database 1999; Lammers 1999). *Delissea undulata* ssp. *undulata* was known from southwestern Maui and western Hawaii. Currently, this variety occurs only on the island of Hawaii (61 FR 53124; HINHP Database 1999).

Delissea undulata ssp. *kauaiensis* occurs in open dry or mesic *Sophora chrysophylla* (mamane) and

Metrosideros polymorpha forest at elevations of about 610–1,740 m (2,000–5,700 ft). Associated native species include *Diospyros sandwicensis*, *Dodonaea viscosa*, *Psychotria mariniana*, *P. greenwelliae*, *Santalum ellipticum* (iliahialo e), *Nothocestrum breviflorum* (aiea), and *Acacia koa* (Lammers 1999).

The threats to this subspecies on Kauai are feral goats, pigs, and cattle; small population size; competition with the alien plants *Passiflora mollissima* and *Senecio mikanioides* (German ivy); fire; introduced slugs; seed predation by rats and introduced game birds; and a risk of extinction due to random naturally occurring events, such as landslides or hurricanes (USFWS 1996).

Euphorbia haeleeleana

Euphorbia haeleeleana, a member of the spurge family (Euphorbiaceae), is a dioecious tree with alternate papery leaves. This short-lived perennial species is distinguished from others in the genus in that it is a tree, whereas most of the other species are herbs or shrubs, as well as by the large leaves with prominent veins (Wagner *et al.* 1999).

Individual trees of *Euphorbia haeleeleana* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. *Euphorbia haeleeleana* sets fruit between August and October (Wagner *et al.* 1999; USFWS 1999). Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Euphorbia haeleeleana is known historically and currently from northwestern Kauai and the Waianae Mountains of Oahu (61 FR 53108; USFWS 1999; HINHP Database 1999; K. Wood, *in litt.* 1999). On Kauai, there is a total of 14 populations with 522–593 individuals occurring on State and privately owned lands (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999). It is found on valley slopes and cliffs along Kauai's northwestern coast from Pohakuao to Haeleele Valley and Hipalau Valley within Waimeae Canyon, including Kuia NAR and the Na Pali Coast State Park (HINHP Database 1999; K. Wood, *in litt.* 1999).

Euphorbia haeleeleana is usually found in lowland mixed mesic or dry forest that is often dominated by *Metrosideros polymorpha*, *Acacia koa*, or *Diospyros* sp. This plant is typically found at elevations between 205 and 670 m (680 and 2,200 ft), but a few populations have been found up to 870 m (2,860 ft). Associated plants include *Acacia koaia* (koaia), *Antidesma platyphyllum*, *Carex meyenii*, *Carex wahuensis*, *Claoxylon* sp., *Diplazium sandwichianum*, *Dodonaea viscosa*, *Erythrina sandwicensis* (wiliwili), *Kokia kauaiensis*, *Pisonia sandwicensis*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria mariniana*, *P. greenwelliae*, *Pteralyxia sandwicensis*, *Rauvolfia sandwicensis*, *Reynoldsia sandwicensis* (ohe), *Sapindus oahuensis*, *Tetraplasandra kauaiensis*, and *Xylosma* sp. (61 FR 53108).

Threats to this species on Kauai include habitat degradation and/or destruction by deer, feral goats, and pigs; seed predation by rats; fire; and competition with alien plants (61 FR 53108; USFWS 1999).

Flueggea neowawraea

Flueggea neowawraea, a member of the spurge family (Euphorbiaceae), is a large dioecious tree with white oblong pores covering its scaly, pale brown bark. This long-lived perennial species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size, scaly bark, the shape, size, and color of the leaves, flowers clustered along the branches, and the size and shape of the fruits (Linney 1982; Neal 1965; Hayden 1999; USFWS 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed (Hayden 1999). Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Flueggea neowawraea* was known from Kauai, Oahu, Maui, Molokai, and Hawaii Island (Hayden 1999; HINHP Database 1999). Currently, it is known from Kauai, Oahu, east Maui, and Hawaii. On Kauai, this species is reported from Limahuli Valley, Kalalau, Pohakuao, and the Koaie and Poomau branches of Waimeae Canyon. There is a total of nine populations with 56 individuals occurring on State and privately owned lands. However, it has been estimated that the total number of individuals may be slightly over 100 (HINHP Database 1999; GDSI 1999; USFWS 1999; K. Wood, *in litt.* 1999).

Flueggea neowawraea occurs in dry or mesic forests at elevations of 250 to 1,000 m (820 to 3,280 ft) (Hayden 1999). Associated native plant species include *Alectryon macrococcus*, *Bobea timonioides*, *Charpentiera* sp., *Caesalpinia kauaiense*, *Hibiscus* sp., *Melicope* sp., *Myrsine lanaiensis*, *Metrosideros polymorpha*, *Munroidendron racemosum*, *Tetraplasandra* sp., *Kokia kauaiensis*, *Isodendrion* sp., *Pteralyxia kauaiensis*, *Psychotria mariniana*, *Diplazium sandwichianum*, *Freycinetia arborea*, *Nesoluma polynesicum*, *Diospyros* sp., *Antidesma pulvinatum* (hame), *A. platyphyllum*, *Canthium odoratum*, *Nestegis sandwicensis*, *Rauvolfia sandwicensis*, *Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis*, *Xylosma* sp., *Pritchardia* sp., *Bidens* sp., and *Streblus pendulinus* (59 FR 56333; HINHP Database 1999; USFWS 1999).

The threats to this species on Kauai include the black twig borer; habitat degradation by feral pigs, goats, deer, and cattle; competition with alien plant species; fire; small population size; depressed reproductive vigor; and a potential threat of predation on the fruit by rats (59 FR 56333; HINHP Database 1999; USFWS 1999).

Gouania meyenii

Gouania meyenii, a member of the buckthorn family (Rhamnaceae), is a shrub with entire, papery leaves. This short-lived perennial species is distinguished from the two other Hawaiian species of *Gouania* by its lack of tendrils on the flowering branches, the absence of teeth on the leaves, and the lack or small amount of hair on the fruit (Wagner *et al.* 1999).

Gouania meyenii flowers from March to May. Seed capsules develop in about 6 to 8 weeks. Plants appear to live about 10 to 18 years in the wild (USFWS 1998b). No other information exists on specific environmental requirements or limiting factors.

Historically, *Gouania meyenii* was known only from Oahu (HINHP Database 1999; Wagner *et al.* 1999). Currently, this species is found on Oahu and two locations on State and privately owned lands on Kauai: the Na Pali-Kona Forest Reserve and in Koaie Canyon. There is a total of three populations with nine individuals (56 FR 55770; GDSI 1999; HINHP Database 1999).

This species typically grows on rocky ledges, cliff faces, and ridge-tops in dry shrubland or *Metrosideros polymorpha* lowland mesic forest at elevations between 490 to 880 m (1,600 to 2,880 ft) (56 FR 55770; HINHP Database 1999; Wagner *et al.* 1999). Associated plants include *Dodonaea viscosa*, *Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis*, *Bidens* sp., *Carex meyenii*, *Diospyros* sp., *Lysimachia* sp., and *Senna gaudichaudii* (kolomona) (56 FR 55770; HINHP Database 1999).

Threats to *Gouania meyenii* on Kauai include competition from the alien

plants *Schinus terebinthifolius*, *Melinis minutiflora*, and *Psidium cattleianum*; fire; habitat degradation by feral pigs and goats; and the small number of extant populations and individuals (56 FR 55770; USFWS 1998b).

Hedyotis cookiana

Hedyotis cookiana, a member of the coffee family (Rubiaceae), is a small shrub with many branches and papery-textured leaves which are fused at the base to form a sheath around the stem. This short-lived perennial species is distinguished from other species in the genus that grow on Kauai by being entirely hairless (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis cookiana.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Hedyotis cookiana* was known from the islands of Hawaii, Kauai, Molokai, and Oahu (HINHP Database 1999). Currently, it is only known from one population of 60–80 individuals on State land within Hono O Na Pali NAR in Waiahuakua Valley on Kauai (GDSI 1999; HINHP Database 1999).

This species generally grows in streambeds or on steep cliffs close to water sources in lowland wet forest communities (59 FR 9304). *Hedyotis cookiana* is believed to have formerly been much more widespread on several of the main Hawaiian Islands at elevations between 170 and 370 m (560 and 1,210 ft) (Wagner *et al.* 1999).

The threats to this species on Kauai are risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of individuals in the only known population; flooding; competition with alien plants; and habitat modification by feral pigs and goats (59 FR 9304; USFWS 1995; HINHP Database 1999).

Isodendrion laurifolium

Isodendrion laurifolium, a member of the violet family (Violaceae), is a slender, straight shrub with few branches. The short-lived perennial species is distinguished from others in the genus by its leathery, oblong-elliptic or narrowly elliptic lance-shaped leaves (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.

Historically, *Isodendrion laurifolium* is known from scattered locations on Kauai and Oahu (HINHP Database 1999). Currently, this species is found on Kauai in the following locations: Paaiki, Kawaiula, Haeleele, Makaha, Poopooiki, and Kuia Valleys (including Kuia NAR), and the Koaie branch of Waimeae Canyon (GDSI 1999; HINHP Database 1999). There are a total of eight populations with 132–143 individuals, on State-owned land (HINHP Database 1999; GDSI 1999; USFWS 1999).

Isodendrion laurifolium is usually found between 490 and 820 m (1,600 and 2,700 ft) in elevation in diverse mesic forest, or rarely wet forest, dominated by *Metrosideros polymorpha*, *Acacia koa* or *Diospyros* sp. with *Kokia kauaiensis*, *Streblus* sp., *Elaeocarpus bifidus*, *Canthium odoratum*, *Antidesma* sp., *Xylosma hawaiiense*, *Hedyotis terminalis*, *Pisonia* sp., *Nestegis sandwicensis*, *Dodonaea viscosa*, *Euphorbia haeleeleana*, *Pleomele* sp., *Pittosporum* sp., *Melicope* sp., *Claoxylon sandwicense*, *Alphitonia ponderosa*, *Myrsine lanaiensis*, and *Pouteria sandwicensis* (HINHP Database 1999).

The primary threats to *Isodendrion laurifolium* on Kauai are habitat degradation by feral goats, pigs and deer, and competition with alien plants (61 FR 53108; HINHP Database 1999; USFWS 1999).

Isodendrion longifolium

Isodendrion longifolium, a member of the violet family (Violaceae), is a slender, straight shrub. Hairless, leathery, lance-shaped leaves distinguish this species from others in the genus (Wagner *et al.* 1999).

Little is known about the life history of this short-lived perennial species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Isodendrion longifolium* is known from scattered locations on Kauai and Oahu (61 FR 53108; Lorence and Flynn 1991, 1993; HINHP Database 1999; USFWS 1999). On Kauai, this species is reported from Limahuli Valley, Mt. Kahili, Hanakapiai-Hoolulu Ridge, near Peapea, east of Haupu Peak, Wainiha-Manoa drainage, Hanapepe drainage, Kawaiula Valley, Kalalau Valley, Wahiawa Mountains, upper Waioli Valley, and Honopu. There is a total of 16 populations containing between 472–522 individual plants on State and privately owned lands. This species may also occur on or near land under Federal jurisdiction in Kokee State Park (HINHP Database 1999; GDSI 1999).

Isodendrion longifolium is found on steep slopes, gulches, and stream banks in mixed mesic or wet *Metrosideros polymorpha* forest, usually between 410 and 760 m (1,345 and 2,500 ft) elevation (61 FR 53108). Associated plants include *Dicranopteris linearis*, *Eugenia* sp., *Diospyros* sp., *Pritchardia* sp., *Canthium odoratum*, *Melicope* sp., *Cheirodendron* sp., *Ilex anomala*, *Pipturus* sp., *Hedyotis fluviatilis* (kamapua a), *Peperomia* sp., *Bidens* sp., *Nestegis sandwicensis*, *Syzygium sandwicensis*, *Cibotium* sp., *Bobea brevipes*, *Antidesma* sp., *Cyanea hardyi*, *Cyrtandra* sp., *Hedyotis terminalis*, *Peperomia* sp., *Perrottetia sandwicensis*, *Pittosporum* sp., and *Psychotria* sp. (61 FR 53108; Lorence and Flynn 1993; HINHP Database 1999; USFWS 1999).

The major threats to *Isodendrion longifolium* on Kauai are habitat degradation or destruction by feral goats and pigs, and competition with various alien plants (61 FR 53108; Lorence and Flynn 1993; HINHP Database 1999; USFWS 1999).

Lobelia niihauensis

Lobelia niihauensis, a member of the bellflower family (Campanulaceae), is a small, branched shrub. This short-lived perennial species is distinguished from others in the genus by lacking or nearly lacking leaf stalks, the magenta-colored flowers, the width of the leaf, and length of the flowers (Rock 1919, Lammers 1999).

Lobelia niihauensis flowers in late summer and early fall. Fruits mature a month to six weeks later. Plants are known to live as long as 20 years (USFWS 1998b).

Historically, *Lobelia niihauensis* was known from Oahu, Niihau, and western (Limahuli Valley to near the Hanapepe River) and eastern (Nounou Mountain and the Haupu Range) Kauai (HINHP Database 1999). It is now known to be extant only on Kauai and Oahu (HINHP Database 1999). On Kauai, 12 populations containing 456–1,406 individuals can be found on State and privately owned lands in Waimeae Canyon, on Polihale Ridge, along the Na Pali Coast, and in the Haupu Range (USFWS 1998b; HINHP Database 1999; GDSI 1999).

Lobelia niihauensis typically grows on exposed, mesic shrubland or coastal dry cliffs at elevation of 100 to 830 m (330 to 2720 ft) (HINHP Database 1999, Lammers 1999). Associated native plants include *Eragrostis* sp., *Bidens* sp., *Plectranthus parviflorus*, *Lipochaeta* sp., *Lythrum* sp., *Wilkesia hobdyi*, *Hibiscus kokio* ssp. *saint johnianus*, *Nototrichium* sp., *Schiedea apokremnos*, *Chamaesyce celastroides*, *Charpentiera* sp., and *Artemisia* sp. (HINHP Database 1999; USFWS 1998b).

On Kauai, the major threats to this species are habitat degradation and

browsing by feral goats and competition from alien plants (56 FR 55770).

Lysimachia filifolia

Lysimachia filifolia, a member of the primrose family (Primulaceae), is a small shrub. This short-lived perennial species is distinguished from other taxa of the genus by its leaf shape and width, calyx lobe shape, and corolla length (Wagner *et al.* 1999).

Little is known about the life history of *Lysimachia filifolia.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Lysimachia filifolia* was known only from the upper portion of Olokele Valley on Kauai. This species is now also known from Oahu, and the ''blue hole'' area of Waialeale, Kauai (USFWS 1995; HINHP Database 1999). There is currently one population containing a total of 20–75 individuals on State owned land on Kauai (USFWS 1995; HINHP Database 1999; GDSI 1999).

This species typically grows on mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests at elevations of 245 to 680 m (800 to 2,230 ft). Associated plants include mosses, ferns, liverworts, *Machaerina* sp., *Heteropogon contortus*, and *Melicope* sp. (59 FR 9304; USFWS 1995; HINHP Database 1999; Wagner *et al.* 1999).

The major threats to *Lysimachia filifolia* on Kauai include competition with alien plant species; feral pigs; and the risk of extinction on Kauai from naturally occurring events (*e.g.*, landslides and hurricanes), due to the small number of individuals in the only known population (59 FR 9304; HINHP Database 1999).

Melicope knudsenii

Melicope knudsenii, a member of the citrus family (Rutaceae), is a tree with smooth gray bark and yellowish brown to olive-brown hairs on the tips of the branches. The long-lived perennial species is distinguished from *M. haupuensis* and other members of the genus by the distinct carpels present in the fruit, a hairless endocarp, a larger number of flowers per cluster, and the distribution of hairs on the underside of the leaves (*Stone et al.* 1999).

Little is known about the life history of *Melicope knudsenii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Melicope knudsenii* is known from Maui and Kauai (59 FR 9304; USFWS 1995; HINHP Database 1999). On Kauai, this species is known from five populations on State owned land, with a total of six individuals, in the Koaie drainage of Waimeae Canyon and the upper Kuia Valley (USFWS 1995; GDSI 1999; HINHP Database 1999; K. Wood, *in litt.* 1999).

Melicope knudsenii grows on forested flats or talus slopes in lowland dry to montane mesic forests at elevations of about 450 to 1,000 m (1,480 to 3,280 ft) with *Dodonaea viscosa, Antidesma* sp., *Metrosideros polymorpha, Hibiscus* sp., *Myrsine lanaiensis, Diospyros* sp., *Rauvolfia sandwicensis, Bobea* sp., *Nestegis sandwicensis, Hedyotis* sp., *Melicope* sp., *Psychotria* sp., or *Pittosporum kauaiensis* and *Xylosma* sp. (USFWS 1995; HINHP Database 1999; Stone *et al.* 1999).

The major threats to *Melicope knudsenii* on Kauai include competition with the alien plant, *Lantana camara;* habitat degradation by feral goats and pigs; fire; black twig borer; and the risk of extinction on Kauai from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals and populations (59 FR 9304; USFWS 1995).

Melicope pallida

Melicope pallida, a member of the citrus family (Rutaceae), is a tree with grayish white hairs and black, resinous new growth. The long-lived perennial species differs from *M. haupuensis, M. knudsenii,* and other members of the genus by presence of resinous new growth, leaves folded in clusters of three, and fruits with separate carpels (Stone *et al.* 1999).

Little is known about the life history of *Melicope pallida.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Melicope pallida* is known from Oahu and Kauai (USFWS 1995; HINHP Database 1999; D.W. Mathias, U.S. Navy *in litt.* 1999). On Kauai, the species is currently known in the following locations: Kalalau Valley and rim, Limahuli Valley, Koaie Stream in Waimeae Canyon, Pohakuao Valley, and Awaawapuhi Valley to Honopu Valley (59 FR 9304; K. Wood, *in litt.* 1999; HINHP Database 1999). There is a total of five populations with 181 individuals on State owned land (USFWS 1995; HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999), although the status of the one individual in Limahuli Valley is unknown (USFWS 1995).

Melicope pallida usually grows on steep rock faces in lowland to montane mesic to wet forests or shrubland at an elevation 490 to 915 m (1,600 to 3,000 ft) (59 FR 9304; Lorence and Flynn 1991; Stone *et al.* 1999). Associated plant taxa include *Dodonaea viscosa, Lepidium serra, Pleomele* sp., *Boehmeria grandis, Coprosma* sp., *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Schiedea membranacea, Psychotria mariniana, Dianella sandwicensis, Pritchardia minor, Chamaesyce celastroides* var. *hanapepensis, Nototrichium* sp., *Carex meyenii, Artemisia* sp., *Abutilon sandwicense, Alyxia olivaeformis, Dryopteris unidentata* (kumunui), *Metrosideros polymorpha, Pipturus albidus* (mamaki), *Sapindus oahuensis, Tetraplasandra* sp., and *Xylosma hawaiiense* (59 FR 9304; USFWS 1995; HINHP Database 1999).

The major threats to *Melicope pallida* are habitat destruction by feral goats and pigs; the black twig borer; fire; susceptibility to extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing populations; and competition with alien plant taxa (59 FR 9304; Hara and Beardsley 1979; Medeiros *et al.* 1986; USFWS 1995; HINHP Database 1999).

Peucedanum sandwicense

Peucedanum sandwicense, a member of the parsley family (Apiaceae), is a parsley-scented, sprawling herb. Hollow stems arise from a short, vertical stem with several fleshy roots. This short-lived perennial species is the only member of the genus in the Hawaiian Islands, one of three genera of the family with taxa endemic to the island of Kauai. This species differs from the other Kauai members of the parsley family in having larger fruit and pinnately compound leaves with broad leaflets (Constance and Affolter 1999).

Little is known about the life history of *Peucedanum sandwicense.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai (HINHP Database 1999). Discoveries in 1990 extended the known distribution of this species to the Waianae Mountains on the island of Oahu (59 FR 9304). Additionally, a population is known from State-owned Keopuka Rock, an islet off the coast of Maui. On Kauai, there are a total of 14 populations on

State and privately owned lands, containing between 238–339 individuals, in Kuia NAR, on the boundary of Na Pali Coast State Park and Hono O Na Pali NAR between Hanakapiai and Hoolulu Valleys, the mouth of the Hanakapiai Stream, in Waiahuakua Valley, Hoolulu Valley, Limahuli Valley, Waimeae Canyon, Kalalau trail, Kaaalahina Ridge, Hanakoa Valley, Haupu, Mahanaloa Valley, and Pohakuao (USFWS 1995; HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species grows in mixed shrub coastal dry cliff communities or diverse mesic forest from sea level to above 915 m (3,000 ft). It is associated with *Hibiscus kokio, Brighamia insignis, Bidens* sp., *Artemisia* sp., *Lobelia niihauensis, Wilkesia gymnoxiphium, Canthium odoratum, Dodonaea viscosa, Psychotria* sp., *Acacia koa, Kokio kauaiensis, Carex meyenii, Panicum lineale, Chamaesyce celastroides, Eragrostis* sp., *Diospyros* sp., and *Metrosideros polymorpha* (59 FR 9304; Constance and Affolter 1999; HINHP Database 1999).

The major threats to *Peucedanum sandwicense* on Kauai include competition with introduced plants; habitat degradation and browsing by feral goats and deer; and trampling and trail clearing (Hanakapiai population) (59 FR 9304; USFWS 1995; HINHP Database 1999).

Plantago princeps

Plantago princeps, a member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This short-lived perennial species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, *anomala, laxiflora, longibracteata,* and *princeps,* are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown. However, individuals have been observed in fruit from April through September (USFWS 1999).

Historically, *Plantago princeps* was found on the islands of Hawaii, Kauai, Maui, Molokai, and Oahu. It no longer occurs on the island of Hawaii. Two varieties of the species, totaling seven populations, with 500–572 individuals, are extant on the island of Kauai, on both State and privately owned lands (HINHP Database 1999; GDSI 1999). Historically on Kauai, *Plantago princeps* var. *anomala* was reported from a ridge west of Hanapepe River. Currently, this variety is found on Mt. Kahili, upper Pohakuao (near Puu Ki), and from the south rim and upper reaches of Kalalau Valley. *Plantago princeps* var. *longibracteata* was historically known from Hanalei, the Wahiawa Mountains, and Hanapepe Falls. Currently, populations are known from Namolokama, Iliiliula drainage, Wainiha Valley, Waioli Valley, and Waialeale (59 FR 56333; GDSI 1999; HINHP Database 1999; USFWS 1999).

Plantago princeps is typically found on steep slopes, rock walls, or at bases of waterfalls in mesic to wet *Metrosideros polymorpha* forest from 480 to about 1,100 m (1,575 to 3,610 ft) in elevation (Wagner *et al.* 1999). Associated plant species include *Dodonaea viscosa, Psychotria* sp., *Dicranopteris linearis, Cyanea* sp., *Hedyotis* sp., *Melicope* sp., *Xylosma* sp., *Pleomele* sp., *Machaerina angustifolia, Athyrium* sp., *Bidens* sp., *Eragrostis* sp., *Lysimachia filifolia, Pipturus* sp., *Cyrtandra* sp., and *Dubautia plantaginea,* as well as *Exocarpos luteolus, Poa siphonoglossa, Nothocestrum peltatum, Remya montgomeryi,* and *Stenogyne campanulata,* and the threatened *Myrsine linearifolia* (HINHP Database 1999; USFWS 1999).

The primary threats to *Plantago princeps* on Kauai are herbivory and habitat degradation by feral pigs and goats, and competition with various alien plant species. Ungulate herbivory is especially severe, with numerous observations of *P. princeps* individuals exhibiting browse damage (61 FR 53108; USFWS 1999).

Platanthera holochila

Platanthera holochila, a member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance to egg-shaped, and the greenish-yellow flowers occur in open spikes. This short-lived perennial is the only species of this genus that occurs in the Hawaiian Islands (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Platanthera holochila* was known from the Alakai Swamp, Kaholuamano area, and the Wahiawa Mountains on Kauai, and scattered locations on Oahu, Molokai, and Maui (HINHP Database 1999). Currently, *P. holochila* is extant on Kauai, Molokai, and Maui (HINHP Database 1999). On Kauai, there are one to two populations with nine individuals reported on State and privately owned lands in the Alakai Swamp (HINHP Database 1999; GDSI 1999).

Platanthera holochila is found in montane *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed bog between 1,050 and 1,600 m (3,450 and 5,245 ft) elevation. Associated native plants include *Myrsine denticulata* (kolea), *Cibotium* sp., *Coprosma ernodeoides* (kukaenene), *Oreobolus furcatus* (NCN), *Styphelia tameiameiae,* and *Vaccinium* sp. (61 FR 53108; USFWS 1999).

The primary threats to *Platanthera holochila* on Kauai are habitat degradation and/or destruction by feral cattle and pigs; competition with alien plants; and a risk of extinction on Kauai from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor, due to the small number of remaining populations and individuals. Predation by introduced slugs may also be a potential threat to this species (61 FR 53108; USFWS 1999).

Schgiedea nuttallii

Schiedea nuttallii, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. This long-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of the inflorescence, number of flowers per inflorescence, and smaller leaves, flowers, and seeds (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea nuttallii.* Based on field and greenhouse observations, it is hermaphroditic (Weller and Sakai 1999). Plants on Oahu have been under observation for 10 years, and they appear to be long-lived. *Schiedea nuttallii* appears to be an outcrossing species. Under greenhouse conditions, plants fail to set seed unless hand pollinated, suggesting that this species requires insects for pollination. Fruits and flowers are abundant in the wet season but can be found throughout the year (USFWS 1999).

Historically and currently, *Schiedea nuttallii* is known from Kauai and Oahu (61 FR 53108; HINHP Database 1999). In addition, it was also reported from Molokai and Maui (USFWS 1999). Currently on Kauai, one population with 10–50 individuals is reported from

east of Haupu Peak on privately owned land. The status of individuals previously found in the Limahuli Valley is currently unknown (HINHP Database 1999; GDSI 1999; USFWS 1999).

Schiedea nuttallii typically grows in diverse lowland mesic *Metrosideros polymorpha* forest at elevations between 415 and 790 m (1,360 and 2,590 ft). Associated plants include *Antidesma* sp., *Psychotria* sp., *Perrottetia sandwicensis, Pisonia* sp., and *Hedyotis acuminata* (USFWS 1999).

Schiedea nuttallii is threatened on Kauai by habitat degradation and/or destruction by feral pigs, goats, and possibly deer; competition with several alien plants; landslides; predation by the black twig borer; and a risk of extinction from naturally occurring events (e.g., landslides or hurricanes) and/or reduced reproductive vigor, due to the small number of individuals in the only known population (61 FR 53108; USFWS 1999). Based on observations that indicate that introduced snails and slugs may consume seeds and seedlings, it is likely that introduced molluscs also represent a major threat to this species (61 FR 53108; USFWS 1999).

Sesbania tomentosa

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 salmon color tinged with yellow, orange-red, scarlet or rarely, pure yellow coloration. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that populations at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year (USFWS 1999). Other aspects of this plant's life history are unknown.

Currently, *Sesbania tomentosa* occurs on at least six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). Although once found on Niihau and Lanai, it is no longer extant on these islands (59 FR 56333; GDSI 1999, USFWS 1999; HINHP Database 1999). On Kauai, *S. tomentosa* is known from two populations, with eight individuals, from the Polihale State Park area (State land) and may extend onto privately owned land and the PMRF (Federal land) (HINHP Database 1999; GDSI 1999).

Sesbania tomentosa is found on sandy beaches, dunes, soil pockets on lava, and along pond margins (Geesink *et al.* 1999; USFWS 1999). It commonly occurs in coastal dry shrublands and grasslands, but is also known from open *Metrosideros polymorpha* forests and mixed coastal dry cliffs in lower elevations (HINHP Database 1999). Associated plant species include *Sida fallax*, *Scaevola sericea*, *Dodonaea viscosa*, *Heteropogon contortus*, *Myoporum sandwicense*, and *Sporobolus virginicus* (akiaki) (HINHP Database 1999; USFWS 1999).

The primary threats to *Sesbania tomentosa* on Kauai are habitat degradation caused by competition with various alien plant species; lack of adequate pollination; seed predation by rats, mice and, potentially, alien insects; fire; and destruction by off-road vehicles and other human disturbances (59 FR 56333; USFWS 1999).

Solanum sandwicense

Solanum sandwicense, a member of the nightshade family (Solanaceae), is a large sprawling shrub. The younger branches are more densely hairy than older branches and the oval leaves usually have up to 4 lobes along the margins. This short-lived perennial species differs from others of the genus in having dense hairs on young plant parts, a greater height, and its lack of prickles (Sohmer and Gustafson 1987; Symon 1999).

Little is known about the life history of *Solanum sandwicense.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Solanum sandwicense* was known from both Oahu and Kauai (59 FR 9304; USFWS 1995; HINHP Database 1999; K. Wood, *in litt.* 1999). Currently, this species is only known from Kauai (Joan Yoshioka, The Nature Conservancy of Hawaii (TNCH), pers. comm. 2000). On Kauai, this species was reported from locations in the Kokee region bounded by Kalalau Valley, Milolii Ridge, and extending to the Hanapepe River (USFWS 1995; HINHP Database 1999). Currently, *Solanum sandwicense* is only known from eight populations of 13–14 individual plants on private and State lands (Kokee and Na Pali Coast State Parks), and may occur on or near land under Federal jurisdiction in Kokee State Park (HINHP Database 1999; GDSI 1999; K. Wood, *in litt.* 1999).

This species is typically found in open, sunny areas at elevations between 760 and 1,220 m (2,500 and 4,000 ft) in diverse lowland or montane mesic forests or occasionally in wet forests (HINHP Database 1999; Symon 1999). Associated plant taxa include *Alphitonia ponderosa*, *Ilex anomala*, *Xylosma* sp., *Athyrium sandwicensis*, *Syzygium sandwicensis*, *Bidens cosmoides*, *Dianella sandwicensis*, *Poa siphonoglossa*, *Carex meyenii*, *Hedyotis* sp., *Coprosma* sp., *Dubautia* sp., *Pouteria sandwicensis*, *Cryptocarya mannii*, *Acacia koa*, *Metrosideros polymorpha*, *Dicranopteris linearis*, *Psychotria* sp., and *Melicope* sp. (59 FR 9304; USFWS 1995; HINHP Database 1999).

The major threats to populations of *Solanum sandwicense* on Kauai are habitat degradation by feral pigs, and competition with alien plant taxa (*Passiflora mollissima*, *Rubus argutus*, *Psidium cattleianum*, *Hedychium gardnerianum* (kahili ginger), and *Lonicera japonica*); fire; human disturbance and development; and a risk of extinction from naturally occurring events (*e.g.*, landslides or hurricanes) and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304; USFWS 1995; HINHP Database 1999).

Spermolepis hawaiiensis

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a 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.

Historically, *Spermolepis hawaiiensis* was known from the islands of Kauai, Oahu, Lanai, and Hawaii (HINHP Database 1999). Currently, it is found on Kauai, Oahu, Molokai, Lanai, West Maui, and Hawaii (59 FR 56333; GDSI 1999; HINHP Database 1999). On Kauai, this species has been observed on State and private land in the Koaie branch and other unspecified locations within Waimeae Canyon, Hanapepe at Kapahili Gulch, and Hipalau (HINHP Database 1999). There are two known populations with four individuals total on Kauai. However, it has been estimated that the total number of plants on Kauai may be as high as a few thousand (HINHP Database 1999; GDSI 1999; USFWS 1999).

Spermolepis hawaiiensis is known from various vegetation types, including *Metrosideros polymorpha* forest and *Dodonaea viscosa* lowland dry shrubland, at elevations from about 305 to 610 m (1,000 to 2,000 ft). Associated plant species include *Eragrostis variabilis*, *Bidens sandvicensis*, *Schiedea spergulina*, *Lipochaeta* sp., *Cenchrus agrimonioides* (kamanomano), *Sida fallax*, *Doryopteris* sp., and the Federally listed endangered *Gouania hillebrandii* (HINHP Database 1999; USFWS 1999).

The primary threats to *Spermolepis hawaiiensis* on Kauai are habitat degradation by feral goats; competition with various alien plants; and erosion, landslides, and rockslides due to natural weathering which result in the death of individual plants, as well as habitat destruction (59 FR 56333; USFWS 1999).

Zanthoxylum hawaiiense

Zanthoxylum hawaiiense is a medium-size tree with pale to dark gray bark, and lemon-scented leaves in the rue family (Rutaceae). Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaves (leaflets) with surfaces usually without hairs. A long-lived perennial tree, *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characteristics: three leaflets all of similar size, one joint on lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.* 1999).

No life history information is currently available for this species.

Historically, *Zanthoxylum hawaiiense* was known from five islands: Kauai, Molokai, Lanai, Maui, and Hawaii. Currently, *Zanthoxylum hawaiiense* is found on Kauai, Molokai, Maui, and Hawaii. On Kauai, this species is only known from a single individual on State owned land in Waimeae Valley (HINHP Database 1999; GDSI 1999).

Zanthoxylum hawaiiense is reported from lowland dry or mesic forests, or montane dry forest, at elevations between 550 and 1,740 m (1,800 and 5,700 ft) (Stone *et al.* 1999). This species is typically found in forests dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* (59 FR 10305; HINHP Database 1999). Other associated species include *Pleomele auwahiensis* (halapepe), *Antidesma platyphyllum*, *Pisonia* sp., *Alectryon macrococcus*, *Charpentiera* sp., *Melicope* sp., *Dodonaea viscosa*, *Streblus pendulinus*, *Myrsine lanaiensis*, and *Sophora chrysophylla* (HINHP Database 1999).

The threats to *Zanthoxylum hawaiiense* on Kauai include competition with the alien plant species (*Melia azedarach*, *Lantana camara*, and *Pennisetum setaceum* (fountain grass)); fire; human disturbance; and risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of individuals in the only known population (59 FR 10305; USFWS 1996).

A summary of populations and landownership for these 81 plants species on Kauai and Niihau is given in Table 3.

TABLE 3.—SUMMARY OF POPULATIONS AND LANDOWNERSHIP FOR 81 SPECIES ON KAUAI AND NIIHAU

Species	Number of current populations	Landownership		
		Federal	State	Private
Adenophorus periens	7		X	X
Alectryon macrococcus	6		X	
Alsinidendron lychnoides	4		X	
Alsinidendron viscosum	4		X	X
Bonamia menziesii	7		X	X
Brighamia insignis	5		X	X
Centaurium sebaeoides	3		X	
Chamaesyce halemanui	7		X	
Cyanea asarifolia	2		X	
Cyanea recta	8		X	X
Cyanea remyi	7		X	X
Cyanea undulata	1			X
Cyperus trachysanthos	2		X	X
Cyrtandra cyaneoides	4		X	X
Cyrtandra limahuliensis	13		X	X
Delissea rhytidosperma	3		X	X
Delissea rivularis	2		X	X
Delissea undulata	1		X	
Diellia pallida	5		X	
Dubautia latifolia	24		X	X
Dubautia pauciflorula	4		X	X
Euphorbia haeleeleana	14		X	X
Exocarpos luteolus	9		X	X
Flueggea neowawraea	9		X	X
Gouania meyenii	3		X	X
Hedyotis cookiana	1		X	
Hedyotis st.-johnii	6		X	
Hesperomannia lydgatei	4		X	X
Hibiscadelphus woodii	1		X	
Hibiscus clayi	1		X	X
Hibiscus waimeae ssp. *hannerae*	2		X	X

TABLE 3.—SUMMARY OF POPULATIONS AND LANDOWNERSHIP FOR 81 SPECIES ON KAUAI AND NIIHAU—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
Isodendrion laurifolium	8		X	
Isodendrion longifolium	16	X	X	X
Kokia kauaiensis	11		X	
Labordia lydgatei	6		X	X
Labordia tinifolia var.	1			X
Lipochaeta fauriei	4		X	X
Lipochaeta micrantha	6		X	X
Lipochaeta waimeaensis	1		X	X
Lobelia niihauensis	12		X	X
Lysimachia filifolia	1		X	
Melicope haupuensis	3		X	
Melicope knudsenii	5		X	
Melicope pallida	5		X	
Melicope quadrangularis (extinct)	0			
Munroidendron racemosum	15		X	X
Myrsine linearifolia	8		X	X
Nothocestrum peltatum	9	X	X	
Panicum niihauense	1	X	X	X
Peucedanum sandwicense	14		X	X
Phyllostegia knudsenii	2		X	
Phyllostegia waimeae (extinct)	0			
Phyllostegia wawrana	4	X	X	X
Plantago princeps	7		X	X
Platanthera holochila	1–2		X	X
Poa mannii	6		X	
Poa sandvicensis	9		X	X
Poa siphonoglossa	5		X	
Pritchardia aylmer-robinsonii	1			X
Pritchardia napaliensis	4		X	
Pritchardia viscosa	1			X
Pteralyxia kauaiensis	20	X	X	X
Remya kauaiensis	14		X	
Remya montgomeryi	3	X	X	
Schiedea apokremnos	5		X	
Schiedea helleri	2		X	
Schiedea kauaiensis	2		X	
Schiedea membranacea	9	X	X	X
Schiedea nuttallii	1			X
Schiedea spergulina var. *leiopoda*	1			X
Schiedea spergulina var. *spergulina*	3		X	X
Schiedea stellarioides	2		X	
Sesbania tomentosa	2	X	X	X
Solanum sandwicense	8	X	X	X
Spermolepis hawaiiensis	2		X	X
Stenogyne campanulata	1–3		X	
Viola helenae	5			X
Viola kauaiensis var. *wahiawaensis*	2		X	X
Wilkesia hobdyi	7	X	X	X
Xylosma crenatum	3	X	X	X
Zanthoxylum hawaiiense	1		X	

Previous Federal Action

Federal action on these plants began as a result of Section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Adenophorus periens*, *Alectryon macrococcus* (as *A. macrococcum* var. *macrococcum* and *A. mahoe*), *Bonamia menziesii*, *Brighamia insignis* (as *B. citrina* var. *napaliensis* and *B. insignis*), *Chamaesyce halemanui* (as *Euphorbia halemanui*), *Delissea rhytidosperma*, *Dubautia latifolia* (as *D. latifolia* var. *latifolia*), *Exocarpos luteolus*, *Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscus clayi* (as *H. clayi* and *H. newhousei*), *H. waimeae* ssp. *hannerae* (as *H. waimeae*), *Kokia kauaiensis*, *Lipochaeta fauriei*, *L. micrantha* (as *L. exigua*), *Lobelia niihauensis*, *Melicope haupuensis* (as *Pelea haupuensis*), *M. knudsenii* (as *P. multiflora*), *M. pallida* (as *P. leveillei* and *P. pallida*), *Melicope quadrangularis* (*Pelea quadrangularis*), *Myrsine linearifolia* (as *M. linearifolia* var. *linearifolia*), *Nothocestrum peltatum*, *Peucedanum sandwicense* (as *P. kauaiense*), *Phyllostegia knudsenii*, *Plantago princeps* (as *P. princeps* var. *elata*, *P.* var. *laxifolia*, and *P.* var. *princeps*), *Poa sandvicensis*, *Pritchardia aylmer-robinsonii*, *Sesbania tomentosa* (as *S. hobdyi* and *S. tomentosa* var. *tomentosa*), *Solanum sandwicense* (as *S. hillebrandii* and *S. kauaiense*), *Viola helenae*, *V. kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum* (as *Antidesma*

crenatum), and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *citiodora*), were considered to be endangered; *Delissea rivularis*, *Diellia pallida* (as *Diellia laciniata*), *Labordia lydgatei*, *Lipochaeta micrantha*, *L. waimeaensis*, *Lysimachia filifolia*, *Schiedea membranacea*, and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *hawaiiense* and *Z. hawaiiense* var. *velutinosum*) were considered to be threatened; and *Delissea undulata* (as *D. undulata* var. *argutidenta* and *D. undulata* var. *undulata*), *Gouania meyenii*, *Hedyotis cookiana*, *Melicope knudsenii* (as *Pelea knudsenii* and *P. tomentosa*), *Munroidendron racemosum* (as *M. racemosum* var. *macdanielsii*), *Plantago princeps* (as *P. princeps* var. *acaulis*, *P. princeps* var. *denticulata*, and *P. princeps* var. *queleniana*), and *Remya kauaiensis* were considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its 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 its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service 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 for *Diellia pallida* considered to be endangered or thought to be extinct,. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A one-year grace period was given to proposals already over two years old. On December 10, 1979, the Service 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. The Service 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), and September 30, 1993 (58 FR 51144).

A summary of the status categories for these 81 plant species in the 1980–1993 notices of review can be found in Table 4(a) and a summary of the listing actions can be found in Table 4(b).

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 81 PLANT SPECIES FROM KAUAI AND NIIHAU

Species	Federal Register notice of review			
	1980	1985	1990	1993
Adenophorus periens	C1	C1	C1	
Alectryon macrococcus	C1	3C	C1	
Alsinidendron lychnoides		C1*		C2
Alsinidendron viscosum		C1*	3A	
Bonamia menziesii	C1	C1	C1	
Brighamia insignis	C1	C1	C1	
Centaurium sebaeoides			C1	
Chamaesyce halemanui	C1	C1	C1	
Cyanea asarifolia			C1	
Cyanea recta			3A	
Cyanea remyi.				
Cyanea undulata			3A	
Cyperus trachysanthos				C2
Cyrtandra cyaneoides				C2
Cyrtandra limahuliensis			C1	
Delissea rhytidosperma	C1	C1	C1	
Delissea rivularis	C2	C2	3A	
Delissea undulata	C1	C1*	C1*	
Diellia pallida			C1*	
Dubautia latifolia	C1	C1	C1	
Dubautia pauciflorula			C1	
Euphorbia haeleeleana	C1	C1	C1	
Exocarpos luteolus		C1	C1	
Flueggea neowawraea	C1	C1	C1	
Gouania meyenii	3A	3A	C1	
Hedyotis cookiana	3A	3A	C1	
Hedyotis st.-johnii	C1	C1	C1	
Hesperomannia lydgatei	C1	C1	C1	
Hibiscadelphus woodii.				
Hibiscus clayi	C1	C1	C1	
Hibiscus waimeae ssp. *hannerae*	3C	3C	C2	C2
Isodendrion laurifolium	C1	C1	C1	C2
Isodendrion longifolium	C1	C1	C1	C2
Kokia kauaiensis	C2	C2	C2	C2
Labordia lydgatei	C2	C2	C2	
Labordia tinifolia var. *wahiawaensis.*				
Lipochaeta fauriei	C1*	C1*	C1	
Lipochaeta micrantha	C1	C1	C1	
Lipochaeta waimeaensis	C1	C1	C1	
Lobelia niihauensis	C1	C1	C1	
Lysimachia filifolia	C2	C2	C1	
Melicope haupuensis	C1	C1	C1	

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 81 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Federal Register notice of review			
	1980	1985	1990	1993
Melicope knudsenii	C1*	C1*	C1	
Melicope pallida			C1*	
Melicope quadrangularis	C1	C1	C1*	
Munroidendron racemosum	C1	C1	C1	
Myrsine linearifolia	C1	C1	C2	C2
Nothocestrum peltatum	C1	C1	C1	
Panicum niihauense				C2
Peucedanum sandwicense	C2	C2	C2	
Phyllostegia knudsenii	C1	C1	3A	
Phyllostegia waimeae			C1	
Phyllostegia wawrana			3A	
Plantago princeps	C2	C2	C1	
Platanthera holochila	C1	C1	C1	C2
Poa mannii	C1	C1	C1*	
Poa sandvicensis	C1	C1	C1	
Poa siphonoglossa	C1	C1	C1	
Pritchardia aylmer-robinsonii	C1	C1	C1	
Pritchardia napaliensis			C2	C2
Pritchardia viscosa			C2	C2
Pteralyxia kauaiensis	C1	C1	C1	
Remya kauaiensis	C1*	C1*		
Remya montgomeryi.				
Schiedea apokremnos		C1	C1	
Schiedea helleri		C1*	3A	
Schiedea kauaiensis.				
Schiedea membranacea	C2	C2	C2	C2
Schiedea nuttallii				C2
Schiedea spergulina var. *leiopoda*		C1	C1*	
Schiedea spergulina var. *spergulina*		C1	C1	
Schiedea stellarioides		C1*	3A	
Sesbania tomentosa	C1*	C1*	C1	
Solanum sandwicense	C1*	C1*	C1	
Spermolepis hawaiiensis			C1	
Stenogyne campanulata			C1	
Viola helenae	C1	C1	C1	
Viola kauaiensis var. *wahiawaensis*	C1	C1	C2	C2
Wilkesia hobdyi	C1	C1		
Xylosma crenatum	C2	C2	C1	
Zanthoxylum hawaiiense	C1	C1	C1	

Key:
C1: Taxa for which the Service has on file enough substantial information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.
C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.
C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.
3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.
3C: Taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat.
Federal Register Notice of Review.
1980: 45 FR 82479; 1985: 50 FR 39525; 1990: 55 FR 6183; 1993: 58 FR 51144.

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 81 PLANT SPECIES FROM KAUAI AND NIIHAU

Species	Federal status	Proposed rule		Final rule	
		Date	Federal Register	Date	Federal Register
Adenophorus periens	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333.
Alectryon macrococcus	E	05/24/1991	56 FR 23842	05/15/1992	57 FR 20772.
Alsinidendron lychnoides	E	09/25/1995	60 FR 49359	10/10/1996	56 FR 53070.
Alsinidendron viscosum	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Bonamia menziesii	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333.
Brighamia insignis	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Centaurium sebaeoides	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770.
Chamaesyce halemanui	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580.
Cyanea asarifolia	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Cyanea recta	T	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Cyanea remyi	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Cyanea undulata	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695.
Cyperus trachysanthos	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108
Cyrtandra cyaneoides	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 81 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Federal status	Proposed rule		Final rule	
		Date	Federal Register	Date	Federal Register
Cyrtandra limahuliensis	T	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Delissea rhytidosperma	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Delissea rivularis	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Delissea undulata	E	06/27/1994	59 FR 32946	10/10/1996	61 FR 53124.
Diellia pallida	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Dubautia latifolia	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580.
Dubautia pauciflorula	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695.
Euphorbia haeleeleana	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Exocarpos luteolus	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Flueggea neowawraea	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333.
Gouania meyenii	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770.
Hedyotis cookiana	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Hedyotis st.-johnii	E	08/03/1990	55 FR 31612	09/30/1991	56 FR 49639.
Hesperomannia lydgatei	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695.
Hibiscadelphus woodii	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Hibiscus clayi	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Hibiscus waimeae ssp. hannerae	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Isodendrion laurifolium	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Isodendrion longifolium	T	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Kokia kauaiensis	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Labordia lydgatei	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695.
Labordia tinifolia var. wahiawaensis	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Lipochaeta fauriei	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Lipochaeta micrantha	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Lipochaeta waimeaensis	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Lobelia niihauensis	E	09/28/1990	55 FR 39664	10/29/1991	56 FR 55770.
Lysimachia filifolia	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Melicope haupuensis	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Melicope knudsenii	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Melicope pallida	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Melicope quadrangularis	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Munroidendron racemosum	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Myrsine linearifolia	T	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Nothocestrum peltatum	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Panicum niihauense	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Peucedanum sandwicense	T	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Phyllostegia knudsenii	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Phyllostegia waimeae	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Phyllostegia wawrana	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Plantago princeps	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333.
Platanthera holochila	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Poa mannii	E	04/07/1993	58 FR 18073	11/10/1994	59 FR 56330.
Poa sandvicensis	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580.
Poa siphonoglossa	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580.
Pritchardia aylmer-robinsonii	E	12/17/1992	57 FR 59970	08/07/1996	61 FR 41020.
Pritchardia napaliensis	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Pritchardia viscosa	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Pteralyxia kauaiensis	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Remya kauaiensis	E	10/02/1989	54 FR 40447	01/14/1991	56 FR 1450.
Remya montgomeryi	E	10/02/1989	54 FR 40447	01/14/1991	56 FR 1450.
Schiedea apokremnos	E	08/03/1990	55 FR 31612	09/30/1991	56 FR 49639.
Schiedea helleri	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Schiedea kauaiensis	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Schiedea membranacea	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Schiedea nuttallii	E	10/02/1995	60 FR 51417	10/10/1996	61 FR 53108.
Schiedea spergulina var. leiopoda	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Schiedea spergulina var. spergulina	T	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Schiedea stellarioides	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Sesbania tomentosa	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333.
Solanum sandwicense	E	10/30/1991	56 FR 5562	02/25/1994	59 FR 09304.
Spermolepis hawaiiensis	E	09/14/1993	58 FR 48012	11/10/1994	59 FR 56333.
Stenogyne campanulata	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580.
Viola helenae	E	09/17/1990	55 FR 38242	09/20/1991	56 FR 47695.
Viola kauaiensis var. wahiawaensis	E	09/25/1995	60 FR 49359	10/10/1996	61 FR 53070.
Wilkesia hobdyi	E	10/02/1989	54 FR 40444	06/22/1992	57 FR 27859.
Xylosma crenatum	E	09/21/1990	50 FR 39301	05/13/1992	57 FR 20580.
Zanthoxylum hawaiiense	E	12/17/1992	57 FR 59951	03/04/1994	59 FR 10305.

Key: E = Endangered; T = Threatened.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant and/or would increase the degree of threat to the species.

These not prudent determinations were challenged in *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Haw. 1988). On March 9, 1998, the United States District Court for the District of Hawaii, directed us to review the prudency determinations for 245 listed plant species in Hawaii, including these 81 species. 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 (2 F. Supp. 2d 1283–1285). For example, the court suggested that, before concluding critical habitat would not be prudent, the Service should consider whether designation might prevent an inadvertent act of destruction by educating the public.

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 and 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 and State and local governments of the listing and of the areas that are essential to the species' conservation, the court found that although no Federal activity may be occurring on private property at present, there may be such activity in the future (*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 (24 F. Supp. 2d 1074). This rule responds to the court's order.

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 over 100 responses from individuals, non-profit organizations, county governments, the State of Hawaii's Division of Forestry and Wildlife, 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 many of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80% opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, negatively impact cooperative projects, polarize relationships with hunters, or potentially increase the occurrences of trespassing or vandalism on private lands. In addition, commenters cited a lack of information on the biological and ecological needs of these plants which may lead to designation based on insufficient data. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On October 5, 1999, we mailed letters to over 160 landowners on the islands of Kauai and Niihau requesting any information considered germane to the management of any of the 245 plants on his/her property. The letters contained a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the plants that may be on his/her property, and a handout containing general information on critical habitat. We received 25 written responses to our landowner mailing with varying types of information on their current land management activities. These responses included information on: the presence of fences or locked gates to restrict public access; access to the respondent's property by hunters or if hunting is allowed on the property; ongoing weeding and rat control programs; and the propagation and/or planting of native plants. Some respondents stated that the plants of concern were not on her/his property. Only a few respondents expressed support for the designation of critical habitat. We held three open houses on the island of Kauai, at the Waimea Community Center, the Kauai War Memorial Convention Hall in Lihue, and the Kilauea Neighborhood Center, on October 19–21, 1999, respectively, to meet one-on-one with local landowners and other interested members of the public. A total of forty-eight people attended the three open houses.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat

designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act 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 adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. In 50 CFR 402.02, ''jeopardize the continued existence'' (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. ''Destruction or adverse modification'' (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are nearly identical.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through section 7 consultations and section 10 permits.

A. Prudency Redetermination

As previously stated, designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for each species, we analyzed the potential threats and benefits for each species in accordance with the court's order. Two species, *Phyllostegia waimeae* and *Melicope quadrangularis,* both endemic to the island of Kauai, are no longer extant in the wild. *Phyllostegia waimeae* was last collected in 1969 and no individuals were seen in two subsequent visits (1991 and 1992) to the last known location (Wagner *et al.* 1999; K. Wood, pers. comm. 2000). *Melicope quadrangularis* was last observed in the Wahiawa drainage area in 1991. This species has not been seen in surveys of this area subsequent to Hurricane Iniki in 1992 (S. Perlman and K. Wood, pers. comm. 2000). In addition, neither species is known to be in storage or under propagation. Therefore, we believe both species may be extinct. Under these circumstances, we propose that designation of critical habitat for *Phyllostegia waimeae* and *Melicope quadrangularis* is not prudent because such designation would be of no benefit to these species. If either species is rediscovered we may revise this proposal to incorporate or address new information as new data becomes available (*See* 16 U.S.C. § 1532 (5)(B); 50 CFR 424.13(f)).

Due to low numbers of individuals and/or populations and their inherent immobility, the other 79 plants may be vulnerable to unrestricted collection, vandalism, or disturbance. We examined the evidence currently available for each of these taxa and found specific evidence of vandalism, disturbance, and/or the threat of unrestricted collection for three species of *Pritchardia,* the native palm, on Kauai and Niihau. At the time of listing we determined that designation of critical habitat was not prudent for *Pritchardia napaliensis, P. aylmer-robinsonii,* and *P. viscosa* because it would increase the degree of threat from vandalism or collecting, and would provide no benefits (60 FR 53070). At that time, we had information that at least one of the remaining adult plants has been damaged by spiked boots used either by a botanist or seed collector to scale these trees (61 FR 53070). Since publication of the listing rule, we learned of additional instances of vandalism, collection, and commercial trade involving these three species of *Pritchardia.* In 1993, the State's DOFAW planted 39 young *Pritchardia napaliensis* plants within a fenced exclosure near the Wailua River. A short time after this, the fence was vandalized and all 39 plants were removed (A. Kyono, pers. comm. 2000; Craig Koga, DOFAW, **in litt.** 1999). In mid-1996, a young plant and seeds of *Pritchardia viscosa* were removed from the only known location of this species (A. Kyono, pers. comm. 2000; C. Koga, *in litt.* 1999). Recently we received information on the commercial trade in palms conducted through the internet (Grant Canterbury, USFWS, *in litt.* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia.* Seven of these species are federally protected, including *Pritchardia aylmer-robinsonii* and *P. napaliensis.*

In light of this information, we believe that designation of critical habitat would likely increase the threat to these three species of *Pritchardia* on Kauai and Niihau from vandalism or collection. These plants are easy to identify, and they are attractive to collectors of rare palms either for their personal use or to trade or sell for personal gain (Johnson 1996). The final listing rules for these three species contained only general information on their distribution, but the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these species more vulnerable to incidents of vandalism or collection, and, therefore, contribute to the decline of these species and make recovery more difficult (61 FR 53070).

In addition, we believe that designation would not provide significant benefits that would outweigh these increased risks. First, *Pritchardia napaliensis* and *P. viscosa* do not occur on Federal land, and the State lands where they are found are zoned for conservation. Some of the plants are on lands set aside in perpetuity to conserve their natural flora and fauna, or as geological sites (State of Hawaii natural area reserves) (HRS § 195–1). In addition, these species are found in areas that are remote and accessible only by four-wheel drive (*Pritchardia viscosa* only), foot, boat, or helicopter. It

is, therefore, unlikely that the lands on which these species are found will be developed. Since there do not appear to be any actions in the future that would involve a Federal agency, designation of critical habitat would not provide any additional protection to the species than they do not already have through listing alone. If, however, in the future any Federal involvement did occur, such as through the permitting process or funding by the U.S. Department of Agriculture, the U.S. Department of Interior, the Corps through section 404 of the Clean Water Act, the U.S. Federal Department of Housing and Urban Development or the Federal Highway Administration, the actions would be subject to consultation under section 7 of the Act.

Pritchardia aylmer-robinsonii is only found on Niihau, which is presently zoned for agriculture. There are no hotels, resorts, or other commercial development on the island. Public access to the island is not generally authorized by the landowner. Most of the people living on this island (fewer than 300) are employed in ranching activities (Department of Geography 1998). While future activities on the island are unknown, it is unlikely that the land on which this species is found will be developed. Future projects that would require Federal permitting or funding such as those mentioned above are particularly unlikely on this privately owned island. Although access to the island has been and continues to be restricted, *P. aylmer-robinsonii* is endemic only to Niihau, so any commercial availability indicates that collection, either with or without the land owner's permission, has occurred in the past and may still be occurring.

We acknowledge that critical habitat designation, in some situations, may provide some value to the species, for example, by identifying areas important for conservation and calling attention to those areas in need of special protection. However, for these three species, we believe that the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection. Given all of the above considerations, we propose that designation of critical habitat for *Pritchardia aylmer-robinsonii, P. napaliensis,* and *P. viscosa* is not prudent.

We examined the evidence available for the other 76 taxa and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similar species. Consequently, while we remain concerned that these activities could potentially threaten these 76 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied; (2) focusing conservation activities; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of these 76 species, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. At least eleven of these species are reported on or near Federal lands (see Table 3), where actions are subject to section 7 consultation. Although a majority of the species considered in this rule are located exclusively on non-Federal lands with limited Federal activities, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There would also be some educational or informational benefits to the designation of critical habitat. Benefits of designation would include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

Therefore, we propose that designation of critical habitat is prudent for these 76 plant species: *Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia pallida, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phyllostegia knudsenii, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea nuttallii, Schiedea spergulina* var. *leiopoda, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Sesbania tomentosa, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Viola helenae, Viola kauaiensis* var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum,* and *Zanthoxylum hawaiiense.*

B. Primary Constituent Elements

In accordance with section 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic

geographical and ecological distributions of a species.

Very little is known about the specific physical and biological requirements of most of these 76 species. Therefore, we have defined primary constituent elements on the basis of general habitat features of the areas in which the species currently occur, such as the plant community associated with the listed species and the species' physical location (*e.g.,* steep rocky cliffs, talus slopes, stream banks, and elevation). Areas outside the currently known occupied areas (*e.g.,* potentially suitable unoccupied habitat) may be important to the recovery of most of these 76 species. However, in most cases, we have not included such areas in the proposed designations for these species because of our limited knowledge of the historical range (*i.e.,* the geographical area they once occupied but from which they are now absent) and our lack of information on the physical or biological features essential for the conservation of a species. The Service considers reintroduction (the planting of propagated individuals or seedlings into an area) to be an acceptable method to try to achieve plant species recovery. Native plant reintroductions are, however, difficult and successful efforts are not common. We do not know enough about these 76 species to identify areas where reintroductions are likely to be successful. We will continue to support experimental efforts to reintroduce species. Such reintroduction work may lead to the need to designate unoccupied habitat in the future to provide additional protection to the reintroduced plants. The areas we are currently proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 76 plant species.

The plant communities given in the following descriptions of primary constituent elements are based upon biological and physical features such as predominant plant species, associated plant species, elevation, precipitation, and soil types and/or parent material. Descriptions of these Hawaiian plant communities are found in Gagne and Cuddihy (1999).

Species Endemic to Kauai

The currently known primary constituent elements of critical habitat for *Alsinidendron lychnoides* are:

(1) montane wet forests

(a) dominated by *Metrosideros polymorpha* and *Cheirodendron* sp., or by *M. polymorpha* and *Dicranopteris linearis,* and

(b) containing one or more of the following native plant species: *Carex* sp., *Cyrtandra* sp., *Machaerina* sp., *Vaccinium* sp., *Peperomia* sp., *Hedyotis terminalis, Astelia* sp., or *Broussaisia arguta;* and

(2) elevations between 1,100 and 1,320 m (3,610 and 4,330 ft).

The currently known primary constituent elements of critical habitat for *Alsinidendron viscosum* are:

(1) steep slopes

(a) in *Acacia koa-Metrosideros polymorpha* lowland, montane mesic, or wet forest, and

(b) containing one or more of the following native plant species: *Alyxia olivaeformis, Bidens cosmoides, Bobea* sp., *Carex* sp., *Coprosma* sp., *Dodonaea viscosa, Gahnia* sp., *Ilex anomala, Melicope* sp., *Pleomele* sp., *Psychotria* sp., or *Schiedea stellarioides;* and

(2) elevations between 820 and 1,200 m (2,700 and 3,940 ft).

The currently known primary constituent elements of critical habitat for *Chamaesyce halemanui* are:

(1) steep slopes of gulches

(a) in mesic *Acacia koa* forests, and

(b) containing one or more of the following native plant species: *Metrosideros polymorpha, Alphitonia ponderosa, Antidesma platyphyllum, Bobea brevipes, Cheirodendron trigynum, Coprosma* sp., *Diospyros sandwicensis, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Kokia kauaiensis, Melicope haupuensis, Pisonia* sp., *Pittosporum* sp., *Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Pouteria sandwicensis, Santalum freycinetianum,* or *Styphelia tameiameiae;* and

(2) elevations between 660 to 1,100 m (2,165 to 3,610 ft).

The currently known primary constituent elements of critical habitat for *Cyanea asarifolia* are:

(1) pockets of soil on sheer rock cliffs

(a) in lowland wet forests, and

(b) containing one or more of the following native plant species: *Hedyotis elatior, Machaerina angustifolia, Metrosideros polymorpha, Touchardia latifolia,* or *Urera glabra;* and

(2) elevations between 330 to 730 m (1,080 to 2,400 ft).

The currently known primary constituent elements of critical habitat for *Cyanea recta* are:

(1) gulches or slopes

(a) in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland, and

(b) containing one or more of the following native plant species: *Antidesma* sp., *Cheirodendron platyphyllum, Cibotium* sp., *Dicranopteris linearis, Diplazium* sp., or *Psychotria* sp.; and

(2) elevations between 400 to 1,200 m (1,310 to 3,940 ft).

The currently known primary constituent elements of critical habitat for *Cyanea remyi* are:

(1) lowland wet forest or shrubland and containing one or more of the following native plant species: *Antidesma* sp., *Cheirodendron* sp., *Diospyros* sp., *Broussaisia arguta, Metrosideros polymorpha, Freycinetia arborea, Hedyotis terminalis, Machaerina angustifolia, Perrottetia sandwicensis, Psychotria hexandra,* or *Syzygium sandwicensis;* and

(2) elevations between 360 and 930 m (1,180 and 3,060 ft).

The currently known primary constituent elements of critical habitat for *Cyanea undulata* are:

(1) pristine, undisturbed sites along shady stream banks or steep to vertical slopes; and

(2) elevations between 630 to 800 m (2,070 to 2,625 ft).

The currently known primary constituent elements of critical habitat for *Cyrtandra cyaneoides* are:

(1) steep slopes or cliffs near streams or waterfalls

(a) in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *M. polymorpha* and *Dicranopteris linearis,* and

(b) containing one or more of the following native species: *Perrottetia sandwicensis, Pipturus* sp., *Bidens* sp., *Psychotria* sp., *Pritchardia* sp., *Freycinetia arborea, Cyanea* sp., *Cyrtandra limahuliensis, Diplazium sandwichianum, Gunnera* sp., *Coprosma* sp., *Stenogyne* sp., *Machaerina* sp., *Boehmeria grandis, Pipturus* sp., *Cheirodendron* sp., *Hedyotis terminalis,* or *Hedyotis tryblium;* and

(2) elevations between 550 and 1,220 meter (1,800 and 4,000 ft).

The currently known primary constituent elements of critical habitat for *Cyrtandra limahuliensis* are:

(1) stream banks

(a) in lowland wet forests, and

(b) containing one or more of the following native plant species: *Antidesma* sp., *Cyrtandra kealiea, Pisonia* sp., *Pipturus* sp., *Cibotium glaucum, Eugenia* sp., *Hedyotis terminalis, Dubautia* sp., *Boehmeria grandis, Touchardia latifolia, Bidens* sp., *Hibiscus waimeae, Charpentiera* sp., *Urera glabra, Pritchardia* sp., *Cyanea* sp., *Perrottetia sandwicensis, Metrosideros polymorpha, Dicranopteris linearis, Gunnera kauaiensis,* or *Psychotria* sp.; and

(2) elevations between 245 and 915 m (800 and 3,000 ft).

The currently known primary constituent elements of critical habitat for *Delissea rhytidosperma* are:

(1) well-drained soils with medium or fine-textured subsoil

(a) in diverse lowland mesic forests or *Acacia koa* dominated lowland dry forests, and

(b) containing one or more of the following native species: *Euphorbia haeleeleana, Psychotria hobdyi, Pisonia* sp., *Pteralyxia* sp., *Dodonaea viscosa, Cyanea* sp., *Hedyotis* sp., *Dianella sandwicensis, Diospyros sandwicensis, Styphelia tameiameiae,* or *Nestegis sandwicensis;* and

(2) elevations between 120 and 915 m (400 and 3,000 ft).

The currently known primary constituent elements of critical habitat for *Delissea rivularis* are:

(1) steep slopes near streams

(a) in *Metrosideros polymorpha—Cheirodendron trigynum* montane wet or mesic forest, and

(b) containing one or more of the following native plant species: *Broussaisia arguta, Carex* sp., *Coprosma* sp., *Melicope clusiifolia, M. anisata, Psychotria hexandra, Dubautia knudsenii, Diplazium sandwichianum, Hedyotis foggiana, Ilex anomala,* or *Sadleria* sp.; and

(2) elevations between 1,100 to 1,220 m (3,610 to 4,000 ft).

The currently known primary constituent elements of critical habitat for *Diellia pallida* are:

(1) bare soil on steep, rocky, dry slopes

(a) in lowland mesic forests, and

(b) containing one or more of the following native plant species: *Acacia koa, Alectryon macrococcus, Antidesma platyphyllum, Metrosideros polymorpha, Myrsine lanaiensis, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Psychotria mariniana, Carex meyenii, Diospyros hillebrandii, Hedyotis knudsenii, Canthium odoratum, Pteralyxia kauaiensis, Nestegis sandwicensis, Alyxia olivaeformis, Wilkesia gymnoxiphium, Alphitonia ponderosa, Styphelia tameiameiae,* or *Rauvolfia sandwicensis;* and

(2) elevations between 520 to 915 m (1,700 to 3,000 ft).

The currently known primary constituent elements of critical habitat for *Dubautia latifolia* are:

(1) gentle or steep slopes on well drained soil

(a) in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha,* and

(b) containing one or more of the following native plant species: *Pouteria sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Diplazium sandwicensis, Elaeocarpus bifidus, Claoxylon sandwicense, Bobea* sp., *Pleomele* sp., *Antidesma* sp., *Cyrtandra* sp., *Xylosma* sp., *Alphitonia ponderosa, Coprosma waimeae, Dicranopteris linearis, Hedyotis terminalis, Ilex anomala, Melicope anisata, Psychotria mariniana,* or *Scaevola* sp.; and

(2) elevations between 800 to 1,220 m (2,625 to 4,000 ft).

The currently known primary constituent elements of critical habitat for *Dubautia pauciflorula* are:

(1) lowland wet forest within stream drainages; and

(2) elevations between 670–700m (2,200–2,300 ft).

The currently known primary constituent elements of critical habitat for *Exocarpos luteolus* are:

(1) wet areas bordering swamps and open, dry ridges

(a) in lowland or montane *Metrosideros polymorpha* dominated wet forest communities, and

(b) containing one or more of the following native plant species: *Acacia koa, Cheirodendron trigynum, Pouteria sandwicensis, Dodonaea viscosa, Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus, Melicope haupuensis, Dubautia laevigata, Dianella sandwicensis, Poa sandwicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Santalum freycinetianum, Styphelia tameiameiae,* or *Dicranopteris linearis;* and

(2) elevations between 475 and 1,290 m (1,560 and 4,220 ft).

The currently known primary constituent elements of critical habitat for *Hedyotis st.-johnii* are:

(1) crevices of north-facing, near-vertical coastal cliff faces within the spray zone

(a) in sparse dry coastal shrubland, and

(b) containing one or more of the following native plant species: *Myoporum sandwicense, Eragrostis variabilis, Lycium sandwicense, Heteropogon contortus, Artemisia australis or Chamaesyce celastroides;* and

(2) elevations below 75 m (250 ft).

The currently known primary constituent elements of critical habitat for *Hesperomannia lydgatei* are:

(1) stream banks with rich brown soil and silty clay

(a) in *Metrosideros polymorpha* or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest, and

(b) containing one or more of the following associated native plant species: *Adenophorus* sp., *Antidesma* sp., *Broussaisia arguta, Cheirodendron* sp., *Elaphoglossum* sp., *Freycinetia arborea, Hedyotis terminalis, Labordia lydgatei, Machaerina angustifolia, Peperomia* sp., *Pritchardia* sp., *Psychotria hexandra,* and *Syzygium sandwicensis;* and

(2) elevations between 410–915 m (1,345–3,000 ft).

The currently known primary constituent elements of critical habitat for *Hibiscadelphus woodii* are:

(1) basalt talus or cliff walls

(a) in *Metrosideros polymorpha* montane mesic forest, and

(b) containing one or more of the following associated native plant species: *Bidens sandwicensis, Artemisia australis, Melicope pallida, Dubautia* sp., *Lepidium serra, Lipochaeta* sp., *Lysimachia glutinosa, Carex meyenii, Chamaesyce celastroides* var. *hanapepensis, Hedyotis* sp., *Nototrichium* sp., *Panicum lineale, Myrsine* sp., *Stenogyne campanulata, Lobelia niihauensis,* or *Poa mannii;* and

(2) elevations around 915 m (3,000 ft).

The currently known primary constituent elements of critical habitat for *Hibiscus clayi* are:

(1) slopes

(a) in *Acacia koa* or *Diospyros* sp.-*Pisonia* sp.-*Metrosideros polymorpha* lowland dry or mesic forest, and

(b) containing one or more of the following associated native plant species: *Hedyotis acuminata, Pipturus* sp., *Psychotria* sp., *Cyanea hardyi, Artemisia australis,* or *Bidens* sp.; and

(2) elevations between 230 to 350 m (750 to 1,150 ft).

The currently known primary constituent elements of critical habitat for *Hibiscus waimeae* ssp. *hannerae* are:

(1) *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* sp., *Charpentiera elliptica* lowland wet or mesic forest and containing one or more of the following associated native plant species: *Antidesma* sp., *Psychotria* sp., *Pipturus* sp., *Bidens* sp., *Bobea* sp., *Sadleria* sp., *Cyrtandra* sp., *Cyanea* sp., *Cibotium* sp., *Perrottetia sandwicensis,* or *Syzygium sandwicensis;* and

(2) elevations between 190 and 560 m (620 and 1,850 ft).

The currently known primary constituent elements of critical habitat for *Kokia kauaiensis* are:

(1) diverse mesic forest containing one or more of the following associated native plant species: *Acacia koa, Metrosideros polymorpha, Bobea* sp., *Diospyros sandwicensis, Hedyotis* sp., *Pleomele* sp., *Pisonia* sp., *Xylosma* sp., *Isodendrion* sp., *Syzygium*

sandwicensis, Antidesma sp., *Alyxia olivaeformis, Pouteria sandwicensis, Streblus pendulinus, Canthium odoratum, Nototrichium* sp., *Pteralyxia kauaiensis, Dicranopteris linearis, Hibiscus* sp., *Flueggea neowawraea, Rauvolfia sandwicensis, Melicope* sp., *Diellia laciniata, Tetraplasandra* sp., *Chamaesyce celastroides, Lipochaeta fauriei, Dodonaea viscosa, Santalum* sp., *Claoxylon* sp., or *Nestegis sandwicensis;* and

(2) elevations between 350–660 m (1,150–2,165 ft).

The currently known primary constituent elements of critical habitat for *Labordia lydgatei* are:

(1) *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest containing one or more of the following associated native plant species: *Psychotria* sp., *Hedyotis terminalis* sp., *Cyanea* sp., *Cyrtandra* sp., *Labordia hirtella, Antidesma platyphyllum var. hillebrandii, Syzygium sandwicensis, Ilex anomala,* or *Dubautia knudsenii;* and

(2) elevations between 635 and 855 m (2,080 to 2,800 ft).

The currently known primary constituent elements of critical habitat for *Labordia tinifolia* var. *wahiawaensis* are:

(1) streambanks

(a) in lowland wet forests dominated by *Metrosideros polymorpha,* and

(b) containing one or more of the following associated species: *Cheirodendron* sp., *Dicranopteris linearis, Cyrtandra* sp., *Antidesma* sp., *Psychotria* sp., *Hedyotis terminalis,* or *Athyrium microphyllum;* and

(2) elevations between 300 to 920 m (985 to 3,020 ft).

The currently known primary constituent elements of critical habitat for *Lipochaeta fauriei* are:

(1) moderate shade to full sun on the sides of steep gulches

(a) in diverse lowland mesic forests, and

(b) containing one or more of the following native species: *Diospyros* sp., *Myrsine lanaiensis, Euphorbia haeleeleana, Acacia koa, Pleomele aurea, Sapindus oahuensis, Nestegis sandwicensis, Dodonaea viscosa, Psychotria mariniana, Psychotria greenwelliae, Kokia kauaiensis,* or *Hibiscus waimeae;* and

(2) elevations between 480 to 900 m (1,575 to 2,950 ft).

The currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *exigua* are:

(1) cliffs, ridges, or slopes

(a) in grassy, shrubby or dry mixed communities, and

(b) containing one or more of the following associated native plant species: *Artemisia australis, Bidens sandvicensis, Plectranthus parviflorus, Chamaesyce celastroides, Diospyros* sp., *Canthium odoratum, Neraudia* sp., *Pipturus* sp., *Hibiscus kokio, Sida fallax, Eragrostis* sp., *or Lepidium bidentatum;* and

(2) elevations between 305–430 m (1,000–1,400 ft).

The currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *micrantha* are:

(1) basalt cliffs, stream banks, or level ground

(a) in mesic or diverse *Metrosideros polymorpha-Diospyros* sp. forest, and

(b) containing one or more of the following associated native plant species: *Lobelia niihauensis, Chamaesyce celastroides* var. *hanapepensis, Neraudia kauaiensis, Rumex* sp., *Nontrichium* sp., *Artemisia* sp., *Dodonaea viscosa, Antidesma* sp., *Hibiscus* sp., *Xylosma* sp., *Pleomele* sp., *Melicope* sp., *Bobea* sp., and *Acacia koa;* and

(2) elevations between 610–720 m (2,000–2,360 ft).

The currently known primary constituent elements of critical habitat for *Lipochaeta waimeaensis* are:

(1) extremely steep, shrub-covered gulches

(a) in diverse lowland forest, and

(b) containing the native species *Dodonaea viscosa* or *Lipochaeta connata;* and

(2) elevations between 350 to 400 m (1,150 to 1,310 ft).

The currently known primary constituent elements of critical habitat for *Melicope haupuensis* are:

(1) moist talus slopes

(a) in *Metrosideros polymorpha* dominated lowland mesic forests, or *Metrosideros polymorpha-Acacia koa* montane mesic forest and

(b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Diospyros* sp., *Psychotria mariniana, P. greenwelliae, Melicope ovata, M. anisata, M. barbigera, Dianella sandwicensis, Pritchardia minor, Tetraplasandra waimeae, Claoxylon sandwicensis, Cheirodendron trigynum, Pleomele aurea, Cryptocarya mannii, Pouteria sandwicensis, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus,* or *Antidesma* sp; and

(2) elevations between 375 to 1,075 m (1,230 to 3,530 ft).

The currently known primary constituent elements of critical habitat for *Munroidendron racemosum* are:

(1) steep exposed cliffs or ridge slopes

(a) in coastal or lowland mesic forest, and

(b) containing one or more of the following associated plant taxa including: *Pisonia umbellifera, Canavalia galeata, Sida fallax, Brighamia insignis, Canthium odoratum, Psychotria* sp., *Nestegis sandwicensis, Tetraplasandra* sp., *Bobea timonioides, Rauvolfia sandwicensis, Pleomele* sp., *Pouteria sandwicensis,* or *Diospyros* sp.; and

(2) elevations between 120 to 400 m (395 to 1,310 ft).

The currently known primary constituent elements of critical habitat for *Myrsine linearifolia* are:

(1) diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest

(a) with *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and

(b) containing one or more of the following associated native plant species: *Dubautia* sp., *Cryptocarya mannii, Sadleria pallida, Myrsine* sp., *Syzygium sandwicensis, Machaerina angustifolia, Freycinetia arborea, Hedyotis terminalis, Cheirodendron* sp., *Bobea brevipes, Nothocestrum* sp., *Melicope* sp., *Eurya sandwicensis, Psychotria* sp., *Lysimachia* sp., or native ferns; and

(2) elevations between 585 to 1,280 m (1,920 to 4,200 ft).

The currently known primary constituent elements of critical habitat for *Nothocestrum peltatum* are:

(1) fertile soil on steep slopes

(a) in montane or lowland mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha,* and

(b) containing one or more of the following associated native plant species: *Antidesma* sp., *Dicranopteris linearis, Bobea brevipes, Elaeocarpus bifidus, Alphitonia ponderosa, Melicope anisata, M. barbigera, M. haupuensis, Pouteria sandwicensis, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra Kauaiensis, Claoxylon sandwicensis, Cheirodendron trigynum, Psychotria mariniana, P. greenwelliae, Hedyotis terminalis, Ilex anomala, Xylosma* sp., *Cryptocarya mannii, Coprosma* sp., *Pleomele aurea, Diplazium sandwicensis, Broussaisia arguta,* or *Perrottetia sandwicensis;* and

(2) elevations between 915 to 1,220 m (3,000 to 4,000 ft).

The currently known primary constituent elements of critical habitat for *Panicum niihauense* are:

(1) sand dunes

(a) in coastal shrubland, and

(b) containing one or more of the following associated native plant

species: *Dodonaea viscosa, Cassytha filiformis, Scaevola sericea, Sida fallax, Vitex rotundifolia,* or *Sporobolus* sp.; and

(2) elevations of 100 m or less (330 ft).

The currently known primary constituent elements of critical habitat for *Phyllostegia knudsenii* are:

(1) *Metrosideros polymorpha* lowland mesic or wet forest containing one or more of the following associated native plant species: *Perrottetia sandwicensis, Cyrtandra kauaiensis, Cyrtandra paludosa, Elaeocarpus bifidus, Claoxylon sandwicensis, Cryptocarya mannii, Ilex anomala, Myrsine linearifolia, Bobea timonioides, Selaginella arbuscula, Diospyros* sp., *Zanthoxylum dipetalum, Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis,* or *Pritchardia minor;* and

(2) elevations between 865–975 m (2,840–3,200 ft).

The currently known primary constituent elements of critical habitat for *Phyllostegia wawrana* are:

(1) *Metrosideros polymorpha* dominated lowland or montane wet or mesic forest

(a) with *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and

(b) containing one or more of the following associated native plant species: *Delissea rivularis, Diplazium sandwichianum, Vaccinium* sp., *Broussaisia arguta, Myrsine lanaiensis, Psychotria* sp., *Dubautia knudsenii, Scaevola procera, Gunnera* sp., *Pleomele aurea, Claoxylon sandwicense, Elaphoglossum* sp., *Hedyotis* sp., *Sadleria* sp., and *Syzygium sandwicensis;* and

(2) elevations between 780–1,210 m (2,560–3,920 ft).

The currently known primary constituent elements of critical habitat for *Poa mannii* are:

(1) cliffs, rock faces, or stream banks

(a) in lowland or montane wet, dry, or mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* montane mesic forest, and

(b) containing one or more of the following associated native plant species: *Alectryon macrococcus, Antidesma platyphyllum, Bidens cosmoides, Chamaesyce celastroides* var. *hanapepensis, Artemisia australis, Bidens sandwicensis, Lobelia sandwicensis, Wilkesia gymnoxiphium, Eragrostis variabilis, Panicum lineale, Mariscus phloides, Luzula hawaiiensis, Carex meyenii, C. wahuensis, Cyrtandra wawrae, Dodonaea viscosa, Exocarpos luteolus, Labordia helleri, Nototrichium* sp., *Schiedea amplexicaulis, Hedyotis terminalis, Melicope anisata, M. barbigera, M. pallida, Pouteria sandwicensis, Schiedea membranacea, Diospyros sandwicensis, Psychotria mariniana, P. greenwelliae,* or *Kokia kauaiensis;* and

(2) elevations between 460 and 1,150 m (1,510 and 3,770 ft).

The currently known primary constituent elements of critical habitat for *Poa sandvicensis* are:

(1) wet, shaded, gentle or steep slopes, ridges, or rock ledges

(a) in semi-open or closed, mesic or wet, diverse montane forest dominated by *Metrosideros polymorpha,* and

(b) containing one or more of the following associated native species: *Dodonaea viscosa, Dubautia* sp., *Coprosma* sp., *Melicope* sp., *Dianella sandwicensis, Alyxia olivaeformis, Bidens* sp., *Dicranopteris linearis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Acacia koa, Psychotria* sp., *Hedyotis* sp., *Scaevola* sp., *Cheirodendron* sp., or *Syzygium sandwicensis;* and

(2) elevations between 1,035 to 1,250 m (3,400 to 4,100 ft).

The currently known primary constituent elements of critical habitat for *Poa siphonoglossa* are:

(1) shady banks near ridge crests

(a) in mesic *Metrosideros polymorpha* forest, and

(b) containing one or more of the following associated native plant species: *Acacia koa, Psychotria* sp., *Scaevola* sp., *Alphitonia ponderosa, Zanthoxylum dipetalum, Tetraplasandra Kauaiensis, Dodonaea viscosa, Hedyotis* sp., *Melicope* sp., *Vaccinium* sp., *Styphelia tameiameiae, Carex meyenii, Carex wahuensis,* or *Wilkesia gymnoxiphium;* and

(2) elevations between 1,000 to 1,200 m (3,300 and 3,940 ft).

The currently known primary constituent elements of critical habitat for *Pteralyxia kauaiensis* are:

(1) diverse mesic or wet forests containing one or more of the following associated plant taxa: *Pisonia sandwicensis, Euphorbia haeleeleana, Charpentiera elliptica, Pipturus* sp., *Neraudia kauaiensis, Hedyotis terminalis, Pritchardia* sp., *Gardenia remyi, Syzygium* sp., *Pleomele* sp., *Cyanea* sp., *Hibiscus* sp., *Kokia kauaiensis, Alectryon macrococcus, Canthium odoratum, Nestegis sandwicensis, Bobea timonioides, Rauvolfia sandwicensis, Nesoluma polynesicum, Myrsine lanaiensis, Caesalpinia Kauaiensis, Tetraplasandra* sp., *Acacia koa, Styphelia tameiameiae, Dodonaea viscosa, Gahnia* sp., *Freycinetia arborea, Psychotria mariniana, Diplazium sandwichianum, Zanthoxylum dipetalum, Carex* sp., *Delissea* sp., *Xylosma hawaiiense, Alphitonia ponderosa, Santalum freycinetianum, Antidesma* sp., *Diospyros* sp., *Metrosideros polymorpha, Dianella sandwicensis, Poa sandwicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense,* or *Pouteria sandwicensis;* and

(2) elevations between 250 to 610 m (810 to 2,000 ft).

The currently known primary constituent elements of critical habitat for *Remya kauaiensis* are:

(1) steep, north or northeast facing slopes

(a) in *Acacia koa-Metrosideros polymorpha* lowland mesic forest, and

(b) containing one or more of the following associated native plant species: *Chamaesyce* sp., *Nestegis sandwicensis, Diospyros* sp., *Hedyotis terminalis, Melicope* ssp., *Pouteria sandwicensis, Schiedea membranacea, Psychotria mariniana, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis* or *Claoxylon sandwicensis;* and

(2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

The currently known primary constituent elements of critical habitat for *Remya montgomeryi* are:

(1) steep, north or northeast-facing slopes, cliffs, or stream banks near waterfalls

(a) in *Metrosideros polymorpha* mixed mesic forest, and

(b) containing one or more of the following associated native plant species: *Lysimachia glutinosa, Lepidium serra, Boehmeria grandis, Poa mannii, Stenogyne campanulata, Myrsine linearifolia, Bobea timonioides, Ilex anomala, Zanthoxylum dipetalum, Claoxylon sandwicensis, Tetraplasandra* sp., *Artemisia* sp., *Nototrichium* sp., *Cyrtandra* sp., *Dubautia plantaginea, Sadleria* sp., *Cheirodendron* sp., *Scaevola* sp., or *Pleomele* sp.; and

(2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

The currently known primary constituent elements of critical habitat for *Schiedea apokremnos* are:

(1) crevices of near-vertical coastal cliff faces

(a) in sparse dry coastal shrub vegetation, and

(b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Chamaesyce* sp., *Bidens* sp., *Artemisia australis, Lobelia niihauensis, Wilkesia hobdyi, Lipochaeta connata, Myoporum sandwicense, Canthium odoratum,* or *Peperomia* sp.; and

(2) elevations between 60 to 330 m (200 to 1,080 ft).

The currently known primary constituent elements of critical habitat for *Schiedea helleri* are:

(1) ridges and steep cliffs

(a) in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Metrosideros polymorpha-Cheirodendron* sp. montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane mesic forest, and

(b) containing one or more of the following associated native plant species: *Dubautia raillardioides, Scaevola procera, Hedyotis terminalis, Syzygium sandwicensis, Melicope clusifolia, Cibotium* sp., *Broussaisia arguta, Cheirodendron* sp., *Cyanea hirtella, Dianella sandwicensis, Viola wailenalenae,* or *Poa sandwicensis;* and

(2) elevations between 1,065–1,100 m (3,490–3,610 ft).

The currently known primary constituent elements of critical habitat for *Schiedea kauaiensis* are:

(1) steep slopes

(a) in diverse mesic or wet forest, and

(b) containing one or more of the following associated plant taxa: *Psychotria mariniana, Psychotria hexandra, Canthium odoratum, Pisonia* sp., *Microlepia speluncae, Exocarpos luteolus, Diospyros* sp., *Peucedanum sandwicense,* or *Euphorbia haeleeleana;* and

(2) elevations between 680–790 m (2,230–2,590 ft).

The currently known primary constituent elements of critical habitat for *Schiedea membranacea* are:

(1) cliffs or cliff bases

(a) in mesic or wet habitats,

(b) in lowland, or montane shrubland, or forest communities dominated by *Acacia koa, Pipturus* sp. or *Metrosideros polymorpha,* and

(c) containing one or more of the following associated native plant species: *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Hibiscus waimeae, Psychotria mariniana, Canthium odoratum, Pisonia* sp., *Perrottetia sandwicensis, Scaevola procera, Sadleria cyatheoides, Diplazium sandwicensis, Thelypteris sandwicensis, Boehmeria grandis, Dodonaea viscosa, Myrsine* sp., *Bobea brevipes, Alyxia olivaeformis, Psychotria greenwelliae, Pleomele* sp., *Alphitonia ponderosa, Joinvillea ascendens* ssp. *ascendens, Athyrium sandwichianum, Machaerina angustifolia, Cyrtandra paludosa, Touchardia latifolia, Thelypteris cyatheoides, Lepidium serra, Eragrostis variabilis, Remya kauaiensis, Lysimachia kalalauensis, Labordia helleri, Mariscus pennatiformis, Asplenium praemorsum,* or *Poa sandvicensis;* and

(2) elevations between 520 and 1,160 m (1,700 and 3,800 ft).

The currently known primary constituent elements of critical habitat for *Schiedea spergulina* var. *leiopoda* are:

(1) bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases

(a) in diverse lowland mesic forests, and

(b) containing one or more of the following native plants: *Bidens sandvicensis, Doryopteris* sp., *Peperomia leptostachya,* or *Plectranthus parviflorus;* and

(2) elevations between 180 and 800 m (590 and 2,625 ft).

The currently known primary constituent elements for *Schiedea spergulina* var. *spergulina* are:

(1) bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases

(a) in diverse lowland mesic forests, and

(b) containing one or more of the following associated plant taxa: *Heliotropium* sp., or *Nototrichium sandwicense;* and

(2) elevations between 180 and 800 m (590 and 2,625 ft).

The currently known primary constituent elements of critical habitat for *Schiedea stellarioides* are:

(1) steep slopes

(a) in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland, and

(b) containing one or more of the following native plant species: *Nototrichium* sp., *Artemisia* sp., *Dodonaea viscosa, Melicope* sp., *Dianella sandwicensis, Bidens cosmoides, Mariscus* sp., or *Styphelia tameiameiae;* and

(2) elevations between 610 and 1,120 m (2,000 and 3,680 ft).

The currently known primary constituent elements of critical habitat for *Stenogyne campanulata* are:

(1) rock faces of nearly vertical, north-facing cliffs

(a) in diverse lowland or montane mesic forest, and

(b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Lepidium serra, Lysimachia glutinosa, Perrottetia sandwicensis,* or *Remya montgomeryi;* and

(2) an elevation of 1,085 m (3,560 ft).

The currently known primary constituent elements of critical habitat for *Viola helenae* are:

(1) stream banks or adjacent valley bottoms with light to moderate shade in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest; and

(2) elevations between 610–855 m (2,000–2,800 ft).

The currently known primary constituent elements of critical habitat for *Viola kauaiensis* var. *wahiawaensis* are:

(1) open montane bog or wet shrubland containing one or more of the following native plant species: *Dicranopteris linearis, Diplopterygium pinnatum, Syzygium sandwicensis,* or *Metrosideros polymorpha;* and

(2) elevations between 640 and 865 m (2,100 and 2,840 ft).

The currently known primary constituent elements of critical habitat for *Wilkesia hobdyi* are:

(1) coastal dry cliffs or very dry ridges containing one or more of the following associated native plant species: *Artemisia* sp., *Wilkesia gymnoxiphium, Lipochaeta connata, Lobelia niihauensis, Peucedanum sandwicensis, Hibiscus kokio* ssp. *saint johnianus, Canthium odoratum, Peperomia* sp., *Myoporum sandwicense, Sida fallax, Waltheria indica, Dodonaea viscosa,* or *Eragrostis variabilis;* and

(2) elevations between 275 to 400 m (900 to 1,310 ft).

The currently known primary constituent elements of critical habitat for *Xylosma crenatum* are:

(1) diverse *Acacia koa -Metrosideros polymorpha* montane mesic forest, or *M. polymorpha-Dicranopteris linearis* montane wet forest, or *A. koa -M. polymorpha* montane wet forest, and containing one or more of the following associated native plant species: *Tetraplasandra kauaiensis, Hedyotis terminalis, Pleomele aurea, Ilex anomala, Claoxylon sandwicense, Myrsine alyxifolia, Nestegis sandwicensis, Streblus pendulinus, Psychotria* sp., *Diplazium sandwichianum, Pouteria sandwicensis, Scaevola procera, Coprosma* sp., *Athyrium sandwichianum, Touchardia latifolia, Dubautia knudsenii, Cheirodendron* sp., *Lobelia yuccoides, Cyanea hirta, Poa sandwicensis,* or *Diplazium sandwichianum;* and

(2) elevations between 975 to 1,065 m (3,200 to 3,490 ft).

Multi Island Species

The currently known primary constituent elements of critical habitat for *Adenophorus periens* on Kauai are:

(1) well-developed, closed canopy that provides deep shade or high humidity

(a) in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forests, open *M. polymorpha* montane wet

forest, or *M. polymorpha-Dicranopteris linearis* lowland wet forest, and

(b) containing one or more of the following native plant species: *Athyrium sandwicensis, Broussaisia* sp., *Cheirodendron trigynum, Cyanea* sp., *Cyrtandra* sp., *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Labordia hirtella, Machaerina angustifolia, Psychotria* sp., *Psychotria hexandra,* or *Syzygium sandwicensis;* and

(2) elevations between 400 and 1,265 m (1,310 and 4,150 ft).

The currently known primary constituent elements of critical habitat for *Alectryon macrococcus* on Kauai are:

(1) dry slopes or gulches

(a) in *Diospyros* sp.-*Metrosideros polymorpha* lowland mesic forest, *M. polymorpha* mixed mesic forest, or *Diospyros* sp. mixed mesic forest, and

(b) containing one or more of the following native plant species: *Nestegis sandwicensis, Psychotria* sp., *Pisonia* sp., *Xylosma* sp., *Streblus pendulinus, Hibiscus* sp., *Antidesma* sp., *Pleomele* sp., *Acacia koa, Melicope knudsenii, Hibiscus waimeae, Pteralyxia* sp., *Zanthoxylum* sp., *Kokia Kauaiensis, Rauvolfia sandwicensis, Myrsine lanaiensis, Canthium odoratum, Canavalia* sp., *Alyxia olivaeformis, Nesoluma polynesicum, Munroidendron racemosum, Caesalpinia kauaiense, Tetraplasandra* sp., *Pouteria sandwicensis,* or *Bobea timonioides;* and

(2) elevations between 360 to 1,070 m (1,180 to 3,510 ft).

The currently known primary constituent elements of critical habitat for *Bonamia menziesii* on Kauai are:

(1) dry, mesic or wet forests containing one or more of the following native plant species: *Metrosideros polymorpha, Canthium odoratum, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Hedyotis terminalis, Melicope anisata, Melicope barbigera, Myoporum sandwicense, Nestegis sandwicense, Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis,* or *Sapindus oahuensis;* and

(2) elevations between 150 and 850 m (500 and 2,800 ft).

The currently known primary constituent elements of critical habitat for *Brighamia insignis* on both Kauai and Niihau are:

(1) rocky ledges with little soil or steep sea cliffs

(a) in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in.), and

(b) containing one or more of the following native plant species: *Artemisia* sp., *Chamaesyce celastroides, Canthium odoratum, Eragrostis variabilis, Heteropogon contortus, Hibiscus kokio, Hibiscus saintjohnianus, Lepidium serra, Lipochaeta succulenta, Munroidendron racemosum,* or *Sida fallax;* and

(2) elevations between sea level and 480 m (1,575 ft).

The currently known primary constituent elements of critical habitat for *Centaurium sebaeoides* on Kauai are:

(1) volcanic or clay soils or cliffs

(a) in arid coastal areas, and

(b) containing one or more of the following native plant species: *Artemisia* sp., *Bidens* sp., *Chamaesyce celastroides, Dodonaea viscosa, Fimbristylis cymosa, Heteropogon contortus, Jaquemontia ovalifolia, Lipochaeta succulenta, Lipochaeta heterophylla, Lipochaeta integrifolia, Lycium sandwicense, Lysimachia mauritiana, Mariscus phloides, Panicum fauriei, P. torridum, Scaevola sericea, Schiedea globosa, Sida fallax,* or *Wikstroemia uva-ursi;* and

(2) elevations below 250 m (800 ft).

The currently known primary constituent elements of critical habitat for *Cyperus trachysanthos* on both Kauai and Niihau are:

(1) wet sites (mud flats, wet clay soil, or wet cliff seeps)

(a) on coastal cliffs or talus slopes, and

(b) containing the native plant species *Hibiscus tiliaceus*; and

(2) elevations between 3 and 160 m (10 and 525 ft).

The currently known primary constituent elements of critical habitat for *Delissea undulata* on Kauai are:

(1) dry or mesic open *Sophora chrysophylla-Metrosideros polymorpha* forests containing one or more of the following native plant species: *Diospyros sandwicensis*, *Dodonaea viscosa*, *Psychotria mariniana*, *P. greenwelliae*, *Santalum ellipticum*, *Nothocestrum breviflorum*, or *Acacia koa*; and

(2) elevations between 610–1,740 m (2,000–5,700 ft).

The currently known primary constituent elements of critical habitat for *Euphorbia haeleeleana* on Kauai are:

(1) lowland mixed mesic or dry forest

(a) that is often dominated by *Metrosideros polymorpha*, *Acacia koa*, or *Diospyros* sp., and

(b) containing one or more of the following native plant species: *Acacia koaia*, *Antidesma platyphyllum*, *Claoxylon* sp., *Carex meyenii*, *Carex wahuensis*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Erythrina sandwicensis*, *Kokia kauaiensis*, *Pleomele aurea*, *Psychotria mariniana*, *P. greenwelliae*, *Pteralyxia sandwicensis*, *Rauvolfia sandwicensis*, *Reynoldsia sandwicensis*, *Sapindus oahuensis*, *Tetraplasandra Kauaiensis*, *Pouteria sandwicensis*, *Pisonia sandwicensis*, or *Xylosma* sp.; and

(2) elevations between 205 and 670 m (680 and 2,200 ft).

The currently known primary constituent elements of critical habitat for *Flueggea neowawraea* on Kauai are:

(1) dry or mesic forests containing one or more of the following native plant species: *Alectryon macrococcus*, *Bobea timonioides*, *Charpentiera* sp., *Caesalpinia kauaiense, Hibiscus* sp., *Melicope* sp., *Metrosideros polymorpha*, *Myrsine lanaiensis*, *Munroidendron racemosum*, *Tetraplasandra* sp., *Kokia kauaiensis*, *Isodendrion* sp., *Pteralyxia kauaiensis*, *Psychotria mariniana*, *Diplazium sandwichianum*, *Freycinetia arborea*, *Nesoluma polynesicum*, *Diospyros* sp., *Antidesma pulvinatum*, *A. platyphyllum*, *Canthium odoratum*, *Nestegis sandwicensis*, *Rauvolfia sandwicensis*, *Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis*, *Xylosma* sp., *Pritchardia* sp., *Bidens* sp., or *Streblus pendulinus*; and

(2) elevations of 250 to 1,000 m (820 to 3,280 ft).

The currently known primary constituent elements of critical habitat for *Gouania meyenii* on Kauai are:

(1) rocky ledges, cliff faces, or ridge tops

(a) in dry shrubland or *Metrosideros polymorpha* lowland mesic forest, and

(b) containing one or more of the following native plant species: *Dodonaea viscosa*, *Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis*, *Bidens* sp., *Carex meyenii*, *Diospyros* sp., *Lysimachia* sp., or *Senna gaudichaudii*; and

(2) elevations between 490 to 880 m (1,600 to 2,880 ft).

The currently known primary constituent elements of critical habitat for *Hedyotis cookiana* on Kauai are:

(1) streambeds or steep cliffs close to water sources in lowland wet forest communities; and

(2) elevations between 170 and 370 m (560 and 1,210 ft).

The currently known primary constituent elements for *Isodendrion laurifolium* on Kauai are:

(1) diverse mesic or wet forest

(a) dominated by *Metrosideros polymorpha*, *Acacia koa*, or *Diospyros* sp., and

(b) containing one or more of the following associated native plant species: *Kokia kauaiensis*, *Streblus* sp., *Elaeocarpus bifidus*, *Canthium odoratum*, *Antidesma* sp., *Xylosma*

hawaiiense, *Hedyotis terminalis*, *Pisonia* sp., *Nestegis sandwicensis*, *Dodonaea viscosa*, *Euphorbia haeleeleana*, *Pleomele* sp., *Pittosporum* sp., *Melicope* sp., *Claoxylon sandwicense*, *Alphitonia ponderosa*, *Myrsine lanaiensis*, or *Pouteria sandwicensis*; and

(2) elevations between 490 and 820 m (1,600 and 2,700 ft).

The currently known primary constituent elements of critical habitat for *Isodendrion longifolium* on Kauai are:

(1) steep slopes, gulches, or stream banks

(a) in mesic or wet *Metrosideros polymorpha* forests, and

(b) containing one or more of the following native species: *Dicranopteris linearis*, *Eugenia* sp., *Diospyros* sp., *Pritchardia* sp., *Canthium odoratum*, *Melicope* sp., *Cheirodendron* sp., *Ilex anomala*, *Pipturus* sp., *Hedyotis fluviatilis*, *Peperomia* sp., *Bidens* sp., *Nestegis sandwicensis*, *Cyanea hardyi*, *Syzygium* sp., *Cibotium* sp., *Bobea brevipes*, *Antidesma* sp., *Cyrtandra* sp., *Hedyotis terminalis*, *Peperomia* sp., *Perrottetia sandwicensis*, *Pittosporum* sp., or *Psychotria* sp.; and

(2) elevations between 410 to 760 m (1,345 to 2,500 ft).

The currently known primary constituent elements of critical habitat for *Lobelia niihauensis* on Kauai are:

(1) exposed mesic mixed shrubland or coastal dry cliffs containing one or more of the following associated native plant species: *Eragrostis* sp., *Bidens* sp., *Plectranthus parviflorus*, *Lipochaeta* sp., *Lythrum* sp., *Wilkesia hobdyi*, *Hibiscus kokio* ssp. *saint johnianus*, *Nototrichium* sp., *Schiedea apokremnos*, *Chamaesyce celastroides*, *Charpentiera* sp., or *Artemisia* sp.; and

(2) elevations between 100 to 830 m (330 to 1,400 ft).

The currently known primary constituent elements of critical habitat for *Lysimachia filifolia* on Kauai are:

(1) mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests and containing one or more of the following associated native plant species: mosses, ferns, liverworts, *Machaerina* sp., *Heteropogon contortus*, or *Melicope* sp.; and

(2) elevations between 240 to 680 m (800 to 2,230 ft).

The currently known primary constituent elements of critical habitat for *Melicope knudsenii* on Kauai are:

(1) forested flats or talus slopes

(a) in lowland dry or montane mesic forests, and

(b) containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Antidesma* sp., *Metrosideros polymorpha*, *Xylosma* sp., *Hibiscus* sp., *Myrsine lanaiensis*, *Diospyros* sp., *Rauvolfia sandwicensis*, *Bobea* sp., *Nestegis sandwicensis*, *Hedyotis* sp., *Melicope* sp., *Psychotria* sp., or *Pittosporum Kauaiensis*; and

(2) elevations between 450 to 1,000 m (1,480 to 3,300 ft).

The currently known primary constituent element of critical habitat for *Melicope pallida* on Kauai are:

(1) steep rock faces

(a) in lowland or montane mesic or wet forests or shrubland, and

(b) containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Lepidium serra*, *Pleomele* sp., *Boehmeria grandis*, *Coprosma* sp., *Hedyotis terminalis*, *Melicope* sp., *Pouteria sandwicensis*, *Poa mannii*, *Schiedea membranacea*, *Psychotria mariniana*, *Dianella sandwicensis*, *Pritchardia minor*, *Chamaesyce celastroides* var. *hanapepensis*, *Nototrichium* sp., *Carex meyenii*, *Artemisia* sp., *Abutilon sandwicense*, *Alyxia olivaeformis*, *Dryopteris* sp., *Metrosideros polymorpha*, *Pipturus albidus*, *Sapindus oahuensis*, *Tetraplasandra* sp., or *Xylosma hawaiiense*; and

(2) elevations between 490 to 915 m (1,600 to 3,000 ft).

The currently known primary constituent elements of critical habitat for *Peucedanum sandwicense* on Kauai are:

(1) cliff habitats

(a) in mixed shrub coastal dry cliff communities or diverse mesic forest and,

(b) containing one or more of the following associated native plant species: *Hibiscus kokio*, *Brighamia insignis*, *Bidens* sp., *Artemisia* sp., *Lobelia niihauensis*, *Wilkesia gymnoxiphium*, *Canthium odoratum*, *Dodonaea viscosa*, *Psychotria* sp., *Acacia koa*, *Kokio kauaiensis*, *Carex meyenii*, *Panicum lineale*, *Chamaesyce celastroides*, *Eragrostis* sp., *Diospyros* sp., or *Metrosideros polymorpha*; and

(2) elevations from sea level to above 915 m (3,000 ft).

The currently known primary constituent elements of critical habitat for *Plantago princeps* on Kauai are:

(1) steep slopes, rock walls, or bases of waterfalls

(a) in mesic or wet *Metrosideros polymorpha* forest, and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Psychotria* sp., *Dicranopteris linearis*, *Cyanea* sp., *Hedyotis* sp., *Melicope* sp., *Dubautia plantaginea*, *Exocarpos luteolus*, *Poa siphonoglossa*, *Nothocestrum peltatum*, *Remya montgomeryi*, *Stenogyne campanulata*, *Xylosma* sp., *Pleomele* sp., *Machaerina angustifolia*, *Athyrium* sp., *Bidens* sp., *Eragrostis* sp., *Lysimachia filifolia*, *Pipturus* sp., *Cyrtandra* sp., or *Myrsine linearifolia*; and

(2) elevations between 480 to 1,100 m (1,580 to 3,610 ft).

The currently known primary constituent elements of critical habitat for *Platanthera holochila* on Kauai are:

(1) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed bog and containing one or more of the following associated native plants: *Myrsine denticulata*, *Cibotium* sp., *Coprosma ernodeoides*, *Oreobolus furcatus*, *Styphelia tameiameiae*, or *Vaccinium* sp.; and

(2) elevations between 1,050 and 1,600 m (3,450 and 5,245 ft).

The currently known primary constituent elements of critical habitat for *Schiedea nuttallii* on Kauai are:

(1) diverse lowland mesic forest, often with *Metrosideros polymorpha* dominant and containing one or more of the following associated native plant species: *Antidesma* sp. *Psychotria* sp., *Perrottetia sandwicensis*, *Pisonia* sp., or *Hedyotis acuminata*; and

(2) elevations between 415 and 790 m (1,360 and 2,590 ft).

The currently known primary constituent elements of critical habitat for *Sesbania tomentosa* on Kauai are:

(1) sandy beaches, dunes, soil pockets on lava, or pond margins

(a) in coastal dry shrublands, or open *Metrosideros polymorpha* forests, or mixed coastal dry cliffs, and

(b) containing one or more of the following associated native plant species: *Sida fallax*, *Heteropogon contortus*, *Myoporum sandwicense*, *Sporobolus virginicus*, *Scaevola sericea* or *Dodonaea viscosa*; and

(2) elevations between sea level and 12 m (0 and 40 ft).

The currently known primary constituent elements of critical habitat for *Solanum sandwicense* on Kauai are:

(1) open, sunny areas

(a) in diverse lowland or montane mesic or wet forests, and

(b) containing one or more of the following associated plants: *Alphitonia ponderosa*, *Ilex anomala*, *Xylosma* sp., *Athyrium sandwicensis*, *Syzygium sandwicensis*, *Bidens cosmoides*, *Dianella sandwicensis*, *Poa siphonoglossa*, *Carex meyenii*, *Hedyotis* sp., *Coprosma* sp., *Dubautia* sp., *Pouteria sandwicensis*, *Cryptocarya mannii*, *Acacia koa*, *Metrosideros polymorpha*, *Dicranopteris linearis*, *Psychotria* sp., or *Melicope* sp.; and

(2) elevations between 760 and 1,220 m (2,500 and 4,000 ft).

The currently known primary constituent elements of critical habitat for *Spermolepis hawaiiensis* on Kauai are:

(1) *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland containing one or more of the following associated plant species: *Eragrostis variabilis*, *Bidens sandvicensis*, *Schiedea spergulina*, *Lipochaeta* sp., *Cenchrus agrimonioides*, *Sida fallax*, *Doryopteris* sp., or *Gouania hillebrandii*; and

(2) elevations of about 305 to 600 m (1,000 to 2,000 ft).

The currently known primary constituent elements of critical habitat for *Zanthoxylum hawaiiense* on Kauai are:

(1) lowland dry or mesic forests, or montane dry forest

(a) dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis*, and

(b) containing one or more of the following associated plant species: *Pleomele auwahiensis*, *Antidesma platyphyllum*, *Pisonia* sp., *Alectryon macrococcus*, *Charpentiera* sp., *Melicope* sp., *Streblus pendulinus*, *Myrsine lanaiensis*, *Sophora chrysophylla*, or *Dodonaea viscosa*; and

(2) elevations between 550 and 730 m (1,800 and 2,400 ft).

C. Methods for Selection of Areas for Proposed Critical Habitat Designations

As discussed above, very little is known about the specific physical and biological requirements of most of the 76 species. Therefore, we have defined the primary constituent elements based on the general habitat features of the areas in which the plants currently occur, such as the type of plant community the plants are growing in, their physical location (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 76 plant species.

Critical habitat may also include areas outside the area currently occupied by a species when it is determined that such areas are essential to the conservation of the species. 16 U.S.C. § 1532(5)(A)(ii). For example, this may include potentially suitable unoccupied habitat that is important to the recovery of the species. However, except for areas within the Alakai Swamp, as discussed later, we have not included such areas in the proposed designations for these 76 species due to our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species) and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species. This would include those features that would be needed, for instance, to determine where to reintroduce a species. Although, we consider reintroduction (the planting of propagated individuals or seedlings into an area) to be an acceptable method to try to achieve plant species recovery, native plant reintroductions are difficult and successful efforts are not common. We will continue to support experimental efforts to reintroduce species that may provide us with additional information on the physical and biological features essential to the conservation of these species. If necessary, unoccupied habitat could be designated in the future to provide additional protection to reintroduced plants.

The historical (pre-1970) or even some post-1970 records for a species may be based on herbarium specimens that contain only the most rudimentary collection information, such as only the name of the island from which the specimen was collected or a general place name (*e.g.*, east Kauai, Na Pali coast, Waimea, Hanalie). In the main Hawaiian Islands, climatic and ecological conditions, such as rainfall, elevation, slope, and aspect, may vary dramatically within a relatively short distance. Therefore, a simple place name would not provide adequate information on the specific physical and biological features of the area where the plant specimen was collected.

The apparent unpredictable distribution of Hawaiian plant species also makes it difficult to designate potentially suitable unoccupied habitat. For example, a species may be known from northern and southern locations on an island, but not from intervening locations in similar habitat. Based on the best available information, we may be unable to determine whether the species once occurred in the intervening areas and disappeared prior to Polynesian or European times (thus never having been collected or documented there) or simply never occurred there.

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 survival and recovery of the 76 plant species. This information included site-specific species information from the Hawaii Natural Heritage Program (HINHP) and our rare plant database, species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum, recent biological surveys and reports, our recovery plans for these 76 species, discussions with botanical experts, and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (Plant Recovery Committee) (see below) (HINHP 1999, Plant Recovery Committee 1998, USFWS 1994, 1995, 1996, 1998a, 1998b, 1999; S. Perlman, pers. comm. 2000; Derral Herbst, Bishop Museum, pers. comm., 2000; Warren L. Wagner, Smithsonian Institution, pers. comm., 2000; CPC *in litt.*1999).

In 1994, the Plant Recovery Committee initiated an effort to identify and map habitat it believed to be necessary for the recovery of 282 endangered and threatened Hawaiian plant species. The Plant Recovery Committee identified areas on most of the islands in the Hawaiian chain, and in 1999, we published a description of these areas in our *Recovery Plan for the Multi-Island Plants* (USFWS 1999). The Plant Recovery Committee expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research findings may also lead to additional refinements (Plant Recovery Committee 1998).

Because the Plant Recovery Committee identified essential habitat areas for all listed, proposed, and candidate plant species, as well as evaluated if these essential habitat areas would provide for habitat requirements of other species the Service is monitoring, the Plant Recovery Committee's mapping of habitat is distinct from the regulatory designation of critical habitat. These habitat maps are a planning tool to focus conservation efforts on the areas that may be most important to the conservation of Hawaii's listed species and other non-listed plants.

For the 76 plant species on Kauai and Niihau, currently occupied habitat was examined and critical habitat boundaries were delineated so that locations with a high density of endangered and threatened plants (multi-species units) were clearly depicted. However, these multi-species critical habitat units are not homogeneous or uniform in nature. The variable topography of the Hawaiian Islands necessitate the creation of critical habitat units that often encompassed a number of plant community types.

When developing critical habitat units, every current (post-1970) location of every plant specimen was delineated within a 586 m (1,924 ft) radius circle,

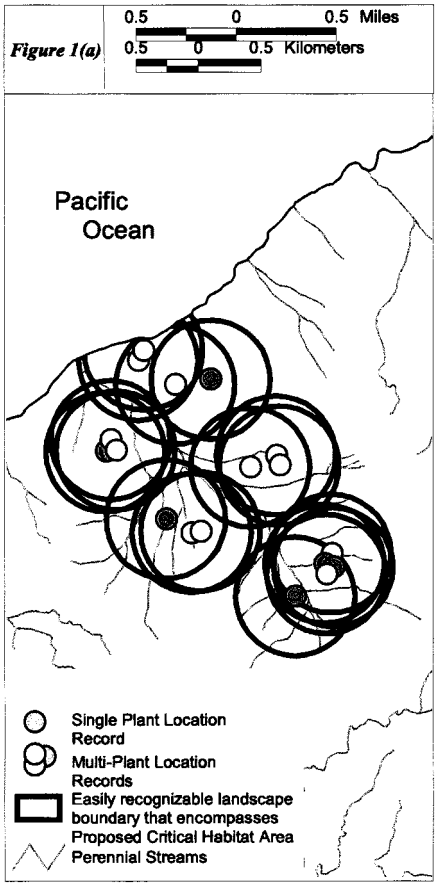
in order to insure enough area to provide for the proper ecological functioning of the habitat immediately supporting the plant. Due to inaccuracies in mapping locations, it has been determined that the actual location of the plant specimen is within 536 m (1,760 ft) of the center of the delineated circle. The 536 m (1,760 ft) distance is consistent with standard mapping methodology for rare species used by the HINHP (1996). An additional 50 m (164 ft) included in the delineated circle to be consistent with the guidelines identified in the recovery plans for these species for minimum-sized exclosures for rare plants (USFWS 1994, 1995, 1996, 1998a, 1998b, 1999). In cases of isolated species locations, an area with a radius of roughly 586 m (1,924 ft) is proposed as critical habitat (HINHP 1996; USFWS 1994, 1995, 1996, 1998a, 1998b, 1999).

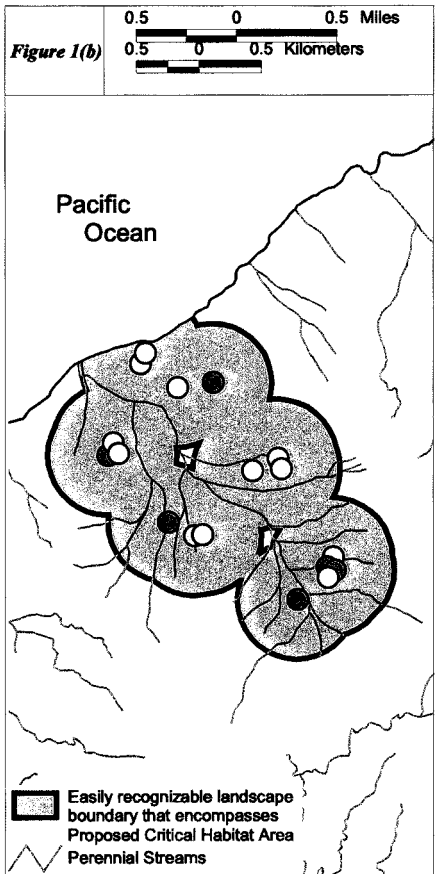
In areas with multiple species locations, critical habitat units were developed as follows.

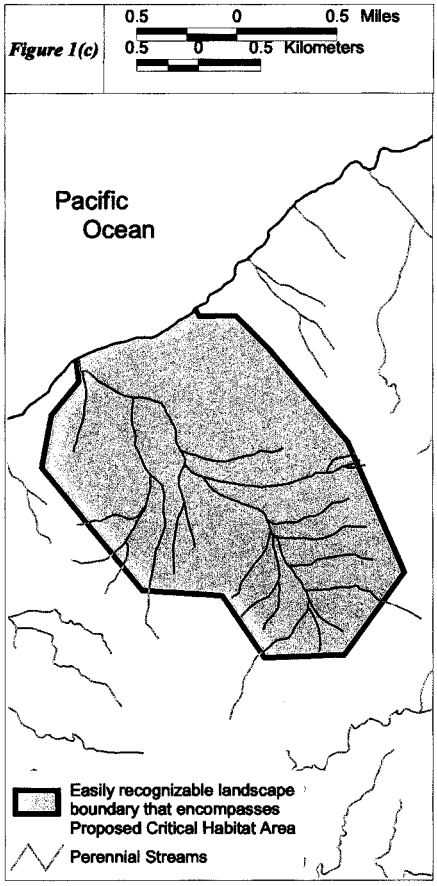
—Known current locations of each plant specimen were delineated using the guidelines explained above (Figure 1(a)).

—The perimeter boundaries of individual circular areas were connected to form unit area boundaries (Figure 1(b)).

—Unit area boundaries were delineated to follow significant topographic features (50 CFR § 424.12(c)) such as coastlines, ridgelines, and valleys (Figure 1(c)).







This delineation method was used to facilitate identification of boundary lines and to aid in implementation of on-the-ground conservation measures. When delineating critical habitat units, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands unlikely to contribute to the conservation of the 76 species. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, arboreta and gardens, heiaus (indigenous place of worship, shrine), and other man-made features, do not contain, and are not likely to develop, constituent elements. Therefore, unless a Federal action related to these existing features or structures indirectly affected nearby habitat containing the primary constituent elements, such features or structures would not be included in the critical habitat designation and therefore, not be impacted by the designation of critical habitat.

The only exception to this methodology are the units in the Alakai Swamp area (units H, I, and T). The Alakai Swamp is a contiguous watershed that, due to its largely boggy condition, is sensitive to disturbances. The relatively level cap rock formation of the Alakai plateau has allowed clay-like soils to accumulate in this area and produce bogs and large forested areas

with hydrated (wet) soil. Where water has completely saturated the soils, many of the common native plants, such as *Metrosideros polymorpha*, *Vaccinium* sp., *Styphelia tameiameiae*, and *Coprosma* sp., are severely stunted and give way to species adapted specifically to bog environments (Carlquist 1980). Patterns of water drainage in the Alakai are critical to the maintenance of plant habitats and plant community diversity in this ecosystem (Mueller-Dombois and Fosberg 1998). Changes in water flow patterns or forest cover can lead to long-term shifts in plant habitat used by *Exocarpos luteolus* and *Platanthera holochila*, the two federally listed plant species known from this area. *Platanthera holochila* is restricted to the bog habitats within the Alakai Swamp where fewer than ten individuals exist. *Exocarpos luteolus* is typically associated with habitat edges where ecological conditions such as availability of light and moisture changes rapidly over short distances. These types of habitats cover comparatively small areas that are scattered throughout the Alakai Swamp landscape. In addition, individual areas may disappear or be created over time depending on changes in seasonal patterns of rainfall or water drainage, or rooting pigs which can alter these edge landscapes and open them to invasive nonnative weeds, such as *Juncus* sp. that can exclude native plants.

Because the habitats required by these two listed species are likely dispersed throughout the Alakai Swamp, we believe this area should be managed as a cohesive ecological unit in order to insure enough area to provide for the proper ecological functioning of the habitat immediately supporting the plants. Smaller areas where these species now occur may simply dry up or become too wet to sustain them. In addition, the current known locations of these two listed species may not represent all extant locations. The Alakai Swamp area is extremely rugged and difficult to survey, and remnant populations may occur in remote areas of the Swamp. Therefore, it is possible that the entire swamp is occupied habitat, but to the extent portions are not currently occupied, maintenance of the swamp's ecosystem is essential to the conservation of these species. Designation of an inclusive areas is also consistent with 50 CFR 424.12(d) which allows for several habitats that each meet the requirements for designation to be designated at one unit.

All currently occupied sites containing one or more of the primary constituent elements considered essential to the conservation of the 76 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 the plants at these sites including published reports and surveys; annual performance reports; forestry management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and, section 7 consultations. Additionally, each public (*i.e.*, any county, state, or Federal government office holdings) and private landowner on Kauai and Niihau with a known occurrence of one of the 76 species was contacted by mail. We reviewed all information received during the public comment period, in response to our landowner mailing and at open houses held at three locations on Kauai from October 19–21, 1999. When clarification was required on the information provided to us, we followed up with a telephone contact. Because of the large amount of land on Kauai under State of Hawaii jurisdiction, we personally met with staff from the Kauai DOFAW and Kauai State Parks to discuss their current management for the plants on their lands. In addition, we contacted the State's Department of Hawaiian Home Lands regarding management for the plants on lands under their jurisdiction.

If an area being considered for designation as critical habitat is not in need of additional special management or protection and it is certain to remain so in the future, the area does not meet the definition in section 3(5)(A) of the Act. In order to make the determination that an area is not in need of special management considerations or protection, we must find that the management efforts are certain to be implemented and effective so as to contribute to the recovery of the species. Any such area must be specifically managed for the species and have a net conservation benefit for the species. In this case, we considered whether the management would reduce the threats to the species.

In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

—The factors that led to the listing of the species, as described in the final rules for listing each of the species. For all or nearly all endangered and threatened plants in Hawaii, the major threats include adverse impacts due to nonnative plant and animal species. Direct browsing, digging, and trampling by ungulates, including pigs, goats, cattle, sheep, and deer, and direct competition from nonnative plants have led to the decline of Hawaii's native flora (Smith 1985; Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Vitousek 1992; Loope in Mac *et al.* 1998; USFWS 1994, 1995, 1996, 1998a, 1998b, 1999). Ungulate activity in most areas results in an increase of nonnative plants since most of these nonnative plants are able to colonize disturbed areas more quickly and effectively than Hawaii's native plants (Smith 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Mack 1992; Tunison *et al.* 1992; USFWS 1994, 1995, 1996, 1998a, 1998b, 1999).

—The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in the Service's recovery plans for the 76 species (USFWS 1994, 1995, 1996, 1998a, 1998b, 1999), the 1998 Plant Recovery Committee report (''Habitat Essential to the Recovery of Hawaiian Plants'') to the Service (Plant Recovery Committee 1998), the June 1999 Plant Recovery Committee draft ''Integrated Plan for the Conservation of Hawaii's Unique Plants and the Ecosystems They Depend Upon'' (Plant Recovery Committee in prep.), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1990; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) nonnative plant control; (3) rodent control; (4) invertebrate pest control; (5) fire control; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance. It should be noted, however, that, on a case-by-case basis,

some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants:

—Feral ungulate control;
—Nonnative plant control;
—Rodent control;
—Invertebrate pest control;
—Fire control;
—Maintenance of genetic material of the endangered and threatened plant species;
—Propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of the species;
—Ongoing management of the wild, outplanted, and augmented populations;
—Maintenance of natural pollinators and pollinating systems, when known;
—Habitat management and restoration in areas deemed essential for the recovery of the species;
—Monitoring of the wild, outplanted, and augmented populations;
—Rare plant surveys;
—Control of human activities/access.

As shown in Table 3, the 76 species of plants occur on Federal, State, and private lands on the islands of Kauai and Niihau. In addition to the information in our files, we received various amounts and types of information on the conservation management actions occurring on these lands. In response to our two public notices, letters to the landowners, open houses, and meetings, many landowners reported that they are not conducting conservation management actions on their lands, while others provided information on various activities, such as fencing, weeding, and control of human access.

Management occurring on the U.S. military lands on the island of Kauai currently consists of restricting human access and mowing landscaped areas. Since these actions alone are not sufficient to address relevant threats facing the listed plant species, these lands are included in the proposed critical habitat units for the following plant species: *Panicum niihauense, Sesbania tomentosa, Pteralyxia kauaiensis, Wilkesia hobdyi, Isodendrion longifolium, Nothocestrum peltatum, Phyllostegia wawrana, Remya montgomeryi, Schiedea membranacea, Solanum sandwicense,* and *Xylosma crenatum.*

The State lands on the island of Kauai that harbor many of the 76 plant species are administered by the Department of Hawaiian Home Lands (DHHL) and the Department of Land and Natural Resources (DLNR). DLNR lands are made up of State Parks, Forest Reserves, Natural Area Reserves, and the Alakai Wilderness Preserve. The Division of Forestry and Wildlife administers all of these lands, except the State parks, which are administered by the Division of State Parks. DLNR also manages the DHHL lands on the island of Kauai. Although the State conducts some conservation management actions on these lands and provides access to others who are conducting such activities, there are no comprehensive management plans for the long-term conservation of endangered and threatened plants on these lands and no assurances that management actions will be implemented. Therefore, we cannot, at this time, find that management on State lands is adequate to exclude them from designation as critical habitat.

The Service received 25 responses from the over 160 private landowners who received letters inquiring about management actions on their lands. The main activities being conducted by several of these landowners are weeding, control of human access, and planting of native species. We are aware of only a few private landowners who are drafting management plans for their areas. Without such plans and assurances that the plans will be implemented, we are unable to find that the lands in question do not require special management or protection.

For the 76 species for which designation of critical habitat is prudent, we know of no areas at this time that do not require special management considerations or protection. However, if we receive information during the public comment period that any of the lands within the proposed designations are actively managed to promote the conservation and recovery of these listed species, in accordance with long term conservation management plans or agreements, and there are assurances that the proposed management actions will be implemented and effective, we can consider this information when making a final determination of critical habitat.

In summary, the proposed critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of the 76 plant species and the special management needs of the species, and are based on the best scientific and commercial information available and described above. We acknowledge that we have incomplete information regarding many of the primary biological and physical requirements for these species, but the Act and relevant court orders require us to proceed with designation at this time based on the available information, however limited. As new information accrues, and in conjunction with our listing priority guidance and available budget, we may reevaluate if additional areas warrant critical habitat designation. We anticipate that comments received through the public review process and from any public hearings, if requested, will provide additional information in our decision-making process.

The approximate areas of proposed critical habitat by land ownership are shown in Table 5. Proposed critical habitat includes habitat for 76 species predominantly in northwestern Kauai, with smaller units scattered in other portions of the island and two small units in the northwestern portion of Niihau. Lands proposed are under private, State, and Federal jurisdiction (owned and leased lands), with Federal lands including lands managed by the Department of Defense. Lands proposed as critical habitat have been divided into 21 units (Kauai A through Kauai U) on Kauai and 2 units (Niihau A and Niihau B) on Niihau. A brief description of each unit is presented below.

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, KAUAI COUNTY, HAWAII

Unit name	State	Private	Federal	Total
Kauai A	N/A	120.79 hectares (298.34 acres)	N/A	120.79 hectares (298.34 acres).
Kauai B	139.32hectares (344.27 acres)	2.91 hectares (7.18 acres)	N/A	142.23 hectares (351.45 acres).
Kauai C	N/A	123.92 hectares (306.20 acres)	N/A	123.92 hectares (306.20 acres).

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, KAUAI COUNTY, HAWAII—Continued

Unit name	State	Private	Federal	Total
Kauai D	N/A	124.68 hectares (308.08 acres)	N/A	124.68 hectares (308.08 acres).
Kauai E	N/A	116.72 hectares (288.42 acres)	N/A	116.72 hectares (288.42 acres).
Kauai F	352.05hectares (869.91 acres)	591.05 hectares (1,460.49 acres)	N/A	943.10 hectares (2,330.40 acres).
Kauai G	6,052.12 hectares (14,954.79 acres)	316.27 hectares (781.50 acres)	3.67 hectaries (9.06 acres)	6,372.06 hectares (15,745.35 acres).
Kauai H	3,877.20 hectares (9,580.55 acres)	68.49 hectares (169.25 acres)	N/A	3,945.69 hectares (9,749.80 acres).
Kauai I	4,042.80 hectares (9,989.77 acres)	1,067.95 hectares (2,638.91 acres)	N/A	5,110.75 hectares (12,628.67 acres).
Kauai J	328.79 hectares (812.43 acres)	102.48 hectares (253.22 acres)	72.78 hectares (179.83 acres)	504.05 hectares (1,245.48 acres).
Kauai K	N/A	820.76 hectares (2,028.09 acres)	N/A	820.76 hectares (2,028.09 acres).
Kauai L	215.40 hectares (532.24 acres)	1,466.89 hectares (3,624.69 acres)	N/A	1,682.29 hectares (4,156.93 acres).
Kauai M	N/A	482.16 hectares (1,191.42 acres)	N/A	482.16 hectares (1,191.42 acres).
Kauai N	286.14 hectares (707.06 acres)	N/A	N/A	286.14 hectares (707.06 acres).
Kauai O	188.93 hectares (466.85 acres)	53.86 hectares (133.08 acres)	N/A	242.79 hectares (599.93 acres).
Kauai P	456.62 hectares (1,128.30 acres)	254.82 hectares (639.66 acres)	N/A	711.44 hectares (1,757.96 acres).
Kauai Q	58.35 hectares (144.18 acres)	195.35 hectares (482.71 acres)	N/A	253.70 hectares (626.89 acres).
Kauai R	694.10 hectares (1,715.13 acres)	521.49 hectares (1,288.60 acres)	N/A	1,215.59 hectares (3,003.73 acres).
Kauai S	119.08 hectares (294.26 acres)	N/A	N/A	119.08 hectares (294.26 acres).
Kauai T	200.57 hectares (495.63 acres)	438.01 hectares (a,082.32 acres)	N/A	638.58 hectares (1,577.95 acres).
Kauai U	392.21 hectares (969.15 acres)	N/A	N/A	392.21 hectares (969.15 acres).
Niihau A	N/A	93.79 hectares (231.76 acres)	N/A	93.79 hectares (231.76 acres).
Niihau B	N/A	96.76 hectares (239.09 acres)	N/A	96.76 hectares (239.09 acres).
Total	17,403.68 hectares (43,004.52 acres)	7059.10 hectares (17,443.01 acres)	76.45 hectares (188.89 acres)	24.539.23 hectares (60,636.42 acres).

Descriptions of Critical Habitat Units

Kauai A

The proposed Kauai A provides critical habitat for one species: *Cyrtandra limahuliensis.* This unit contains a total of 120.79 hectares (ha) (298.34 acres (ac)) on privately owned land. The natural features found in this unit are portions of the floor and western wall of Lumahai Valley and portions of the Lumahai River. This unit is bound on the west by the western wall of Lumahai Valley and on the east by the eastern wall of Lumahai Valley.

Kauai B

The proposed Kauai B provides critical habitat for two species: *Lipochaeta waimeaensis* and *Spermolepis hawaiiensis.* This unit contains a total of 142.23 ha (351.45 ac). The lands contained within this unit are owned by the State of Hawaii and by private landowners. The natural features found within this unit are portions of the following areas: western wall of Waimea Canyon, Huluhulunui Ridge, Hukipo Ridge, and the Waimea River. This unit is bounded on the northeast and east by Waimea Canyon; on the west by Kapilimao Valley; and on the south by Hukipo Ridge.

Kauai C

The proposed Kauai C provides critical habitat for one species: *Schiedea spergulina* var. *leiopoda.* This unit contains a total of 123.92 ha (306.20 ac) of privately owned land. The natural features found within this unit are portions of the Lawai Valley and Lawai Stream. To the east of the unit is the Niukapu Heiau; to the south is Lawai Bay; to the north are the Lawai Homesteads; and to the northwest is Kalaheo town.

Kauai D

The proposed Kauai D provides critical habitat for one species: *Solanum sandwicense.* This unit totals 124.68 ha (308.08 ac) on land owned by a single private entity within the State's Na Pali-Kona Forest Reserve. The most evident natural feature found in this area is a portion of the Mokuone Stream.

Kauai E

The proposed Kauai E provides critical habitat for *Brighamia insignis.* This unit contains a total of 116.72 ha (288.42 ac), all within the Haupu Mountain Range. The area contained in this unit is owned by a private entity. The natural features found in this unit are Keopaweo Peak and portions of the north facing slope of the Haupu

Mountain Range. This area is bounded on the north by Huleia Stream.

Kauai F

The proposed Kauai F provides critical habitat for 12 species: *Adenophorus periens, Cyrtandra limahuliensis, Delissea rhytidosperma, Flueggea neowawraea, Hesperomannia lydgatei, Hibiscus waimeae* ssp. *hannerae, Isodendrion longifolium, Labordia lydgatei, Lobelia niihauensis, Myrsine linearifolia, Peucedanum sandwicense,*and *Pteralyxia kauaiensis.* This unit contains a total of 943.10 ha (2,330.40 ac) of land owned by the State of Hawaii and private owners. A very small portion of this unit is found in the State's Hono o Na Pali Natural Area Reserve. The natural features contained within this unit are Kulanaililia Peak, portions of Manoa Stream, Pohakukane Peak, portions of Haena Valley, portions of the Wainiha Pali, portions of Wainiha Valley, Hono o Na Pali Peak, Limahuli Falls, Limahuli Valley and Stream, Maunapulua Peak, Maunahou Peak, Makana Peak, and portions of Hanakapiai Valley and Stream. This unit is bounded on the east by Wainiha Pali and Valley; on the west by Hanakapiai Valley; on the southwest by the Kauai G; and on the north by Haena State Park, the Pacific Ocean, and Haena town.

Kauai G

The proposed Kauai G provides critical habitat for 48 species: *Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Cyperus trachysanthos, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia pallida, Dubautia latifolia, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hibiscadelphus woodii, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Lipochaeta fauriei, Lobelia niihauensis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Peucedanum sandwicense, Phyllostegia wawrana, Plantago princeps, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea kauaiensis, Schiedea membranacea, Schiedea spergulina* var. *spergulina, Solanum sandwicense, Stenogyne campanulata, Wilkesia hobdyi,* and *Xylosma crenatum.* This unit contains a total of 6,372.06 ha (15,745.35 ac). The lands contained within this unit are owned by the State of Hawaii, private land owners, and owned or leased by the United States Department of Defense (U.S. Navy and U.S. Air Force). Portions of this unit are contained within the State's Hono o Na Pali Natural Area Reserve, Kuia Natural Area Reserve, Na Pali-Kona Forest Reserve, Kokee Air Force Station, Kokee State Park, and Puu Ka Pele Forest Reserve. The natural features found in this unit are portions of Kopakaka Ridge; portions of Makaha Ridge and Valley; Milolii Ridge; portions of Kauhao Valley; Paaiki Valley; Poopooiki Valley; Kuia Valley; Mahanaloa Valley; Kawaiula Valley; Milolii Valley; portions of Kaahole Valley; Nualoolo Valley and Stream; Awaawapuhi Valley; Honopu Valley; Makaha Point; Keawanui Point; Makuaiki Point; Alapii Point; Puanaiea Point; Nakeikionaiwi Falls; Kalepa Ridge; Kainamanu Peak; Kalahu; Nianiau; Kalalau Beach, Valley, and Stream; Kanakou; Puu Ki; Kaaalahina Ridge; Keanapuka; Alealau; Manono Ridge; Hanakoa Valley and Stream; Pohakukumano; Waiahuakua; Waiahuakua Stream; Pohakea; Hoolulu Stream; Puu okila; Pihea; Moaalelele; portions of Hanakapiai Stream and Valley; Kaunouhua Ridge; and Kahuamaa Flat. This area is bounded on the north and northeast by the Pacific Ocean; on the northeast by Kauai F; on the southeast by Kauai H; and on the south by Kauai I.

Kauai H

The proposed Kauai H provides critical habitat for four species: *Alsinidendron lychnoides, Exocarpos luteolus, Myrsine linearifolia,* and *Platanthera holochila.* This unit contains a total of 3,945.69 ha (9,749.80 ac) on State and private lands. Portions of this area are contained within the State's Na Pali-Kona Forest Reserve, Alakai Wilderness Preserve, Halelea Forest Reserve, and Kokee State Park. The natural features found in this unit are portions of the Kawaikoi Stream; most of the Alakai Swamp; portions of Kaunuohua Ridge; Pihea Peak; Waiakoali Stream; Koali Peak; portions of Kawaiiki Ridge; portions of Kawaiiki Valley; portions of Koaie Stream; portions of Waialae Stream; portions of Loli River; portions of Halepaakai Stream; and portions of Halehaha Stream. This unit is bounded on the northeast by Kauai K; on the west by Kauai I; and on the south by Opaewela Valley.

Kauai I

The proposed Kauai I provides critical habitat for 36 species: *Alectryon macrococcus, Alsinidendron viscosum, Chamaesyce halemanui, Diellia pallida, Dubautia latifolia, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Isodendrion laurifolium, Kokia kauaiensis, Lipochaeta fauriei, Lipochaeta micrantha, Lobelia niihauensis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Peucedanum sandwicense, Phyllostegia knudsenii, Phyllostegia wawrana, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea helleri, Schiedea membranacea, Schiedea spergulina var. spergulina, Schiedea stellarioides, Solanum sandwicense, Spermolepis hawaiiensis, Xylosma crenatum,* and *Zanthoxylum hawaiiense.* This unit contains a total of 5,110.75 ha (12,628.68 ac). The unit contains areas owned by the State of Hawaii and private owners. Portions of this unit are found within the State's Puu Ka Pele Forest Reserve, Na Pali-Kona Forest Reserve, Kokee State Park, Waimea Canyon State Park, and Alakai Wilderness Preserve. The natural areas found in this unit are upper portions of Awini Stream, portions of Kokee Stream, portions of Waipoo falls, Kaou, portions of Loli River, portions of Waiahulu Stream, portions of Poomau Stream, portions of Kohua Ridge, portions of Kaluahaula Ridge, portions of Koaie Stream and Canyon, portions of Hipalau Valley, Poo Kaena Peak, portions of Oneopaewa Valley, portions of Waimea Canyon, portions of Waimea River, portions of Nawaimaka Valley and Stream, Waialae Falls, portions of Kapukapala Ridge, Kipalau Valley, a small portion of the Alalaki Swamp, Waineke Swamp, Kumuwela Ridge, portions of Maluapopoki Stream, portions of Koliee Stream, portions of Elekeninui Stream, portions of Noe Stream, portions of Elekeniiki Stream, Puu Kaohelo Peak, portions of Kauaikinuna Stream, portions of Mohihi Stream, Haeleele Ridge, portions of Haeleele Valley, portions of Kaulaula Valley, Kawaiiki Ridge, Kumuwela Ridge, portions of Wahana Valley, Kaluahaulau Ridge, and portions of Kawaiiki Valley. Kauai H is bordered by Kauai I to the east and northeast. The Na Pali coastline is to the north, northwest, and west of the boundaries. The remainder of the Alakai Swamp is to the east and northeast.

Kauai J

The proposed Kauai J provides critical habitat for six species: *Hedyotis st.-johnii, Lobelia niihauensis, Panicum niihauense, Schiedea apokremnos, Sesbania tomentosa,* and *Wilkesia hobdyi.* This unit contains a total of 504.05 ha (1,245.48 ac) on Federal, State, and privately owned land. Portions of this unit are contained within the State's Puu Ka Pele Forest Reserve, Polihale State Park, and the Pacific Missile Range Facility. The natural features and landmarks found in this area are Polihale Spring, Kapaula Heiau, and the lower portions of Haeleele Valley, Hikimoe Valley, Kaaweiki Ridge, Kauhao Ridge, Kaaweiki Ridge, and Polihale Ridge. This area is bounded on the east by the Pacific Ocean.

Kauai K

The proposed Kauai K provides critical habitat for 7 species: *Adenophorus periens, Cyanea recta, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Labordia lydgatei, Plantago princeps,* and *Schiedea membranacea.* This unit contains a total of 820.76 ha (2,028.09 ac). The areas contained in this unit are owned by the State of Hawaii. Portions of this unit are found within the State's Halelea Forest Reserve. The natural features found in this area are the back portions of Lumahai Valley and River, Mahinakehau Ridge, the back portions of Wainiha Valley and River, and sections of the Wainiha Pali.

Kauai L

The proposed Kauai L provides critical habitat for 14 species: *Adenophorus periens, Bonamia menziesii, Cyanea remyi, Cyanea undulata, Cyrtandra limahuliensis, Dubautia pauciflorula, Exocarpos luteolus, Hesperomannia lydgatei, Isodendrion longifolium, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Myrsine linearifolia, Viola helenae,* and *Viola kauaiensis* var. *wahiawaensis.* This unit contains a total of 1,682.29 ha (4,156.93 ac). The lands contained within this unit are owned by the State of Hawaii and private owners. Portions of this unit are contained within the State's Lihue-Koloa Forest Reserve. The natural features and landmarks found in this area are portions of Hanapepe Valley, Kapalaoa Peak, Hulua Peak, portions of Wahiawa Stream, Kanaele Swamp, Kahili Peak, Laauhihaihai Peak, Kalualea Peak, Puu Kolo Peak, portions of Wainonoia Stream, and Puuauuka Peak. This unit is bounded on the south by Alexander Reservoir and on the west by Hanapepe Valley and Stream.

Kauai M

The proposed Kauai M provides critical habitat for eight species: *Brighamia insignis, Delissea rhytidosperma, Isodendrion longifolium, Lipochaeta micrantha, Munroidendron racemosum, Peucedanum sandwicense, Pteralyxia kauaiensis,* and *Schiedea nuttallii.* This unit contains a total of 482.16 ha (1,191.42 ac) on privately owned lands within the Haupu Mountain Range. The natural features found within this unit are Haupu Peak, Naluakeina Peak, and Queen Victoria's profile. A length of 1,730.72 m of the Haupu Range ridgeline to the west and 2,036.42 m of the Haupu Range ridgeline to east of Haupu Peak are included in this unit. This unit is bound on the north by Kipu; on the southeast by Kipu Kai; and on the southwest by Mahaulepu.

Kauai N

The proposed Kauai N provides critical habitat for two species: *Hibiscus clayi* and *Munroidendron racemosum.* This unit contains a total of 286.14 ha (707.06 ac). The area found in the Nonou Forest Reserve, owned by the State of Hawaii. The natural features found within this unit are the Nonou Mountain Range, Sleeping Giant, and Nonou Peak. This unit is bounded on the east by Wailua; on the south by the Wailua River; on the southwest by the Wailua Homesteads; and on the north by the Twin Reservoirs.

Kauai O

The proposed Kauai O provides critical habitat for 2 species: *Cyrtandra limahuliensis* and *Cyanea recta.* This unit contains a total of 242.79 ha (599.93 ac) on State and privately owned lands. This unit is found within the State's Kealia and Lihue-Koloa Forest Reserves. The natural features found in this area are Kupakanui Falls, Kualapa Peak, portions of Keahua Stream, and portions of Waipunaea Stream.

Kauai P

The proposed Kauai P provides critical habitat for 10 species: *Adenophorus periens, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Hesperomannia lydgatei, Isodendrion longifolium, Labordia lydgatei, Myrsine linearifolia,* and *Plantago princeps.* This unit contains a total of 711.44 ha (1,757.96 ac). The lands contained within this unit are owned by the State of Hawaii and private owners. Portions of this unit are contained within the State's Halelea Forest Reserve. The natural features found in this unit are the Mamalohoa Peak, Waiopa, Namolokama Mountains, Kaliko, portions of the Lumahai River, portions of the eastern wall of the Lumahai Valley, portions of the Waioli Stream, portions of the back of Waioli Valley, portions of the western wall of Hanalei Valley, and Puu Manu. This unit is bounded on the north by Waioli Valley; on the east by Hanalei Valley; and on the west and south by Lumahai Valley.

Kauai Q

The proposed Kauai Q provides critical habitat for two species: *Cyrtandra limahuliensis* and *Pteralyxia kauaiensis.* This unit contains a total of 253.70 ha (626.89 ac). The areas contained in this unit are owned by the State of Hawaii and a private entity. Portions of this unit are contained within the State's Halelea Forest Reserve. The natural features found in this unit are the back of Waipa Valley, portions of Waipo Stream, Kapailu Peak, Waiokihi Peak, and Kapalikea Peak. The area is bounded on the west and southwest by Lumahai Valley and on the east by Waioli Valley.

Kauai R

The proposed Kauai R provides critical habitat for 8 species: *Adenophorus periens, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Labordia lydgatei,* and *Phyllostegia wawrana.* This unit contains a total of 1,215.59 ha (3,003.73 ac) of State and privately owned land. Portions of this unit are found within the State's Moloaa, Kealia, and Lihue-Koloa Forest Reserves. The natural features found in this area are portions of Makaleha Mountains and Stream, portions of Kaumoku Stream, Mt. Namahana, Keoiki Peak, portions of Anahola Stream, Kahili Peak, the Pinnacle, Leleiwi Peak, Ke Ana Kolea Falls, Puu Awa Peak, and Puu Eu Peak.

Kauai S

The proposed Kauai S provides critical habitat for *Exocarpos luteolus.* This unit contains 119.08 ha (294.26 ac) of State owned land within the Kealia and Lihue-Koloa Forest Reserves. The natural features found in this area are portions of Kamalii Ridge and Kamahuna Peak, and portions of Moalepe and Makaleha Streams.

Kauai T

The proposed Kauai T provides critical habitat for 7 species: *Cyanea asarifolia, Cyanea remyi, Cyrtandra*

limahuliensis, Labordia lydgatei, Lysimachia filifolia, Plantago princeps, and *Pteralyxia kauaiensis.* This unit contains a total of 638.58 ha (1,577.95 ac). The areas contained in this unit are owned by the State of Hawaii, as well as private owners. The area included in this unit are found within the State's Lihue-Koloa Forest Reserve and Alakai Wilderness Preserve. The natural features found in this unit are Mt. Waialeale and portions of Iliiliula Stream, the north Fork of the Wailua River, the most eastern section of the Alakai Swamp, and the Hanalei River.

Kauai U

The proposed Kauai U provides critical habitat for 7 species: *Alectryon macrococcus*, *Euphorbia haeleeleana*, *Isodendrion laurifolium*, *Lipochaeta fauriei*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, and *Remya kauaiensis*. This unit contains a 392.21 ha (969.15 ac) of land owned by the State of Hawaii. Portions of this unit are found within the State's Puu Ka Pele Forest Reserve, as well as containing portions of Haeleele Ridge and Valley, portions of Polihale Ridge, and portions of Kaulaula Valley.

Niihau A

Niihau A provides critical habitat for *Cyperus trachysanthos* on Niihau. This unit contains 93.79 ha (231.76 ac) of land owned by a private entity. The entire unit falls within the Keawanui watershed and contains the lower portions of Kanaio and Mokouia Valleys.

Niihau B

Niihau B provides critical habitat for *Brighamia insignis* on Niihau. This unit contains a total of 96.76 ha (239.09 ac) of privately owned land. This entire unit falls within the Keawanui watershed and contains the Kaali Cliffs.

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 do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species and avoid 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.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat a description and evaluation of those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. When determining whether any of these activities may adversely modify critical habitat, we base our analysis on the effects of the action on the entire critical habitat area and not just on the portion where the activity will occur. Adverse effects on constituent elements or segments of critical habitat do not result in an adverse modification determination unless that loss, when added to the environmental baseline, is likely to appreciably diminish the capability of the critical habitat to satisfy essential requirements of the species. In other words, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of any of the 76 plant species is appreciably reduced.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery (50 CFR 402.02). Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species (50 CFR 402.02).

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned when the habitat is occupied by the species. The purpose of designating critical habitat is to contribute to a species' conservation,

which by definition equates to survival and recovery. Section 7 prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of the listed species, thus providing a regulatory means of ensuring that Federal actions within critical habitat are considered in relation to the goals and recommendations of any existing recovery plan for the species concerned. As a result of the direct link between critical habitat and recovery, the prohibition against destruction or adverse modification of the critical habitat should provide for the protection of the critical habitat's ability to contribute fully to a species' recovery.

Activities on lands being proposed as critical habitat for these 76 species or activities that may indirectly affect such lands and that are conducted by a Federal agency, are funded by a Federal agency, or require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of any one of the 76 species is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy habitat defined as a primary constituent element, 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, or herbicide application); introducing or enabling the spread of nonnative species; or actions that pose a risk of fire;

(2) Water diversion or impoundment, groundwater pumping, or other activity that alters water quality or quantity to an extent that wet forest or bog vegetation is significantly affected; and

(3) Recreational activities that appreciably degrade vegetation.

Actions affected by designation of critical habitat may include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development on private or State lands requiring permits from other Federal agencies, such as Housing and Urban Development;

(3) Military training or similar activities of the U.S. Department of Defense (Navy and Air Force) on their lands or lands under their jurisdiction at Makaha Ridge, Pacific Missile Range Facility at Barking Sands, and Kokee Air Force Station;

(4) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(5) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act;

(6) Construction of communication sites licensed by the Federal Communications Commission; and

(7) Activities not previously mentioned that is funded or authorization by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration) or any other Federal agency.

If you have questions regarding whether specific activities will 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 wildlife and plants and inquiries about prohibitions and permits should be directed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits at the same address.

Consideration of Economic and Other Relevant Impacts

Section 4(b)(2) of the Act requires that we 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 designating these areas as critical habitat. We cannot exclude such areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time to accept comments on the economic analysis or further comments on the proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

The Service invites comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed or protected, we may exclude such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the recovery of the species.

In determining whether a management effort is likely to be implemented, we would generally consider: (a) whether a management plan or agreement exists, which specifies the management actions being implemented, or to be implemented, the schedule for implementation, the responsible party(ies), and the funding source(s), or other resources necessary to implement the actions, are available with a high level of certainty that the funding will be provided; and (b) the authority and long-term commitment of the party(ies) to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

In determining whether an action is likely to be effective, we would generally consider: (a) whether the plan specifically addresses the management needs, including reduction of threats of the species; (b) whether such actions have been successful in the past; (c) whether there are provisions for monitoring and assessment of the effectiveness of the management actions; (d) and whether adaptive management principles have been incorporated into the plan.

We are aware that the State of Hawaii and some private landowners are considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Kauai. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat adequately provide for the recovery of the species. We are also soliciting comments on whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements, *etc.*) should be excluded from critical habitat and, if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation would outweigh any threats to these species due to designation;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532(5));

(3) Specific information on the amount and distribution of habitat for *Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia pallida, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus clayi, Hibiscus waimeae* spp. *hannerae, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Melicope quadrangularis, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phyllostegia knudsenii, Phyllostegia waimeae, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pritchardia aylmer-robinsonii, Pritchardia napaliensis, Pritchardia viscosa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea nuttallii, Schiedea spergulina* var. *leiopoda, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Sesbania tomentosa, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Viola helenae, Viola kauaiensis* var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum,* and *Zanthoxylum hawaiiense,* and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other relevant impacts resulting from the proposed designations of critical habitat, including any impacts on small entities or families; and

(6) Economic and other potential values associated with designating critical habitat for the 76 plant species such as those derived from non-consumptive uses (*e.g.,* hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values,'' and reductions in administrative costs).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). If you are sending comments by electronic mail (e-mail), please submit them in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: 1018–AG71'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Pacific Islands Office at phone number 808/541–3441. Please note that the e-mail address (KAandNIcrithab pr@fws.gov) will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that

interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the document? (5) Are the detailed scientific descriptions of the plants helpful, and (6) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

1. Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this action was submitted for review by the Office of Management and Budget (OMB). We are in the process of preparing an economic analysis to determine the economic consequences of designating the specific areas identified as critical habitat. If our economic analysis reveals that the economic impacts of designating any area as critical habitat outweigh the benefits of designation, we may exclude those areas from consideration, unless such exclusion will result in the extinction of the species.

(a) Even though we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this proposed rule will have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore, we do not believe a cost-benefit and economic analysis pursuant to EO 12866 is required.

These 76 plants were listed as endangered or threatened species between the years 1991 and 1996. With the possible exception of portions of the Alakai Swamp, the areas proposed for critical habitat are currently occupied by one or more of these species. Under section 7 of the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; designation does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Section 7 also requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience, due to the limited number of individuals and populations, and limited range, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat for any of these 76 species would also likely cause ''jeopardy'' to that species. Accordingly, the designation of currently occupied areas as critical habitat would not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal involvement in their actions are not restricted by the designation of critical habitat. It is possible that some unoccupied habitat in the Alakai Swamp has been proposed as critical habitat. However, the Alakai Swamp is unlikely to be developed because it is a designated State wilderness preserve, and therefore, any possible inclusion of unoccupied habitat that might not otherwise be covered by section 7 is unlikely to have an economic impact.

(b) This proposed rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of these 76 plant species since their listing between 1991 and 1996. The prohibition against adverse modification of critical habitat would not be expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is occupied, with the exception, possibly, of portions of the Alakai Swamp.

(c) This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects.

(d) This proposed rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

2. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this proposed rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 5 (see ''Methods for Selection of Areas for Proposed Critical Habitat Designations'') we have designated property owned by Federal and State governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development on private or State lands requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Military training or similar activities of the U.S. Department of Defense (Navy and Air Force) on their lands or lands under their jurisdiction;

(4) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(5) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act;

(6) Construction of communication sites licensed by the Federal Communications Commission;

(7) Activities not previously mentioned that are funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration) or any other Federal agency.

Many of these activities authorized or funded by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in section 1 above, these actions are currently required to comply with the protections of the Act that are triggered by listing, such as avoiding jeopardy to these species, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current State restrictions concerning

take of listed threatened or endangered plant species remain in effect, and this proposed rule will have no additional restrictions.

3. Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will 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 in the economic analysis, 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.

4. 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 proposed rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent requirements through the listing protections of the species, and no further restrictions are anticipated.

(b) This proposed rule will not produce a Federal mandate 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.

5. Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The proposed rule will not increase or decrease the current restrictions on private property concerning take of these 76 plant species. We do not anticipate that property values will be affected by the critical habitat designations. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with State law and with the continued survival of the plant species.

6. Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the 76 plant species would have little incremental impact on State and local governments and their activities. 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 identified. While this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

7. Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The proposed 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 76 plant species.

8. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

9. National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Ecoregion Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Stacy Jorgensen, Christa Russell, Michelle Stephens, and Marigold Zoll (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entries for *''Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus clayi, Hibiscus waimeae spp. hannerae, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia var. wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phyllostegia knudsenii, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea*

membranacea, Schiedea nuttallii, Schiedea spergulina var. leiopoda, Schiedea spergulina var. spergulina, Schiedea stellarioides, Sesbania tomentosa, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Viola helenae, Viola kauaiensis var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum,* and *Zanthoxylum hawaiiense''* under ''FLOWERING PLANTS'' and *''Adenophorus periens* and *Diellia pallida''* under ''FERNS AND ALLIES'' to read as follows:

17.12(h) Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Alectryon macrococcus.	Mahoe	U.S.A. (HI)	Sapindaceae	E	467	17.96(a)	NA
*	*	*	*	*	*	*	
Alsinidendron lychnoides.	Kuawawaenohu	U.S.A. (HI)	Caryophyllaceae	E	590	17.96(a)	NA
Alsinidendron viscosum.	None	U.S.A. (HI)	Caryophyllaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Bonamia menziesii	None	U.S.A. (HI)	Convolvulaceae	E	559	17.96(a)	NA
Brighamia insignis	'Olulu	U.S.A. (HI)	Campanulaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Centaurium sebaeoides.	'Awiwi	U.S.A. (HI)	Gentianaceae	E	448	17.96(a)	NA
*	*	*	*	*	*	*	
Chamaesyce halemanui.	None	U.S.A. (HI)	Euphorbiaceae	E	464	17.96(a)	NA
*	*	*	*	*	*	*	
Cyanea asarifolia	Haha	U.S.A (HI)	Campanulaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Cyanea recta	Haha	U.S.A (HI)	Campanulaceae	T	590	17.96(a)	NA
Cyanea remyi	Haha	U.S.A (HI)	Campanulaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Cyanea undulata	Haha	U.S.A. (HI)	Campanulaceae	E	436	17.96(a)	NA
*	*	*	*	*	*	*	
Cyperus trachysanthos.	Pu'uka'a	U.S.A. (HI)	Cyperaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Cyrtandra cyaneoides	Mapele	U.S.A. (HI)	Gesneriaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Cyrtandra limahuliensis.	Ha'iwale'	U.S.A. (HI)	Gesneriaceae	T	530	17.96(a)	NA
*	*	*	*	*	*	*	
Delissea rhytidosperma.	None	U.S.A. (HI)	Campanulaceae	E	530	17.96(a)	NA
Delissea rivularis	'Oha'	U.S.A. (HI)	Campanulaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Delissea undulata	None	U.S.A. (HI)	Campanulaceae	E	593	17.96(a)	NA
*	*	*	*	*	*	*	
Dubautia latifolia	Na'ena'e'	U.S.A. (HI)	Asteraceae	E	464	17.96(a)	NA
Dubautia pauciflorula	Na'ena'e'	U.S.A. (HI)	Asteraceae	E	436	17.96(a)	NA
*	*	*	*	*	*	*	
Euphorbia haeleeleana.	'Akoko	U.S.A. (HI)	Euphorbiaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Exocarpos luteolus	Heau	U.S.A. (HI)	Santalaceae	E	530	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Flueggea neowawraea	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E	559	17.96(a)	NA
*	*	*	*	*	*	*	
Gouania meyenii	None	U.S.A. (HI)	Rhamnaceae	E	448	17.96(a)	NA
*	*	*	*	*	*	*	
Hedyotis cookiana	'Awiwi	U.S.A. (HI)	Rubiaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Hedyotis st.-johnii	Na Pali beach hedyotis.	U.S.A. (HI)	Rubiaceae	E	441	17.96(a)	NA
*	*	*	*	*	*	*	
Hesperomannia lydgatei	None	U.S.A. (HI)	Asteraceae	E	436	17.96(a)	NA
*	*	*	*	*	*	*	
Hibiscadelphus woodii	Hau kuahiwi	U.S.A. (HI)	Malvaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Hibiscus clayi	Clay's hibiscus	U.S.A. (HI)	Malvaceae	E	530	17.96(a)	NA
Hibiscus waimeae spp. *hannerae*	Koki'o ke'oke'o	U.S.A. (HI)	Malvaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Isodendrion laurifolium	Aupaka	U.S.A. (HI)	Violaceae	E	592	17.96(a)	NA
Isodendrion longifolium	Aupaka	U.S.A. (HI)	Violaceae	T	592	17.96(a)	NA
*	*	*	*	*	*	*	
Kokia kauaiensis	Koki'o	U.S.A. (HI)	Malvaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Labordia lydgatei	Kamakahala	U.S.A. (HI)	Loganiaceae	E	436	17.96(a)	NA
Labordia tinifolia var. *wahiawaensis*	Kamakahala	U.S.A. (HI)	Loganiaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Lipochaeta fauriei	Nehe	U.S.A. (HI)	Asteraceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Lipochaeta micrantha	Nehe	U.S.A. (HI)	Asteraceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Lipochaeta waimeaensis	Nehe	U.S.A. (HI)	Asteraceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Lobelia niihauensis	None	U.S.A. (HI)	Campanulaceae	E	448	17.96(a)	NA
*	*	*	*	*	*	*	
Lysimachia filifolia	None	U.S.A. (HI)	Primulaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Melicope haupuensis	Alani	U.S.A. (HI)	Rutaceae	E	530	17.96(a)	NA
Melicope knudsenii	Alani	U.S.A. (HI)	Rutaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Melicope pallida	Alani	U.S.A. (HI)	Rutaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Munroidendron racemosum	None	U.S.A. (HI)	Araliaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Myrsine linearifolia	Kolea	U.S.A. (HI)	Myrsinaceae	T	590	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Nothocestrum peltatum.	'Aiea	U.S.A. (HI)	Solanaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Panicum niihauense	Lau 'ehu	U.S.A. (HI)	Poaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Peucedanum sandwicense.	Makou	U.S.A. (HI)	Apiaceae	T	530	17.96(a)	NA
*	*	*	*	*	*	*	
Phyllostegia knudsenii.	None	U.S.A. (HI)	Lamiaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Phyllostegia wawrana	None	U.S.A. (HI)	Lamiaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Plantago princeps	Laukahi kuahiwi	U.S.A. (HI)	Plantaginaceae	E	559	17.96(a)	NA
Platanthera holochila	None	U.S.A. (HI)	Orchidaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Poa mannii	Mann's bluegrass	U.S.A. (HI)	Poaceae	E	558	17.96(a)	NA
*	*	*	*	*	*	*	
Poa sandvicensis	Hawaiian bluegrass	U.S.A. (HI)	Poaceae	E	464	17.96(a)	NA
Poa siphonoglossa	None	U.S.A. (HI)	Poaceae	E	464	17.96(a)	NA
*	*	*	*	*	*	*	
Pteralyxia kauaiensis	Kaulu	U.S.A. (HI)	Apocynaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Remya kauaiensis	None	U.S.A. (HI)	Asteraceae	E	413	17.96(a)	NA
*	*	*	*	*	*	*	
Remya montgomeryi	None	U.S.A. (HI)	Asteraceae	E	413	17.96(a)	NA
*	*	*	*	*	*	*	
Schiedea apokremnos.	Ma'oli'oli	U.S.A. (HI)	Caryophyllaceae	E	441	17.96(a)	NA
*	*	*	*	*	*	*	
Schiedea helleri	None	U.S.A. (HI)	Caryophyllaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Schiedea kauaiensis	None	U.S.A. (HI)	Caryophyllaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Schiedea membranacea.	None	U.S.A. (HI)	Caryophyllaceae	E	590	17.96(a)	NA
Schiedea nuttallii	None	U.S.A. (HI)	Caryophyllaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Schiedea spergulina var. *leiopoda.*	None	U.S.A. (HI)	Caryophyllaceae	E	530	17.96(a)	NA
Schiedea spergulina var. *spergulina.*	None	U.S.A. (HI)	Caryophyllaceae	T	530	17.96(a)	NA
Schiedea stellarioides	Laulihilihi (Ma'oli'oli)	U.S.A. (HI)	Caryophyllaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Sesbania tomentosa	'Ohai	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*	*	
Solanum sandwicense.	'Aiakeakua, popolo	U.S.A. (HI)	Solanaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	
Spermolepis hawaiiensis.	None	U.S.A. (HI)	Apiaceae	E	559	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Stenogyne campanulata.	None	U.S.A. (HI)	Lamiaceae	E	464	17.96(a)	NA
*	*	*	*	*	*	*	
Viola helenae	None	U.S.A. (HI)	Violaceae	E	436	17.96(a)	NA
Viola kauaiensis var. *wahiawaensis.*	Nani wai'ale'ale	U.S.A. (HI)	Violaceae	E	590	17.96(a)	NA
*	*	*	*	*	*	*	
Wilkesia hobdyi	Dwarf iliau	U.S.A. (HI)	Asteraceae	E	473	17.96(a)	NA
Xylosma crenatum	None	U.S.A. (HI)	Flacourtiaceae	E	464	17.96(a)	NA
*	*	*	*	*	*	*	
Zanthoxylum hawaiiense.	A'e	U.S.A. (HI)	Rutaceae	E	532	17.96(a)	NA
*	*	*	*	*	*	*	
FERNS AND ALLIES							
Adenophorus periens	Pendant kihi fern	U.S.A. (HI)	Grammitidaceae	E	559	17.96(a)	NA
*	*	*	*	*	*	*	
Diellia pallida	None	U.S.A. (HI)	Aspleniaceae	E	530	17.96(a)	NA
*	*	*	*	*	*	*	

3. In § 17.96, redesignate paragraph (a) as paragraph (b); revise heading of newly designated paragraph (b) to read ''Single-species critical habitat—flowering plants''; and add a new paragraph (a) to read as follows:

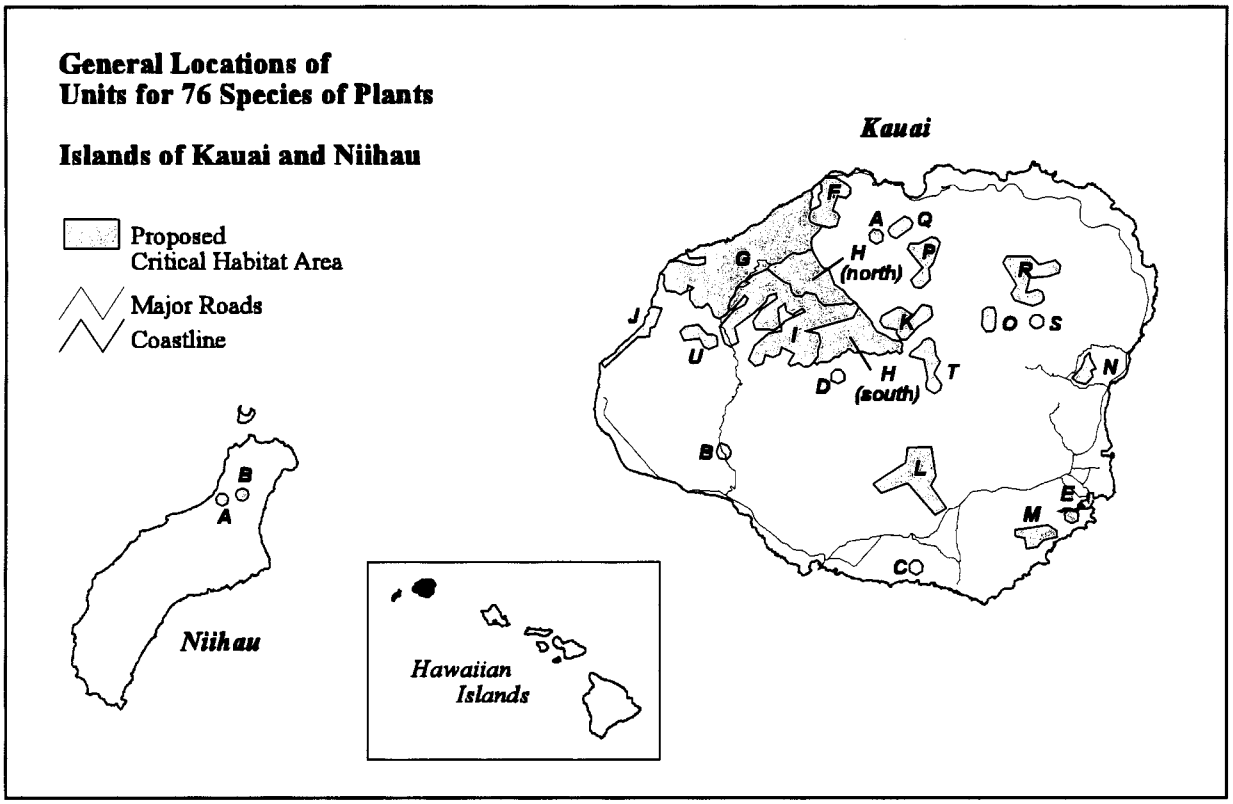
§ 17.96 Critical habitat—plants.

(a) *Unit Descriptions and Maps of multiple-species critical habitat units.*

(1) Hawaii.

(i) Maps and critical habitat unit descriptions.

(A) Kauai.

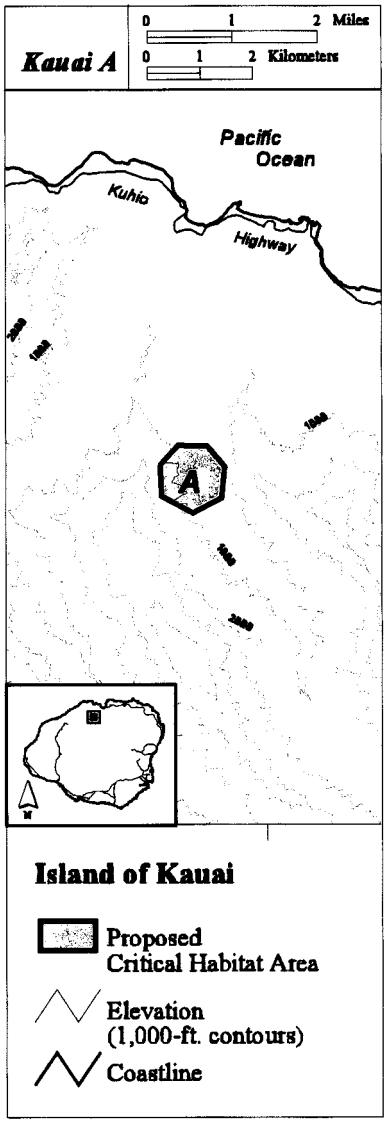


Critical habitat units with multiple species are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). Distances are provided in meters and miles.

Kauai A (121 ha; 298 ac)

Unit consists of seven boundary points with the following coordinates: 443666, 2452051; 443998, 2452413; 444554, 2452401; 444886, 2452015; 444832, 2451423; 444282, 2451133; 443696, 2451454.

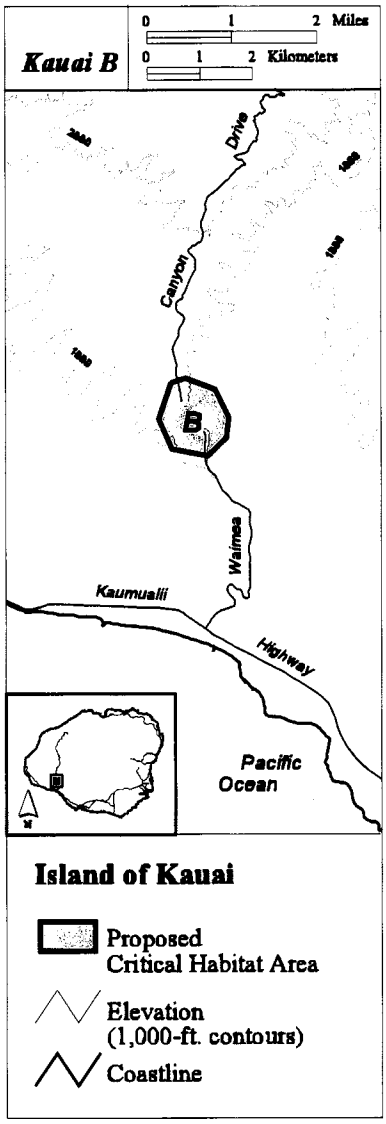
Note: Map follows:



Kauai B (142 ha; 351 ac)

Unit consists of eight boundary points with the following coordinates: 429954, 2432936; 430228, 2433024; 430792, 2432813; 431050, 2432278; 431007, 2431901; 430646, 2431556; 429966, 2431685; 429725, 2432253.

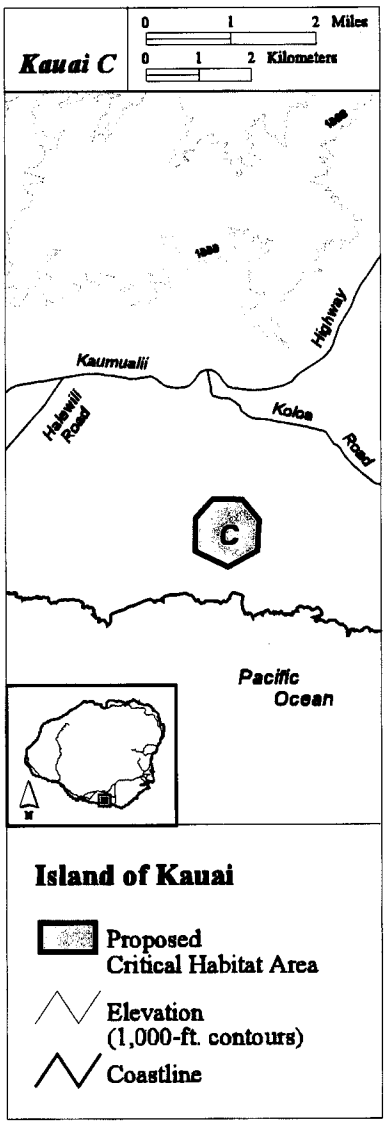
Note: Map follows:



Kauai C (124 ha; 306 ac)

Unit consists of seven boundary points with the following coordinates: 447275, 2421965; 447607, 2422327; 448163, 2422315; 448481, 2421928; 448450, 2421347; 447896, 2421028; 447268, 2421332.

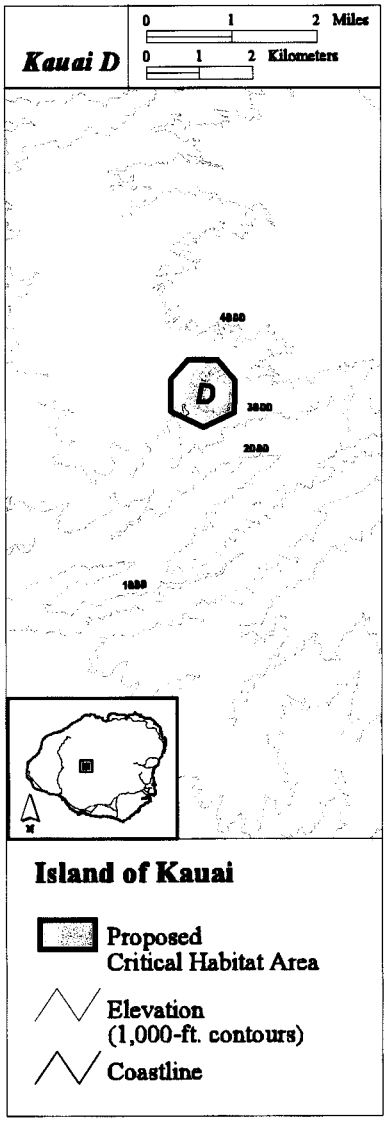
Note: Map follows:



Kauai D (125 ha; 308 ac)

Unit consists of seven boundary points with the following coordinates: 440157, 2439356; 440489, 2439719; 441045, 2439706; 441377, 2439320; 441355, 2438717; 440773, 2438438; 440155, 2438734.

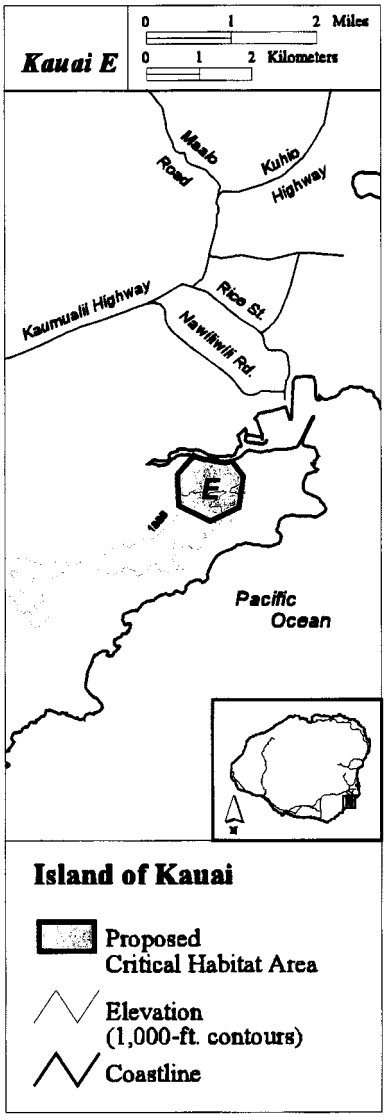
Note: Map follows:



Kauai E (117 ha; 288 ac)

Unit consists of seven boundary points and the intermediate coastline with the following coordinates: 462461, 2426866; 462686, 2426588; 462598, 2425988; 462047, 2425726; 461453, 2426032; 461432, 2426617; 461741, 2426979.

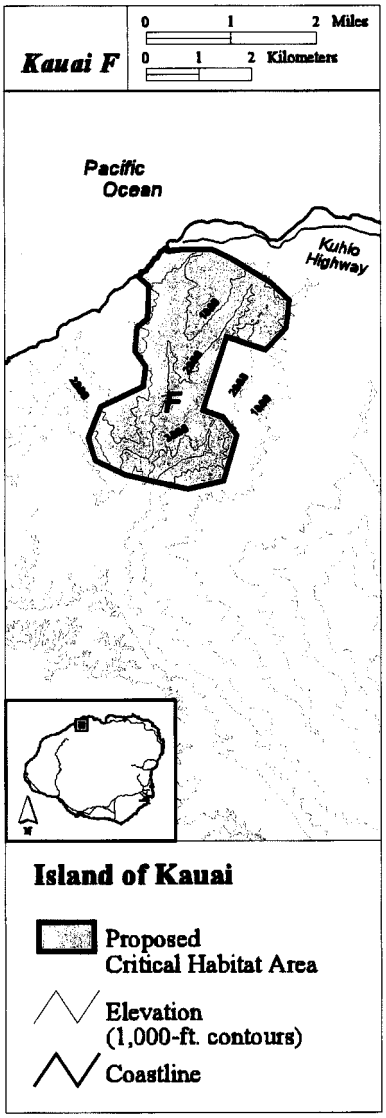
Note: Map follows:



Kauai F (943 ha; 2,330 ac)

Unit consists of twenty-seven boundary points and the intermediate coastline with the following coordinates: 439582, 2457190; 439646, 2457137; 439870, 2457165; 440480, 2457164; 440853, 2456992; 441585, 2456539; 441928, 2456203; 441875, 2455686; 441477, 2455265; 440747, 2455513; 440294, 2454127; 440678, 2454002; 440939, 2453662; 440687, 2452786; 440011, 2452638; 439324, 2452794; 438821, 2452909; 438249, 2453179; 438122, 2453607; 438356, 2454207; 439171, 2454579; 439213, 2454955; 439014, 2455248; 439053, 2455692; 439249, 2455858; 439274, 2456481; 439060, 2456669.

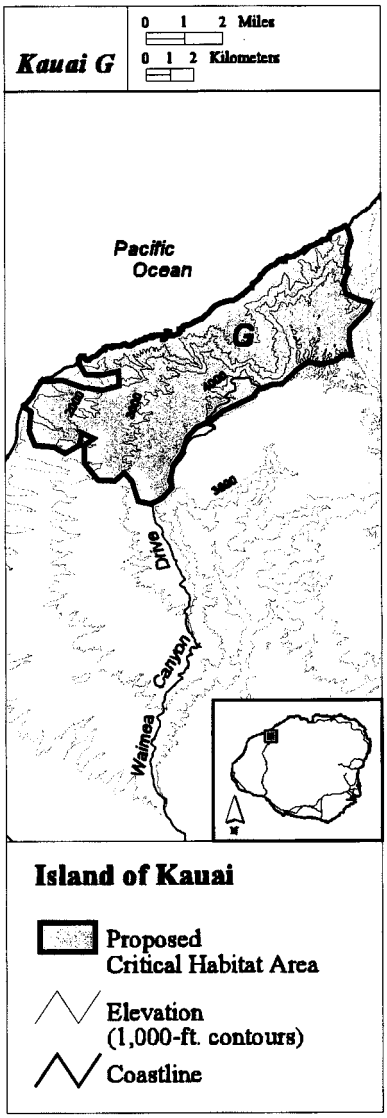
Note: Map follows:



Kauai G (6,372 ha; 15,752 ac)

Unit consists of sixty-one boundary points and two intermediate stretches of coastline with the following coordinates: 438237, 2456026; 438340, 2455904; 438452, 2455418; 438302, 2455008; 438227, 2454336; 438356, 2454207; 438122, 2453607; 438249, 2453179; 438821, 2452909; 439324, 2452794; 439098, 2452402; 438390, 2451683; 438377, 2451066; 438479, 2450630; 438081, 2450611; 437856, 2450386; 437196, 2450236; 436686, 2450327; 436206, 2450012; 435576, 2449428; 435171, 2449398; 434571, 2449188; 434346, 2448873; 433716, 2448589; 433056, 2448274; 432606, 2447884; 431976, 2447600; 431571, 2447195; 431376, 2446520; 431001, 2446041; 430881, 2445501; 430956, 2445096; 430506, 2444616; 430055, 2444390; 429511, 2444515; 429264, 2445339; 428958, 2445710; 428546, 2445373; 427836, 2445411; 427275, 2446121; 427275, 2446869; 427649, 2447167; 427163, 2447392; 427051, 2446869; 426453, 2446532; 426005, 2446794; 425182, 2446869; 424958, 2447466; 425033, 2448288; 424734, 2448475; 424703, 2448535; 425519, 2449626; 425631, 2449559; 426331, 2449614; 427201, 2449297; 428060, 2449185; 428733, 2449372; 428696, 2449969; 427986, 2449820; 427327, 2449846; 427036, 2450343.

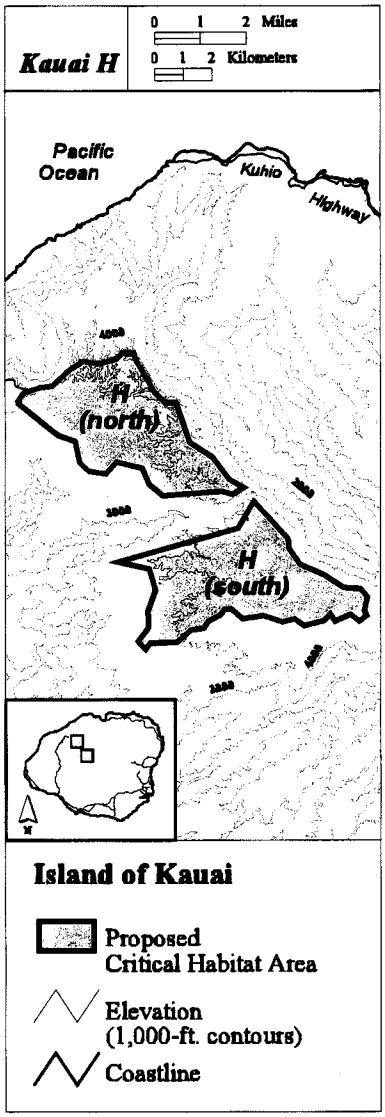
Note: Map follows:



Kauai H North (1,893 ha; 4,678 ac)

Unit consists of thirty boundary points with the following coordinates: 438479, 2450630; 438530, 2450411; 439197, 2449222; 439559, 2448851; 439963, 2448868; 440449, 2447452; 441231, 2446950; 441832, 2446159; 442326, 2445855; 441941, 2445618; 441564, 2445724; 440439, 2445635; 439481, 2445574; 439012, 2445981; 438755, 2446540; 437858, 2446764; 437473, 2446353; 436897, 2446435; 436567, 2446737; 436399, 2447492; 435795, 2447718; 434346, 2448873; 434571, 2449188; 435171, 2449398; 435576, 2449428; 436206, 2450012; 436686, 2450327; 437196, 2450236; 437856, 2450386; 438081, 2450611.

Note: Map follows:



Kauai H South (2,053 ha; 5,072 ac)

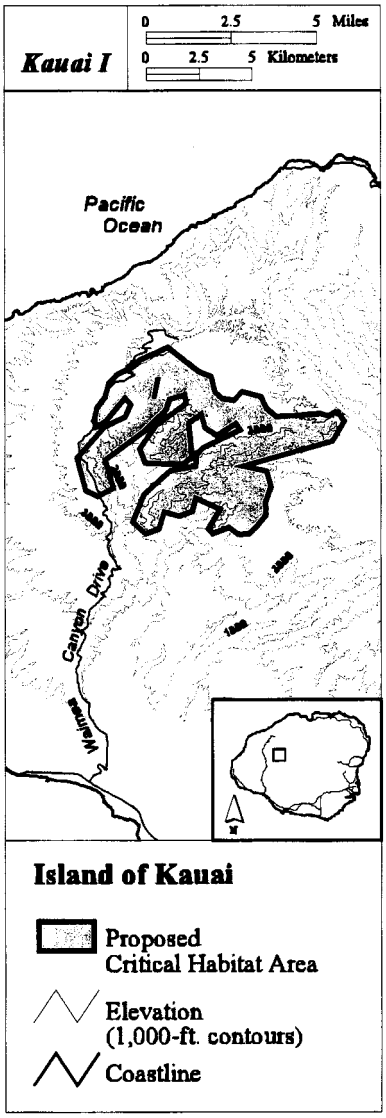
Unit consists of thirty-six boundary points with the following coordinates: 442681, 2445377; 443901, 2444045; 443929, 2443735; 444310, 2443141; 445138, 2442798; 445835, 2442346; 446429, 2442286; 446674, 2441998; 446559, 2441513; 446662, 2441347; 446394, 2441140; 446090, 2441397; 445534, 2441154; 445380, 2441414; 445147, 2441167; 444455, 2440991; 444124, 2441223; 443707, 2441132; 443023, 2441344; 442289, 2441224; 441900, 2441577; 441650, 2441573; 441526, 2441372; 441085, 2441150; 440912, 2440914; 440464, 2440832; 440002, 2440430; 439021, 2440374; 438871, 2440154; 438599, 2440452; 438983, 2440918; 438956, 2441522; 439226, 2442251; 439011, 2443004; 437912, 2443251; 442140, 2444430.

Note: Map follows:

Kauai I (5,111 ha; 12,629 ac)

Unit consists of seventy-five boundary points with the following coordinates: 442326, 2445855; 442681, 2445377; 442140, 2444430; 437912, 2443251; 439011, 2443004; 439226, 2442251; 438956, 2441522; 438983, 2440918; 438599, 2440452; 438182, 2440018; 437639, 2439989; 437237, 2440320; 436456, 2440043; 436254, 2440270; 436809, 2441177; 435666, 2441725; 435498, 2441102; 434893, 2440850; 434168, 2441070; 433936, 2440283; 433268, 2440018; 432676, 2440585; 433230, 2441908; 434465, 2443017; 435654, 2443235; 435682, 2443786; 435977, 2444109; 437779, 2444969; 437565, 2445246; 436658, 2444679; 436091, 2445059; 435939, 2445705; 435335, 2445271; 435492, 2443672; 435074, 2443340; 433280, 2443372; 433030, 2444063; 433773, 2445154; 435198, 2446208; 435150, 2446635; 434429, 2446408; 434277, 2445895; 433180, 2444874; 431397, 2443543; 431758, 2442201; 431027, 2441811; 430463, 2442072; 430035, 2443613; 431367, 2445115; 432329, 2445592; 432614, 2446180; 432320, 2446465; 431417, 2445364; 430956, 2445096; 430881, 2445501; 431001, 2446041; 431376, 2446520; 431571, 2447195; 431976, 2447600; 432606, 2447884; 433056, 2448274; 433716, 2448589; 434346, 2448873; 435795, 2447718; 436399, 2447492; 436567, 2446737; 436897, 2446435; 437473, 2446353; 437858, 2446764; 438755, 2446540; 439012, 2445981; 439481, 2445574; 440439, 2445635; 441564, 2445724; 441941, 2445618.

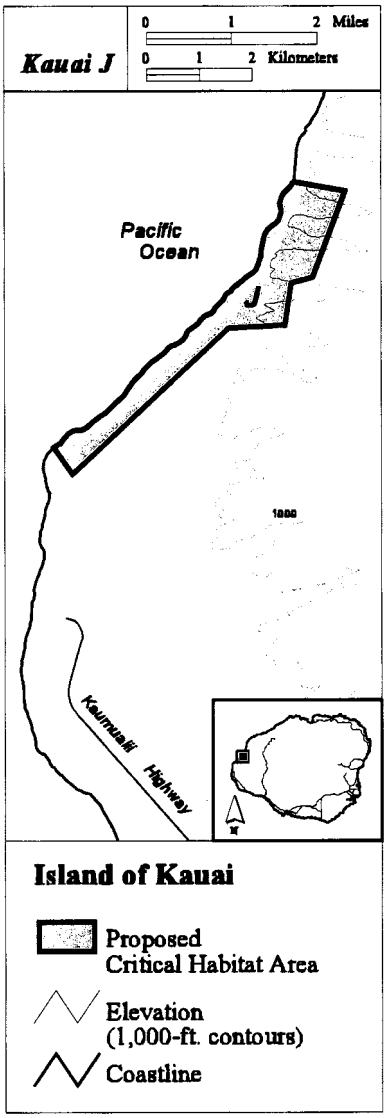
Note: Map follows:



Kauai J (504 ha; 1,245 ac)

Unit consists of eight boundary points and the intermediate coastline with the following coordinates: 423814, 2445432; 424802, 2445255; 424177, 2443625; 423776, 2443508; 423659, 2442716; 422590, 2442656; 419640, 2439894; 419295, 2440404.

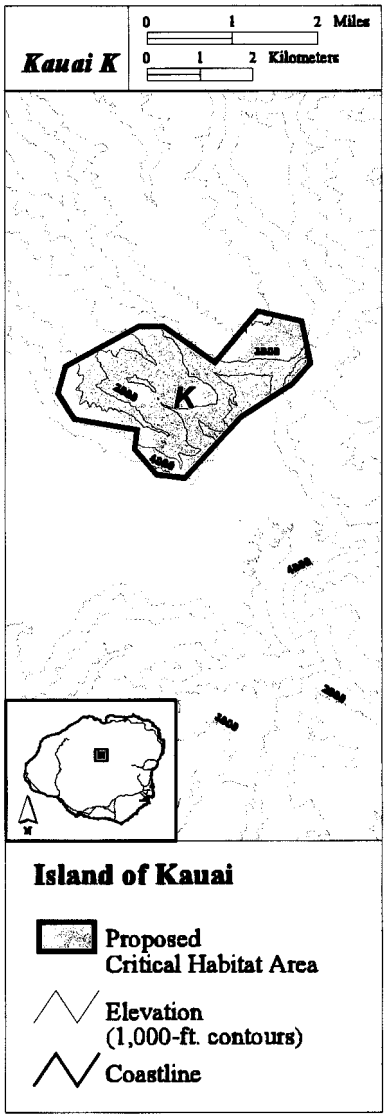
Note: Map follows:



Kauai K (821 ha; 2,028 ac)

Unit consists of fifteen boundary points with the following coordinates: 448086, 2443601; 447030, 2442449; 446492, 2442508; 446087, 2442992; 446126, 2443364; 444940, 2443559; 444633, 2444048; 444772, 2444564; 446167, 2445324; 446631, 2445322; 447605, 2444633; 448415, 2445609; 449238, 2445413; 449406, 2444618; 449057, 2444228.

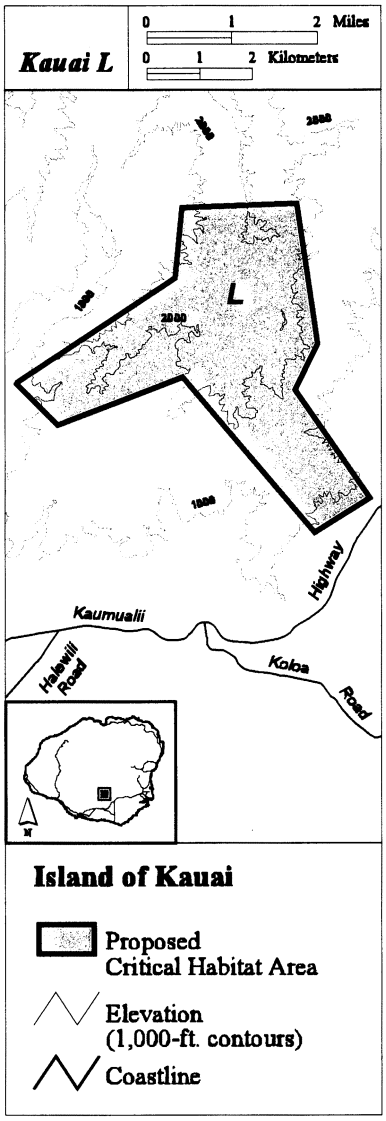
Note: Map follows:



Kauai L (1,682 ha; 4,157 ac)

Unit consists of eleven boundary points with the following coordinates: 443963, 2429307; 446972, 2431287; 447094, 2432620; 449275, 2432701; 449659, 2430034; 449235, 2429166; 450649, 2427126; 449602, 2426473; 447114, 2429408; 444745, 2428502; 443963, 2429287.

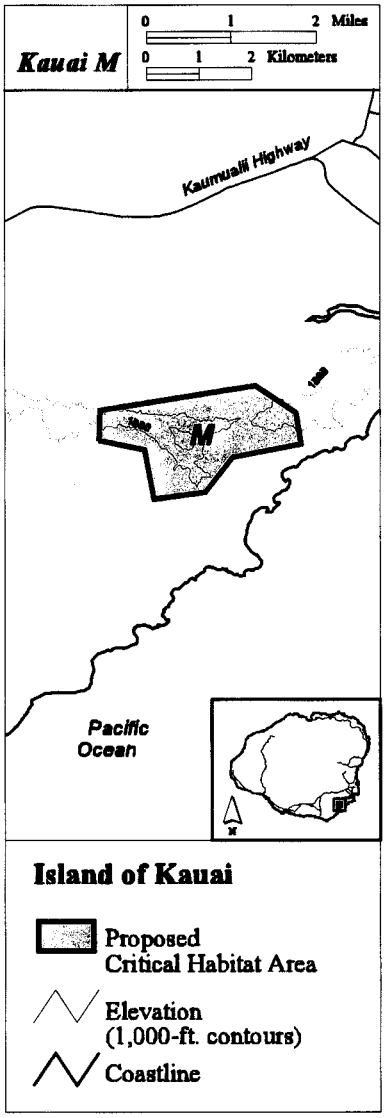
Note: Map follows:



Kauai M (482 ha; 1,191 ac)

Unit consists of nine boundary points with the following coordinates: 456911, 2424542; 456931, 2425122; 459885, 2425581; 460651, 2425063; 460751, 2424475; 459457, 2424224; 458932, 2423556; 457954, 2423431; 457777, 2424372.

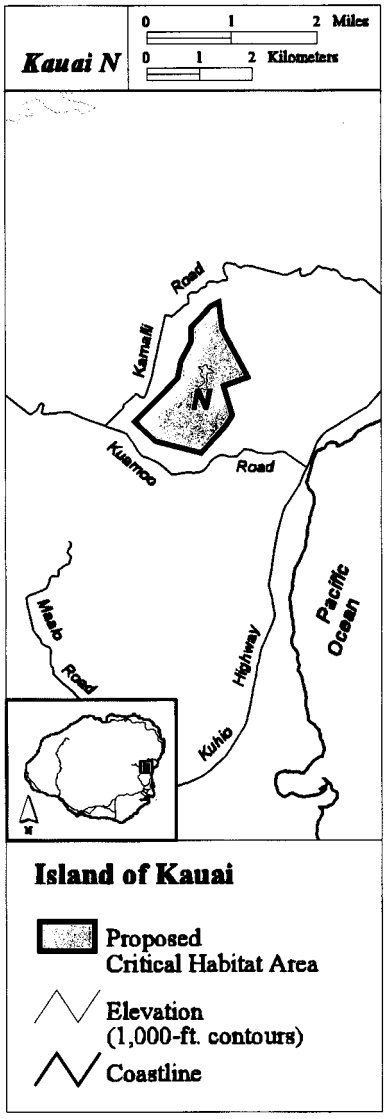
Note: Map follows:



Kauai N (286 ha; 707 ac)

Unit consists of sixteen boundary points with the following coordinates: 462502, 2438598; 462104, 2438973; 462578, 2439445; 462918, 2439799; 462987, 2440106; 463169, 2440475; 463176, 2440747; 463392, 2440968; 463540, 2441156; 463704, 2441235; 463768, 2440728; 464252, 2439811; 463789, 2439644; 463956, 2439085; 463831, 2438883; 463365, 2438375.

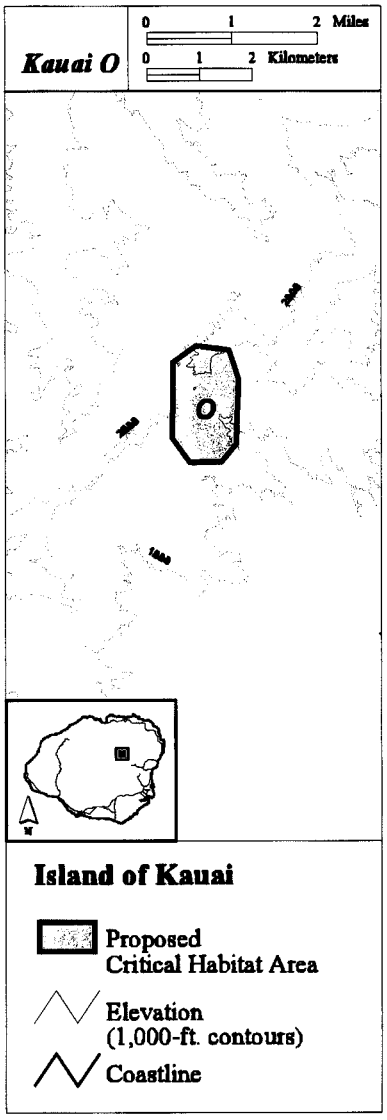
Note: Map follows:



Kauai O (243 ha; 600 ac)

Unit consists of eight boundary points with the following UTM coordinates: 454357, 2445398; 454986, 2445311; 455160, 2444765; 455113, 2443528; 454847, 2443199; 454234, 2443189; 453902, 2443647; 453926, 2445083.

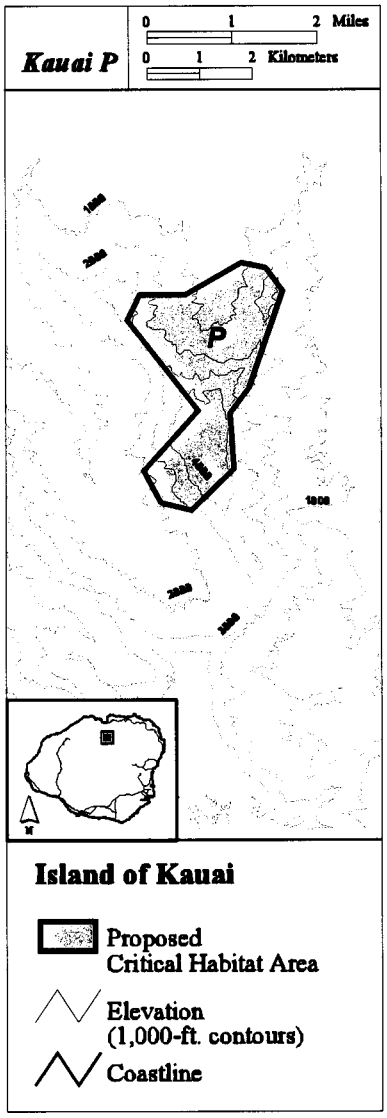
Note: Map follows:



Kauai P (711 ha; 1,758 ac)

Unit consists of thirteen boundary points with the following coordinates: 447753, 2447225; 447428, 2447829; 448470, 2448968; 447125, 2450677; 447365, 2451166; 448229, 2451166; 449288, 2451766; 449752, 2451666; 450073, 2451227; 449432, 2449395; 449073, 2448924; 449147, 2447868; 448339, 2447084.

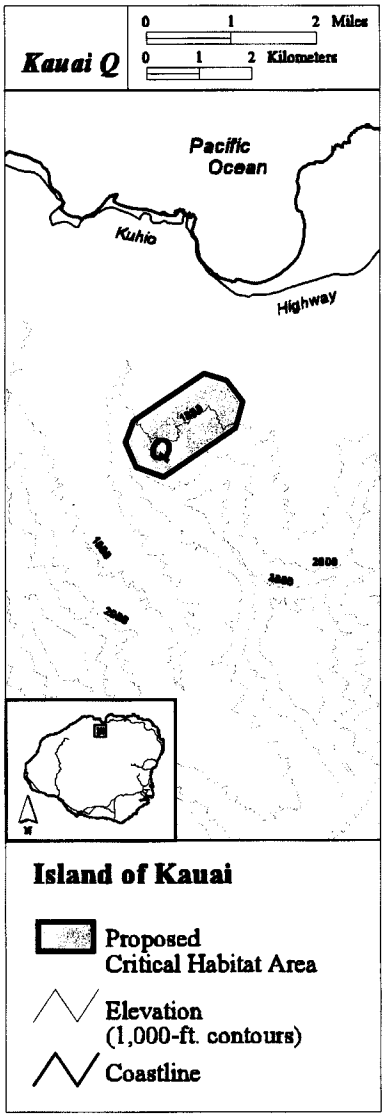
Note: Map follows:



Kauai Q (254 ha; 627 ac)

Unit consists of eight boundary points with the following coordinates: 445509, 2452732; 446856, 2453623; 447285, 2453489; 447596, 2453084; 447448, 2452593; 446079, 2451669; 445560, 2451860; 445359, 2452315.

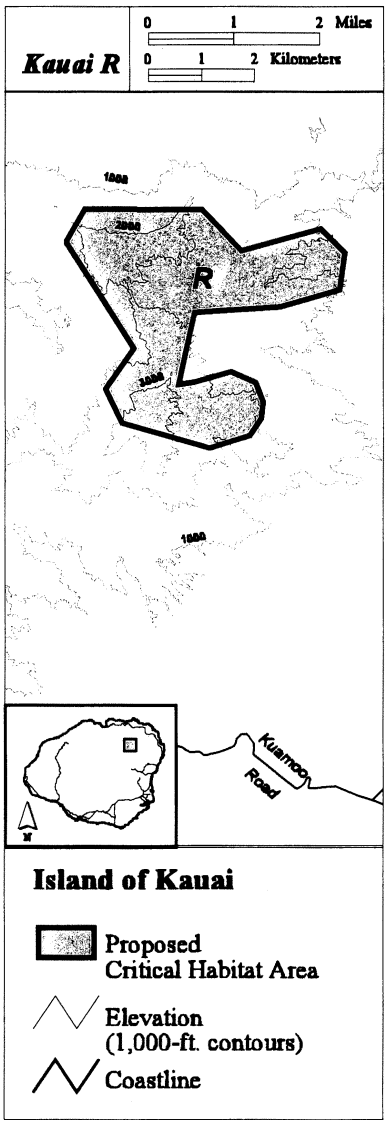
Note: Map follows:



Kauai R (1,216 ha; 3,004 ac)

Unit consists of twenty boundary points with the following coordinates: 455777, 2449394; 456131, 2450017; 458344, 2450005; 459083, 2449224; 460578, 2449637; 461026, 2449189; 460925, 2448495; 459811, 2448172; 458204, 2448066; 457900, 2446720; 458214, 2446760; 458887, 2446950; 459348, 2446748; 459490, 2446382; 459454, 2446075; 459242, 2445757; 458486, 2445521; 456838, 2445992; 456525, 2446628; 457057, 2447386.

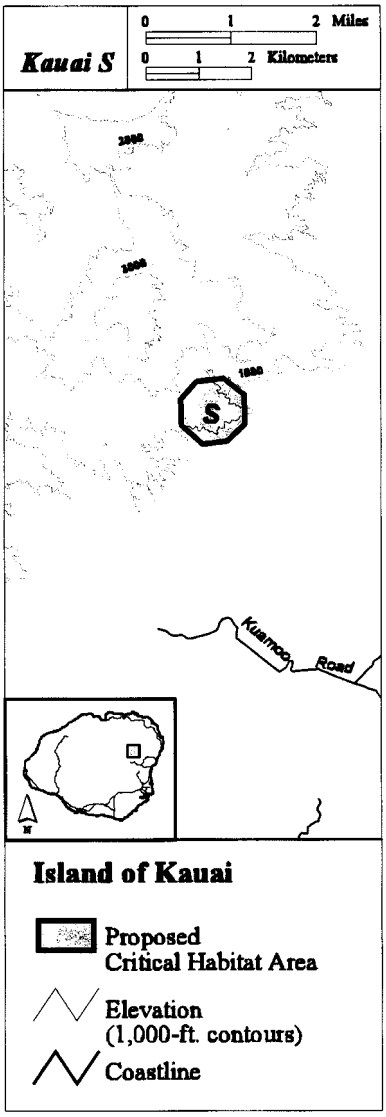
Note: Map follows:



Kauai S (119 ha; 294 ac)

Unit consists of eight boundary points with the following coordinates: 458569, 2444612; 459074, 2444680; 459466, 2444364; 459486, 2443810; 459152, 2443495; 458687, 2443427; 458285, 2443787; 458273, 2444282.

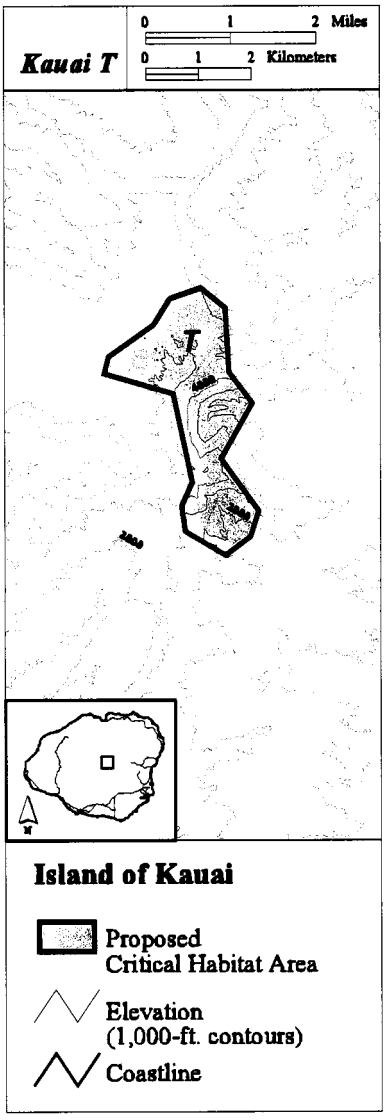
Note: Map follows:



Kauai T (639 ha; 1,578 ac)

Unit consists of sixteen boundary points with the following coordinates: 448552, 2442388; 449125, 2442584; 449589, 2442204; 449663, 2440988; 450101, 2440410; 449514, 2439343; 450217, 2438368; 450068, 2437872; 449597, 2437516; 448836, 2437971; 448762, 2438443; 448960, 2438905; 448605, 2440584; 447306, 2440964; 447381, 2441287; 448241, 2441890.

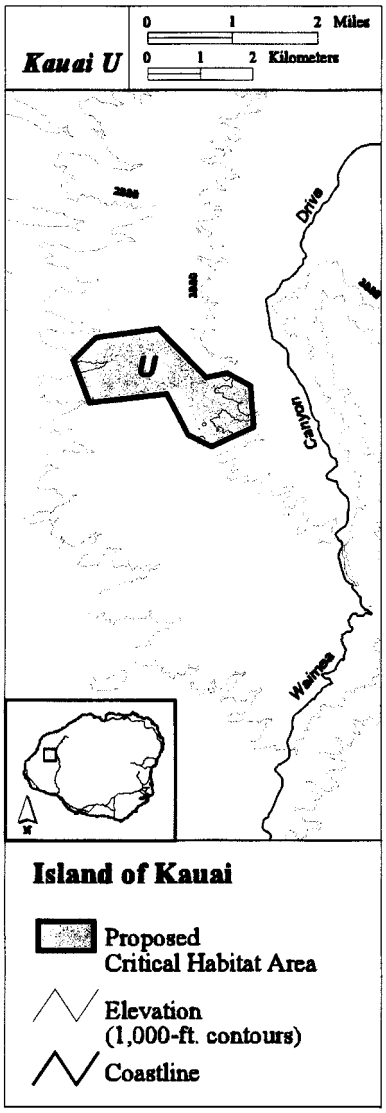
Note: Map follows:



Kauai U (392 ha; 969 ac)

Unit consists of eleven boundary points with the following coordinates: 426882, 2443616; 428076, 2443787; 428971, 2442855; 429381, 2442944; 429822, 2442698; 429881, 2441922; 429083, 2441549; 428635, 2441781; 428233, 2442549; 426763, 2442385; 426465, 2443191.

Note: Map follows:



PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT ON KAUAI

Kauai units	Species
A	*Cyrtandra limahuliensis.*
B	*Lipochaeta waimeaensis* and *Spermolepis hawaiiensis.*
C	*Schiedea spergulina* var. *leiopoda.*
D	*Solanum sandwicense.*
E	*Brighamia insignis.*
F	*Adenophorus periens, Cyrtandra limahuliensis, Delissea rhytidosperma, Flueggea neowawraea, Hesperomannia lydgatei, Hibiscus waimeae* ssp. *hannerae, Isodendrion longifolium, Labordia lydgatei, Lobelia niihauensis, Myrsine linearifolia, Peucedanum sandwicense,* and *Pteralyxia kauaiensis.*
G	*Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Cyperus trachysanthos, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia pallida, Dubautia latifolia, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hibiscadelphus woodii, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Lipochaeta fauriei, Lobelia niihauensis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Peucedanum sandwicense, Phyllostegia wawrana, Plantago princeps, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea kauaiensis, Schiedea membranacea, Schiedea spergulina* var. *spergulina, Solanum sandwicense, Stenogyne campanulata, Wilkesia hobdyi,* and *Xylosma crenatum.*
H	*Alsinidendron lychnoides, Exocarpos luteolus, Myrsine linearifolia,* and *Platanthera holochila.*
I	*Alectryon macrococcus, Alsinidendron viscosum, Chamaesyce halemanui, Diellia pallida, Dubautia latifolia, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Isodendrion laurifolium, Kokia kauaiensis, Lipochaeta fauriei, Lipochaeta micrantha, Lobelia niihauensis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Peucedanum sandwicense, Phyllostegia knudsenii, Phyllostegia wawrana, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea helleri, Schiedea membranacea, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Solanum sandwicense, Spermolepis hawaiiensis, Xylosma crenatum,* and *Zanthoxylum hawaiiense.*
J	*Hedyotis st.-johnii, Lobelia niihauensis, Panicum niihauense, Schiedea apokremnos, Sesbania tomentosa,* and *Wilkesia hobdyi.*
K	*Adenophorus periens, Cyanea recta, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Labordia lydgatei, Plantago princeps,* and *Schiedea membranacea.*
L	*Adenophorus periens, Bonamia menziesii, Cyanea remyi, Cyanea undulata, Cyrtandra limahuliensis, Dubautia pauciflorula, Exocarpos luteolus, Hesperomannia lydgatei, Isodendrion longifolium, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Myrsine linearifolia, Viola helenae,* and *Viola kauaiensis* var. *wahiawaensis.*
M	*Brighamia insignis, Delissea rhytidosperma, Isodendrion longifolium, Lipochaeta micrantha, Munroidendron racemosum, Peucedanum sandwicense, Pteralyxia kauaiensis,* and *Schiedea nuttallii.*
N	*Hibiscus clayi* and *Munroidendron racemosum.*
O	*Cyrtandra limahuliensis* and *Cyanea recta.*
P	*Adenophorus periens, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Hesperomannia lydgatei, Isodendrion longifolium, Labordia lydgatei, Myrsine linearifolia,* and *Plantago princeps.*
Q	*Cyrtandra limahuliensis* and *Pteralyxia kauaiensis.*
R	*Adenophorus periens, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Labordia lydgatei, Phyllostegia wawrana.*
S	*Exocarpos luteolus.*
T	*Cyanea asarifolia, Cyanea remyi, Cyrtandra limahuliensis, Labordia lydgatei, Lysimachia filifolia, Plantago princeps,* and *Pteralyxia kauaiensis.*
U	*Alectryon macrococcus, Euphorbia haeleeleana, Isodendrion laurifolium, Lipochaeta fauriei, Poa siphonoglossa, Pteralyxia kauaiensis,* and *Remya kauaiensis.*

(B) Niihau.

Critical habitat units with multiple species are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). Distances are provided in meters and miles.

Niihau A (94 ha; 232 ac)

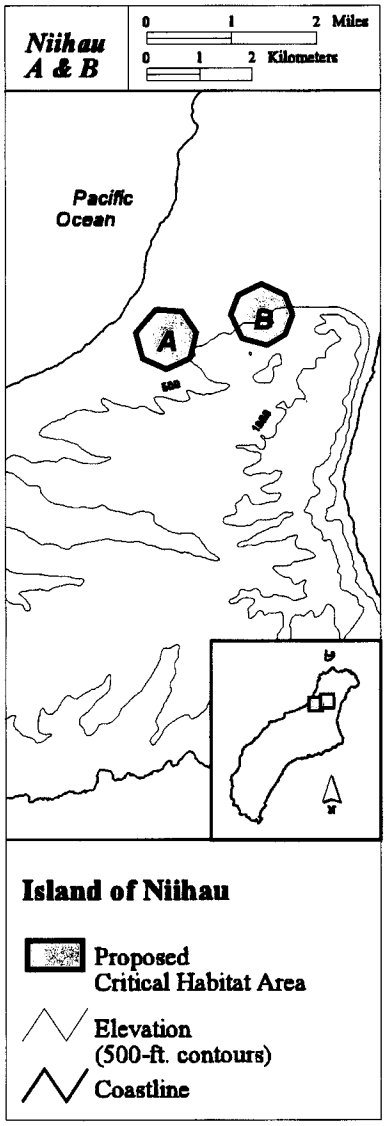
Area consists of seven boundary points with the following coordinates: 385256, 2427495; 384807, 2427285; 384358, 2427494; 384230, 2427972; 384607, 2428421; 385100, 2428379; 385384, 2427974.

Note: Map follows:

Niihau B (97 ha; 239 ac)

Area consists of eight boundary points with the following coordinates: 387204, 2428323; 387067, 2427946; 386719, 2427745; 386241, 2427873; 386032, 2428321; 386169, 2428698; 386618, 2428908; 387067, 2428699.

Note: Map follows:



PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT ON NIIHAU

Niihau units	Species
A	*Cyperus trachysanthos.*
B	*Brighamia insignis.*

(ii) Hawaiian plants—Constituent elements.

(A) Flowering plants.

Family Apiaceae: *Peucedanum sandwicense* (makou)

Kauai F, G, I, and M, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Peucedanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) cliff habitats (a) in mixed shrub coastal dry cliff communities or diverse mesic forest and (b) containing one or more of the following associated native plant species: *Hibiscus kokio, Brighamia insignis, Bidens* sp., *Artemisia* sp., *Lobelia niihauensis, Wilkesia gymnoxiphium, Canthium odoratum, Dodonaea viscosa, Psychotria* sp., *Acacia koa, Kokio kauaiensis, Carex meyenii, Panicum lineale, Chamaesyce celastroides, Eragrostis* sp., *Diospyros* sp., or *Metrosideros polymorpha;* and (2) elevations from sea level to above 915 m (3,000 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (no common name)

Kauai B and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Spermolepis hawaiiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland containing one or more of the following associated plant species: *Eragrostis variabilis, Bidens sandvicensis, Schiedea spergulina, Lipochaeta* sp., *Cenchrus agrimonioides, Sida fallax, Doryopteris* sp., or *Gouania hillebrandii*; and (2) elevations of about 305 to 610 m (1,000 to 2,000 ft).

Family Apocynaceae: *Pteralyxia kauaiensis* (kaulu)

Kauai F, G, I, M, Q, T, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Pteralyxia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse mesic or wet forests containing one or more of the following associated plant taxa: *Pisonia sandwicensis, Euphorbia haeleeleana, Charpentiera elliptica, Pipturus* sp., *Neraudia kauaiensis, Hedyotis terminalis, Pritchardia* sp., *Gardenia remyi, Syzygium* sp., *Pleomele* sp., *Cyanea* sp., *Hibiscus* sp., *Kokia kauaiensis, Alectryon macrococcus, Canthium odoratum, Nestegis sandwicensis, Bobea timonioides, Rauvolfia sandwicensis, Nesoluma polynesicum, Myrsine lanaiensis, Caesalpinia kauaiensis, Tetraplasandra* sp., *Acacia koa, Styphelia tameiameiae, Dodonaea viscosa, Gahnia* sp., *Freycinetia arborea, Psychotria mariniana, Diplazium sandwichianum, Zanthoxylum dipetalum, Carex* sp., *Delissea* sp., *Xylosma hawaiiense, Alphitonia ponderosa, Santalum freycinetianum, Antidesma* sp., *Diospyros* sp., *Metrosideros polymorpha, Dianella sandwicensis, Poa sandwicensis, Schiedea*

stellarioides, Peperomia macraeana, Claoxylon sandwicense, or *Pouteria sandwicensis*; and (2) elevations between 250 to 610 m (820 to 2,000 ft).

Family Araliaceae: *Munroidendron racemosum* (no common name)

Kauai G, I, M, and N, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Munroidendron racemosum* on Kauai. Within these units the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep exposed cliffs or ridge slopes (a) in coastal or lowland mesic forest and (b) containing one or more of the following associated plant taxa: *Pisonia umbellifera, Canavalia galeata, Sida fallax, Brighamia insignis, Canthium odoratum, Psychotria* sp., *Nestegis sandwicensis, Tetraplasandra* sp., *Bobea timonioides, Rauvolfia sandwicensis, Pleomele* sp., *Pouteria sandwicensis,* or *Diospyros* sp.; and (2) elevations between 120 to 400 m (395 to 1,310 ft).

Family Asteraceae: *Dubautia latifolia* (na'ena'e)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Dubautia latifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) gentle or steep slopes on well drained soil in (a) semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and (b) containing one or more of the following native plant species: *Pouteria sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Diplazium sandwichianum, Elaeocarpus bifidus, Claoxylon sandwicense, Bobea* sp., *Pleomele* sp., *Antidesma* sp., *Cyrtandra* sp., *Xylosma* sp., *Alphitonia ponderosa, Coprosma waimeae, Dicranopteris linearis, Hedyotis terminalis, Ilex anomala, Melicope anisata, Psychotria mariniana,* or *Scaevola* sp.; and (2) elevations between 800 to 1,220 m (2,625 to 4,000 ft).

Family Asteraceae: *Dubautia pauciflorula* (na'ena'e)

Kauai L, identified in the legal description in (a)(1)(i)(A), description above, constitutes critical habitat for *Dubautia pauciflorula* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) lowland wet forest within stream drainages; and (2) elevations between 670–700 m (2,200–2,300 ft).

Family Asteraceae: *Hesperomannia lydgatei* (no common name)

Kauai F, L, and P, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Hesperomannia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) stream banks with rich brown soil and silty clay (a) in *Metrosideros polymorpha* or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest and (b) containing one or more of the following associated native plant species: *Adenophorus* sp., *Antidesma* sp., *Broussaisia arguta, Cheirodendron* sp., *Elaphoglossum* sp., *Freycinetia arborea, Hedyotis terminalis, Labordia lydgatei, Machaerina angustifolia, Peperomia* sp., *Pritchardia* sp., *Psychotria hexandra,* and *Syzygium sandwicensis*; and (2) elevations between 410–915 m (1,345–3,000 ft).

Family Asteraceae: *Lipochaeta fauriei* (nehe)

Kauai G, I, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lipochaeta fauriei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) moderate shade to full sun on the sides of steep gulches (a) in diverse lowland mesic forests and (b) containing one or more of the following native species: *Diospyros* sp., *Myrsine lanaiensis, Euphorbia haeleeleana, Acacia koa, Pleomele aurea, Sapindus oahuensis, Nestegis sandwicensis, Dodonaea viscosa, Psychotria mariniana, Psychotria greenwelliae, Kokia kauaiensis,* or *Hibiscus waimeae*; and (2) elevations between 480 and 900 m (1,575 and 2,950 ft).

Family Asteraceae: *Lipochaeta micrantha* (nehe)

Kauai I and M, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lipochaeta micrantha* on Kauai. Within these units the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *exigua* are habitat components that provide: (1) cliffs, ridges, or slopes (a) in grassy, shrubby or dry mixed communities and (b) containing one or more of the following associated native plant species: *Artemisia australis, Bidens sandvicensis, Plectranthus parviflorus, Chamaesyce celastroides, Diospyros* sp., *Canthium odoratum, Neraudia* sp., *Pipturus* sp., *Hibiscus kokio, Sida fallax, Eragrostis* sp., or *Lepidium bidentatum*; and (2) elevations between 305–430 m (1,000–1,400 ft).

Within these units, the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *micrantha* are habitat components that provide: (1) basalt cliffs, stream banks, or level ground (a) in mesic or diverse *Metrosideros polymorpha-Diospyros* sp. forest and (b) containing one or more of the following associated native plant species: *Lobelia niihauensis, Chamaesyce celastroides* var. *hanapepensis, Neraudia kauaiensis, Rumex* sp., *Nontrichium* sp. (kului), *Artemisia* sp., *Dodonaea viscosa, Antidesma* sp., *Hibiscus* sp., *Xylosma* sp., *Pleomele* sp., *Melicope* sp., *Bobea* sp., and *Acacia koa*; and (2) elevations between 610–720 m (2,000–2,360 ft).

Family Asteraceae: *Lipochaeta waimeaensis* (nehe)

Kauai B, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Lipochaeta waimeaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) precipitous, shrub-covered gulch (a) in diverse lowland forest and (b) containing the native species *Dodonaea viscosa* or *Lipochaeta connata*; and (2) elevations between 350 and 400 m (1,150 and 1,310 ft).

Family Asteraceae: *Remya kauaiensis* (no common name)

Kauai G, I, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Remya kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep, north or northeast facing slopes (a) in *Acacia koa-Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following associated native plant species: *Chamaesyce* sp., *Nestegis sandwicensis, Diospyros* sp., *Hedyotis terminalis, Melicope* ssp., *Pouteria sandwicensis, Schiedea membranacea, Psychotria mariniana, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis,* or *Claoxylon sandwicensis*; and (2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

Family Asteraceae: *Remya montgomeryi* (no common name)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Remya montgomeryi* on Kauai. Within these units, the

currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep, north or northeast-facing slopes, cliffs, or stream banks near waterfalls (a) in *Metrosideros polymorpha* mixed mesic forest and (b) containing one or more of the following associated native plant species: *Lysimachia glutinosa, Lepidium serra, Boehmeria grandis, Poa mannii, Stenogyne campanulata, Myrsine linearifolia, Bobea timonioides, Ilex anomala, Zanthoxylum dipetalum, Claoxylon sandwicensis, Tetraplasandra* spp., *Artemisia* sp., *Nototrichium* sp., *Cyrtandra* sp., *Dubautia plantaginea, Sadleria* sp., *Cheirodendron* sp., *Scaevola* sp., or *Pleomele* sp.; and (2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

Family Asteraceae: *Wilkesia hobdyi* (dwarf iliau)

Kauai G and J, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Wilkesia hobdyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) coastal dry cliffs or very dry ridges containing one or more of the following associated native plant species: *Artemisia* sp., *Wilkesia gymnoxiphium, Lipochaeta connata, Lobelia niihauensis, Peucedanum sandwicensis, Hibiscus kokio* ssp. *saint johnianus, Canthium odoratum, Peperomia* sp., *Myoporum sandwicense, Sida fallax, Waltheria indica, Dodonaea viscosa,* or *Eragrostis variabilis*; and (2) elevations between 275 to 400 m (900 to 1,310 ft).

Family Campanulaceae: *Brighamia insignis* (‘olulu)

Kauai E, G, and M, identified in the legal descriptions in (a)(1)(i)(A), and Niihau B, identified in the legal descriptions in (a)(1)(i)(B), constitute critical habitat for *Brighamia insignis* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) rocky ledges with little soil or steep sea cliffs (a) in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in.) and (b) containing one or more of the following native plant species: *Artemisia* sp., *Chamaesyce celastroides, Canthium odoratum, Eragrostis variabilis, Heteropogon contortus, Hibiscus kokio, Hibiscus saintjohnianus, Lepidium serra, Lipochaeta succulenta, Munroidendron racemosum,* or *Sida fallax*; and (2) elevations between sea level to 480 m (1,575 ft) elevation.

Family Campanulaceae: *Cyanea asarifolia* (haha)

Kauai R and T, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyanea asarifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) pockets of soil on sheer rock cliffs (a) in lowland wet forests and (b) containing one or more of the following native plant species: *Hedyotis elatior, Machaerina angustifolia, Metrosideros polymorpha, Touchardia latifolia,* or *Urera glabra*; and (2) elevations between 330 to 730 m (1,080 to 2,400 ft).

Family Campanulaceae: *Cyanea recta* (haha)

Kauai K, O, P, and R, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyanea recta* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) gulches or slopes (a) in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland and (b) containing one or more of the following native plant species: *Dicranopteris linearis, Psychotria* sp., *Antidesma* sp., *Cheirodendron platyphyllum, Cibotium* sp., or *Diplazium* sp.; and (2) elevations between 400 to 1,200 m (1,310 to 3,940 ft).

Family Campanulaceae: *Cyanea remyi* (haha)

Kauai L, P, R, and T, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyanea remyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) lowland wet forest or shrubland and containing one or more of the following native plant species: *Antidesma* sp., *Cheirodendron* sp., *Diospyros sp., Broussaisia arguta, Metrosideros polymorpha, Freycinetia arborea, Hedyotis terminalis, Machaerina angustifolia, Perrottetia sandwicensis, Psychotria hexandra,* or *Syzygium sandwicensis*; and (2) elevations between 360 to 930 m (1,180 to 3,060 ft).

Family Campanulaceae: *Cyanea undulata* (haha)

Kauai L, identified in the legal descriptions in (a)(1)(i)(A), constitutes critical habitat for *Cyanea undulata* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) pristine, undisturbed sites along shady stream banks or steep to vertical slopes; and (2) elevations between 630 to 800 m (2,070 to 2,625 ft).

Family Campanulaceae: *Delissea rhytidosperma* (no common name)

Kauai F, G, and M, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Delissea rhytidosperma* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) well-drained soils with medium or fine-textured subsoil (a) in diverse lowland mesic forests or *Acacia koa* dominated lowland dry forests and (b) containing one or more of the following native species: *Euphorbia haeleeleana, Psychotria hobdyi, Pisonia* sp., *Pteralyxia* sp., *Dodonaea viscosa, Cyanea* sp., *Hedyotis* sp., *Dianella sandwicensis, Diospyros sandwicensis, Styphelia tameiameiae,* or *Nestegis sandwicensis;* and (2) elevations between 120 and 915 m (400 and 3,000 ft).

Family Campanulaceae: Delissea rivularis (‘oha)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Delissea rivularis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes near streams (a) in *Metrosideros polymorpha—Cheirodendron trigynum* montane wet or mesic forest and (b) containing one or more of the following native plant species: *Broussaisia arguta, Carex* sp., *Coprosma* sp., *Melicope clusiifolia, M. anisata, Psychotria hexandra, Dubautia knudsenii, Diplazium sandwichianum, Hedyotis foggiana, Ilex anomala,* or *Sadleria* sp.; and (2) elevations between 1,100 to 1,220 m (3,610 to 4,000 ft).

Family Campanulaceae: *Delissea undulata* (no common name)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Delissea undulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) dry or mesic open *Sophora chrysophylla-Metrosideros polymorpha* forests containing one or more of the following native plant species: *Diospyros sandwicensis, Dodonaea viscosa, Psychotria mariniana, P. greenwelliae, Santalum ellipticum, Nothocestrum breviflorum,* or *Acacia koa;* and (2) elevations between 610–1,740 m (2,000–5,700 ft).

Family Campanulaceae: *Lobelia niihauensis* (no common name)

Kauai F, G, I, and J, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Lobelia niihauensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) exposed mesic mixed shrubland or coastal dry cliffs containing one or more of the following associated native plant species: *Eragrostis* sp., *Bidens* sp., *Plectranthus parviflorus, Lipochaeta* sp., *Lythrum* sp., *Wilkesia hobdyi, Hibiscus kokio* ssp. *saint johnianus, Nototrichium* sp., *Schiedea apokremnos, Chamaesyce celastroides, Charpentiera* sp., or *Artemisia* sp.; and (2) elevations between 100 to 830 m (330 to 2720 ft).

Family Caryophyllaceae: *Alsinidendron lychnoides* (kuawawaenohu)

Kauai G and H, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Alsinidendron lychnoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) montane wet forests (a) dominated by *Metrosideros polymorpha* and *Cheirodendron* sp., or by *Metrosideros polymorpha* and *Dicranopteris linearis* and (b) containing one or more of the following native plant species: *Carex* sp., *Cyrtandra* sp., *Machaerina* sp., *Vaccinium* sp., *Peperomia* sp., *Hedyotis terminalis, Astelia* sp., or *Broussaisia arguta;* and (2) elevations between 1,100 and 1,320 m (3,610 and 4,330 ft).

Family Caryophyllaceae: *Alsinidendron viscosum* (no common name)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Alsinidendron viscosum* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes (a) in *Acacia koa-Metrosideros polymorpha* lowland, montane mesic, or wet forest and (b) containing one or more of the following native plant species: *Alyxia olivaeformis, Bidens cosmoides, Bobea* sp., *Carex* sp., *Coprosma* sp., *Dodonaea viscosa, Gahnia* sp., *Ilex anomala, Melicope* sp., *Pleomele* sp., *Psychotria* sp., or *Schiedea stellarioides;* and (2) elevations between 820 and 1,200 m (2,700 and 3,940 ft).

Family Caryophyllaceae: *Schiedea apokremnos* (ma'oli'oli)

Kauai G and J, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Schiedea apokremnos* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) crevices of near-vertical coastal cliff faces (a) in sparse dry coastal shrub vegetation and (b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Chamaesyce* sp., *Bidens* sp., *Artemisia australis, Lobelia niihauensis, Wilkesia hobdyi, Lipochaeta connata, Myoporum sandwicense, Canthium odoratum,* or *Peperomia* sp.; and (2) elevations between 60 to 330 m (200 to 1,080 ft).

Family Caryophyllaceae: *Schiedea helleri* (no common name)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea helleri* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) ridges and steep cliffs (a) in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Metrosideros polymorpha-Cheirodendron* sp. montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane mesic forest, and (b) containing one or more of the following associated native plant species: *Dubautia raillardioides, Scaevola procera, Hedyotis terminalis, Syzygium sandwicensis, Melicope clusifolia, Cibotium* sp., *Broussaisia arguta, Cheirodendron sp., Cyanea hirtella, Dianella sandwicensis, Viola wailenalenae,* or *Poa sandvicensis;* and (2) elevations between 1,065–1,100 m (3,490–3,610 ft).

Family Caryophyllaceae: *Schiedea kauaiensis* (no common name)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea kauaiensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes (a) in diverse mesic or wet forest and (b) containing one or more of the following associated plant taxa: *Psychotria mariniana, Psychotria hexandra, Canthium odoratum, Pisonia* sp., *Microlepia speluncae, Exocarpos luteolus, Diospyros* sp., *Peucedanum sandwicense,* or *Euphorbia haeleeleana;* and (2) elevations between 680–790 m (2,230–2,590 ft).

Family Caryophyllaceae: *Schiedea membranacea* (no common name)

Kauai G, I, and K, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Schiedea membranacea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) cliffs or cliff bases (a) in mesic or wet habitats, (b) in lowland, or montane shrubland, or forest communities dominated by *Acacia koa, Pipturus* sp. or *Metrosideros polymorpha* and (c) containing one or more of the following associated native plant species: *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Hibiscus waimeae, Psychotria mariniana, Canthium odoratum, Pisonia* sp., *Perrottetia sandwicensis, Scaevola procera, Sadleria cyatheoides, Diplazium sandwicensis, Thelypteris sandwicensis, Boehmeria grandis, Dodonaea viscosa, Myrsine* sp., *Bobea brevipes, Alyxia olivaeformis, Psychotria greenwelliae, Pleomele* sp., *Alphitonia ponderosa, Joinvillea ascendens* ssp. *ascendens, Athyrium sandwichianum, Machaerina angustifolia, Cyrtandra paludosa, Touchardia latifolia, Thelypteris cyatheoides, Lepidium serra, Eragrostis variabilis, Remya kauaiensis, Lysimachia kalalauensis, Labordia helleri, Mariscus pennatiformis, Asplenium praemorsum,* or *Poa sandvicensis;* and (2) elevations between 520 and 1,160 m (1,700 and 3,800 ft).

Family Caryophyllaceae: *Schiedea nuttallii* (no common name)

Kauai M, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea nuttallii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse lowland mesic forest, often with *Metrosideros polymorpha* dominant, containing one or more of the following associated native plant species: *Antidesma* sp, *Psychotria* sp., *Perrottetia sandwicensis, Pisonia* sp., or *Hedyotis acuminata;* and (2) elevations between 415 and 790 m (1,360 and 2,590 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *leiopoda* (no common name)

Kauai C, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea spergulina* var. *leiopoda* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases (a) in diverse lowland mesic forests and (b) containing one or more of the following native plants: *Bidens sandvicensis, Doryopteris* sp., *Peperomia leptostachya,* or *Plectranthus parviflorus;* and (2) elevations between 180 and 800 m (590 and 2,625 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *spergulina* (no common name)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Schiedea spergulina* var. *spergulina* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases (a) in diverse lowland mesic forests and (b) containing one or more of the following associated plant taxa: *Heliotropium* sp., or *Nototrichium sandwicense;* and (2) elevations between 180 and 800 m (590 and 2,625 ft).

Family Caryophyllaceae: *Schiedea stellarioides* (laulihilihi (ma'oli'oli))

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Schiedea stellarioides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes (a) in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland and (b) containing one or more of the following native plant species: *Nototrichium* sp., *Artemisia* sp., *Dodonaea viscosa, Melicope* sp., *Dianella sandwicensis, Bidens cosmoides, Mariscus* sp., or *Styphelia tameiameiae;* and (2) elevations between 610 and 1,120 m (2,000 and 3,680 ft).

Family Convolvulaceae: *Bonamia menziesii* (no common name)

Kauai G and L, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Bonamia menziesii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) dry, mesic or wet forests containing one or more of the following native plant species: *Metrosideros polymorpha, Canthium odoratum, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Hedyotis terminalis, Melicope anisata, Melicope barbigera, Myoporum sandwicense, Nestegis sandwicense, Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis,* or *Sapindus oahuensis;* and (2) elevations between 150 and 850 m (500 and 2,800 ft).

Family Cyperaceae: *Cyperus trachysanthos* (pu'uka'a)

Kauai G, identified in the legal descriptions in (a)(1)(i)(A), and Niihau A, identified in the legal descriptions in (a)(1)(i)(B), constitute critical habitat for *Cyperus trachysanthos* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) wet sites (mud flats, wet clay soil, or wet cliff seeps) (a) on coastal cliffs or talus slopes and (b) containing the native plant species *Hibiscus tiliaceus;* and (2) elevations between 3 and 160 m (10 and 525 ft).

Family Euphorbiaceae: *Chamaesyce halemanui* (no common name)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Chamaesyce halemanui* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes of gulches (a) in mesic *Acacia koa* forests and (b) containing one or more of the following native plant species: *Metrosideros polymorpha, Alphitonia ponderosa, Antidesma platyphyllum, Bobea brevipes, Cheirodendron trigynum, Coprosma* sp., *Diospyros sandwicensis, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Kokia kauaiensis, Melicope haupuensis, Pisonia* sp., *Pittosporum* sp., *Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Pouteria sandwicensis, Santalum freycinetianum,* or *Styphelia tameiameiae;* and (2) elevations between 660 to 1,100 m (2,165 to 3,610 ft).

Family Euphorbiaceae: *Euphorbia haeleeleana* ('akoko)

Kauai G, I, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Euphorbia haeleeleana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) lowland mixed mesic or dry forest that (a) is often dominated by *Metrosideros polymorpha, Acacia koa,* or *Diospyros* sp. and (b) containing one or more of the following native plant species: *Acacia koaia, Antidesma platyphyllum, Claoxylon sp., Carex meyenii, Carex wahuensis, Diplazium sandwichianum, Dodonaea viscosa, Erythrina sandwicensis, Kokia kauaiensis, Pleomele aurea, Psychotria mariniana, P. greenwelliae, Pteralyxia sandwicensis, Rauvolfia sandwicensis, Reynoldsia sandwicensis, Sapindus oahuensis, Tetraplasandra kauaiensis, Pouteria sandwicensis, Pisonia sandwicensis,* or *Xylosma* sp.; and (2) elevations between 205 and 670 m (680 and 2,200 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Kauai F, G, and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Flueggea neowawraea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) dry or mesic forests containing one or more of the following native plant species: *Alectryon macrococcus, Bobea timonioides, Charpentiera* sp., *Caesalpinia kauaiense, Hibiscus* sp., *Melicope* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Munroidendron racemosum, Tetraplasandra* sp., *Kokia kauaiensis, Isodendrion* sp., *Pteralyxia kauaiensis, Psychotria mariniana, Diplazium sandwichianum, Freycinetia arborea, Nesoluma polynesicum, Diospyros* sp., *Antidesma pulvinatum, A. platyphyllum, Canthium odoratum, Nestegis sandwicensis, Rauvolfia sandwicensis, Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis, Xylosma* sp., *Pritchardia* sp., *Bidens* sp., or *Streblus pendulinus;* and (2) elevations of 250 to 1,000 m (820 to 3,280 ft).

Family Fabaceae: *Sesbania tomentosa* ('ohai)

Kauai J, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Sesbania tomentosa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) sandy beaches, dunes, soil pockets on lava, or pond margins (a) in coastal dry shrublands, or open *Metrosideros polymorpha* forests, or mixed coastal dry cliffs, and (b) containing one or more of the following associated native plant species: *Sida fallax, Heteropogon contortus, Myoporum sandwicense, Sporobolus virginicus, Scaevola sericea,* or *Dodonaea viscosa;* and (2) elevations between sea level and 12 m (0 and 40 ft).

Family Flacourtiaceae: *Xylosma crenatum* (no common name)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Xylosma crenatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse *Acacia koa-Metrosideros polymorpha* montane mesic forest, or *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane wet forest, and containing one or more of the following associated native plant species: *Tetraplasandra kauaiensis, Hedyotis terminalis, Pleomele aurea, Ilex anomala, Claoxylon sandwicense,*

Myrsine alyxifolia, Nestegis sandwicensis, Streblus pendulinus, Psychotria sp., *Diplazium sandwichianum, Pouteria sandwicensis, Scaevola procera, Coprosma* sp., *Athyrium sandwichianum, Touchardia latifolia, Dubautia knudsenii, Cheirodendron* sp., *Lobelia yuccoides, Cyanea hirta, Poa sandwicensis,* or *Diplazium sandwichianum;* and (2) elevations between 975 to 1,065 m (3,200 to 3,4900 ft).

Family Gentianaceae: *Centaurium sebaeoides* (‘awiwi)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Centaurium sebaeoides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) volcanic or clay soils or cliffs (a) in arid coastal areas and (b) containing one or more of the following native plant species; *Artemisia* sp., *Bidens* sp., *Chamaesyce celastroides, Dodonaea viscosa, Fimbristylis cymosa, Heteropogon contortus, Jaquemontia ovalifolia, Lipochaeta succulenta, Lipochaeta heterophylla, Lipochaeta integrifolia, Lycium sandwicense, Lysimachia mauritiana, Mariscus phloides, Panicum fauriei, P. torridum, Scaevola sericea, Schiedea globosa, Sida fallax,* or *Wikstroemia uva-ursi;* and (2) elevations above 250 m (800 ft).

Family Gesneriaceae: *Cyrtandra cyaneoides* (mapele)

Kauai K, P, and R, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyrtandra cyaneoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes or cliffs near streams or waterfalls (a) in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* and (b) containing one or more of the following native species: *Perrottetia sandwicensis, Pipturus* sp., *Bidens* sp., *Psychotria* sp., *Pritchardia* sp., *Freycinetia arborea, Cyanea* sp., *Cyrtandra limahuliensis, Diplazium sandwichianum, Gunnera* sp., *Coprosma* sp., *Stenogyne* sp., *Machaerina* sp., *Boehmeria grandis, Pipturus* sp., *Cheirodendron* sp., *Hedyotis terminalis,* or *Hedyotis tryblium;* and (2) elevations between 550 and 1,220 meter (1,800 and 4,000 ft).

Family Gesneriaceae: *Cyrtandra limahuliensis* (ha‘iwale)

Kauai A, F, K, L, O, P, Q, R, and T, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Cyrtandra limahuliensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) stream banks (a) in lowland wet forests and (b) containing one or more of the following native plant species: *Antidesma* sp., *Cyrtandra kealiea, Pisonia* sp., *Pipturus* sp., *Cibotium glaucum, Eugenia* sp, *Hedyotis terminalis, Dubautia* sp., *Boehmeria grandis, Touchardia latifolia, Bidens* sp., *Hibiscus waimeae, Charpentiera* sp., *Urera glabra, Pritchardia* sp., *Cyanea* sp., *Perrottetia sandwicensis, Metrosideros polymorpha, Dicranopteris linearis, Gunnera kauaiensis,* or *Psychotria* sp.; and (2) elevations between 245 and 915 m (800 and 3,000 ft).

Family Lamiaceae: *Phyllostegia knudsenii* (no common name)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Phyllostegia knudsenii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* lowland mesic or wet forest containing one or more of the following associated native plant species: *Perrottetia sandwicensis, Cyrtandra kauaiensis, Cyrtandra paludosa, Elaeocarpus bifidus, Claoxylon sandwicensis, Cryptocarya mannii, Ilex anomala, Myrsine linearifolia, Bobea timonioides, Selaginella arbuscula, Diospyros* sp., *Zanthoxylum dipetalum, Pittosporum* sp., *Tetraplasandra* spp., *Pouteria sandwicensis,* or *Pritchardia minor;* and (2) elevations between 865–975 m (2,840–3,200 ft).

Family Lamiaceae: *Phyllostegia wawrana* (no common name)

Kauai G, I, and R, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Phyllostegia wawrana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* dominated lowland or montane wet or mesic forest with (a) *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and (b) containing one or more of the following associated native plant species: *Delissea rivularis, Diplazium sandwichianum, Vaccinium* sp., *Broussaisia arguta, Myrsine lanaiensis, Psychotria* sp., *Dubautia knudsenii, Scaevola procera, Gunnera* sp., *Pleomele aurea, Claoxylon sandwicense, Elaphoglossum* sp., *Hedyotis* sp., *Sadleria* sp., and *Syzygium sandwicensis;* and (2) elevations between 780–1,210 m (2,560–3,920 ft).

Family Lamiaceae: *Stenogyne campanulata* (no common name)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Stenogyne campanulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) rock faces of nearly vertical, north-facing cliffs (a) in diverse lowland or montane mesic forest and (b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Lepidium serra, Lysimachia glutinosa, Perrottetia sandwicensis, or Remya montgomeryi;* and (2) an elevation of 1,085 m (3,560 ft).

Family Loganiaceae: *Labordia lydgatei* (kamakahala)

Kauai F, K, L, P, R, and T, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Labordia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest containing one or more of the following associated native plant species: *Psychotria* sp., *Hedyotis terminalis* sp., *Cyanea* sp., *Cyrtandra* sp., *Labordia hirtella, Antidesma platyphyllum* var. *hillebrandii, Syzygium sandwicensis, Ilex anomala,* or *Dubautia knudsenii;* and (2) elevations between 635 and 855 m (2,080 to 2,800 ft).

Family Loganiaceae: *Labordia tinifolia* var. *wahiawaensis* (kamakahala)

Kauai L, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Labordia tinifolia* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) streambanks (a) in lowland wet forests dominated by *Metrosideros polymorpha* and (b) containing one or more of the following associated species: *Cheirodendron* sp., *Dicranopteris linearis, Cyrtandra* sp, *Antidesma* sp., *Psychotria* sp., *Hedyotis terminalis,* or *Athyrium microphyllum;* and (2) elevations between 300 to 920 m (985 to 3,020 ft).

Family Malvaceae: *Hibiscadelphus woodii* (hau kuahiwi)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes

critical habitat for *Hibiscadelphus woodii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) basalt talus or cliff walls (a) in *Metrosideros polymorpha* montane mesic forest and (b) containing one or more of the following associated native plant species: *Bidens sandwicensis, Artemisia australis, Melicope pallida, Dubautia* sp., *Lepidium serra, Lipochaeta* sp., *Lysimachia glutinosa, Carex meyenii, Chamaesyce celastroides* var. *hanapepensis, Hedyotis* sp., *Nototrichium* sp., *Panicum lineale, Myrsine* sp., *Stenogyne campanulata, Lobelia niihauensis,* or *Poa mannii;* and (2) elevations around 915m (3,000 ft).

Family Malvaceae: *Hibiscus clayi* (Clay's hibiscus)

Kauai N, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hibiscus clayi* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) slopes (a) in *Acacia koa* or *Diospyros* sp.-*Pisonia* sp.-*Metrosideros polymorpha* lowland dry or mesic forest and (b) containing one or more of the following associated native plant species: *Hedyotis acuminata, Pipturus* sp., *Psychotria* sp., *Cyanea hardyi, Artemisia australis,* or *Bidens* sp.; and (2) elevations between 230 to 350 m (750 to 1,150 ft).

Family Malvaceae: *Hibiscus waimeae* ssp. *hannerae* (koki'o ke'oke'o)

Kauai F, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hibiscus waimeae* ssp. *hannerae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* sp.-*Charpentiera elliptica* lowland wet or mesic forest and containing one or more of the following associated native plant species: *Antidesma* sp., *Psychotria* sp., *Pipturus* sp., *Bidens* sp., *Bobea* sp., *Sadleria* sp., *Cyrtandra* sp., *Cyanea* sp., *Cibotium* sp., *Perrottetia sandwicensis,* or *Syzygium sandwicensis;* and (2) elevations between 190 and 560 m (620 and 1,850 ft).

Family Malvaceae: *Kokia kauaiensis* (koki'o)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Kokia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse mesic forest containing one or more of the following associated native plant species: *Acacia koa, Metrosideros polymorpha, Bobea* sp., *Diospyros sandwicensis, Hedyotis* sp., *Pleomele* sp., *Pisonia* sp., *Xylosma* sp., *Isodendrion* sp., *Syzygium sandwicensis, Antidesma* sp., *Alyxia olivaeformis*, *Pouteria sandwicensis*, *Streblus pendulinus*, *Canthium odoratum*, *Nototrichium* sp., *Pteralyxia kauaiensis*, *Dicranopteris linearis*, *Hibiscus* sp., *Flueggea neowawraea*, *Rauvolfia sandwicensis*, *Melicope* sp., *Diellia laciniata*, *Tetraplasandra* sp., *Chamaesyce celastroides*, *Lipochaeta fauriei*, *Dodonaea viscosa*, *Santalum* sp., *Claoxylon* sp., or *Nestegis sandwicensis*; and (2) elevations between 350–660 m (1,150–2,165 ft).

Family Myrsinaceae: *Myrsine linearifolia* (kolea)

Kauai F, G, H, I, L, and P, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Myrsine linearifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with (a) *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and (b) containing one or more of the following associated native plant species: *Dubautia* sp., *Cryptocarya mannii*, *Sadleria pallida*, *Myrsine* sp., *Syzygium sandwicensis*, *Machaerina angustifolia*, *Freycinetia arborea*, *Hedyotis terminalis*, *Cheirodendron* sp., *Bobea brevipes*, *Nothocestrum* sp., *Melicope* sp., *Eurya sandwicensis*, *Psychotria* sp., *Lysimachia* sp., or native ferns; and (2) elevations between 585 to 1,280 m (1,920 to 4,200 ft).

Family Orchidaceae: *Platanthera holochila* (no common name)

Kauai H, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Platanthera holochila* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed bog containing one or more of the following associated native plants: *Myrsine denticulata*, *Cibotium* sp., *Coprosma ernodeoides*, *Oreobolus furcatus*, *Styphelia tameiameiae*, or *Vaccinium* sp.; and (2) elevations between 1,050 and 1,600 m (3,450 and 5,245 ft).

Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)

Kauai G, K, P, and T, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Plantago princeps* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes, rock walls, or bases of waterfalls (a) in mesic or wet *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Psychotria* sp., *Dicranopteris linearis*, *Cyanea* sp., *Hedyotis* sp., *Melicope* sp., *Dubautia plantaginea*, *Exocarpos luteolus*, *Poa siphonoglossa*, *Nothocestrum peltatum*, *Remya montgomeryi*, *Stenogyne campanulata*, *Xylosma* sp., *Pleomele* sp., *Machaerina angustifolia*, *Athyrium* sp., *Bidens* sp., *Eragrostis* sp., *Lysimachia filifolia*, *Pipturus* sp., *Cyrtandra* sp., or *Myrsine linearifolia*; and (2) elevations between 480 to 1,100 m (1,580 to 3,610 ft).

Family Poaceae: *Panicum niihauense* (lau ''ehu)

Kauai J, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Panicum niihauense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) sand dunes (a) in coastal shrubland and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Cassytha filiformis*, *Scaevola sericea*, *Sida fallax*, *Vitex rotundifolia*, or *Sporobolus* sp.; and (2) elevations of 100 m or less (330 ft).

Family Poaceae: *Poa mannii* (Mann's bluegrass)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Poa mannii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) cliffs, rock faces, or stream banks (a) in lowland or montane wet, dry, or mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* montane mesic forest and (b) containing one or more of the following associated native plant species: *Alectryon macrococcus*, *Antidesma platyphyllum*, *Bidens cosmoides, Chamaesyce celastroides* var. *hanapepensis, Artemisia australis*, *Bidens sandwicensis*, *Lobelia sandwicensis*, *Wilkesia gymnoxiphium*, *Eragrostis variabilis*, *Panicum lineale*, *Mariscus phloides*, *Luzula hawaiiensis*, *Carex meyenii*, *C. wahuensis*, *Cyrtandra wawrae*, *Dodonaea viscosa*, *Exocarpos luteolus*, *Labordia helleri*, *Nototrichium* sp., *Schiedea amplexicaulis*, *Hedyotis terminalis*, *Melicope anisata*, *M.*

barbigera, *M. pallida*, *Pouteria sandwicensis*, *Schiedea membranacea*, *Diospyros sandwicensis*, *Psychotria mariniana*, *P. greenwelliae*, or *Kokia kauaiensis*; and (2) elevations between 460 and 1,150 m (1,510 and 3,770 ft).

Family Poaceae: *Poa sandvicensis* (Hawaiian bluegrass)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Poa sandvicensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) wet, shaded, gentle or steep slopes, ridges, or rock ledges (a) in semi-open or closed, mesic or wet, diverse montane forest dominated by *Metrosideros polymorpha* and (b) containing one or more of the following associated native species: *Dodonaea viscosa*, *Dubautia* sp., *Coprosma* sp., *Melicope* sp., *Dianella sandwicensis*, *Alyxia olivaeformis*, *Bidens* sp., *Dicranopteris linearis*, *Schiedea stellarioides*, *Peperomia macraeana*, *Claoxylon sandwicense*, *Acacia koa*, *Psychotria* sp., *Hedyotis* sp., *Scaevola* sp., *Cheirodendron* sp., or *Syzygium sandwicensis;* and (2) elevations between 1,035 to 1,250 m (3,400 to 4,100 ft).

Family Poaceae: *Poa siphonoglossa* (no common name)

Kauai G, I, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Poa siphonoglossa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) shady banks near ridge crests (a) in mesic *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Acacia koa*, *Psychotria* sp., *Scaevola* sp., *Alphitonia ponderosa*, *Zanthoxylum dipetalum*, *Tetraplasandra kauaiensis*, *Dodonaea viscosa*, *Hedyotis* sp., *Melicope* sp., *Vaccinium* sp., *Styphelia tameiameiae*, *Carex meyenii*, *Carex wahuensis*, or *Wilkesia gymnoxiphium;* and (2) elevations between 1,000 to 1,200 m (3,300 and 3,900 ft).

Family Primulaceae: *Lysimachia filifolia* (no common name)

Kauai T, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Lysimachia filifolia* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests and containing one or more of the following associated native plant species: mosses, ferns, liverworts, *Machaerina* sp., *Heteropogon contortus*, or *Melicope* sp.; and (2) elevations between 240 to 680 m (800 to 2,230 ft).

Family Rhamnaceae: *Gouania meyenii* (no common name)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Gouania meyenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) rocky ledges, cliff faces, or ridge tops (a) in dry shrubland or *Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following native plant species: *Dodonaea viscosa*, *Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis*, *Bidens* sp., *Carex meyenii*, *Diospyros* sp., *Lysimachia* sp., or *Senna gaudichaudii;* and (2) elevations between 490 to 880 m (1,600 to 2,880 ft).

Family Rubiaceae: *Hedyotis cookiana* ('awiwi)

Kauai G, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Hedyotis cookiana* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) streambeds or steep cliffs close to water sources in lowland wet forest communities; and (2) elevations between 170 and 370 m (560 and 1,210 ft).

Family Rubiaceae: *Hedyotis st.-johnii* (Na Pali beach Hedyotis)

Kauai G and J, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for Hedyotis st.-johnii on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) crevices of north-facing, near-vertical coastal cliff faces within the spray zone (a) in sparse dry coastal shrubland and (b) containing one or more of the following native plant species: *Myoporum sandwicense, Eragrostis variabilis, Lycium sandwicense, Heteropogon contortus, Artemisia australis* or *Chamaesyce celastroides*; and (2) elevations above 75 m (250 ft).

Family Rutaceae: *Melicope haupuensis* (alani)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Melicope haupuensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) moist talus slopes (a) in *Metrosideros polymorpha* dominated lowland mesic forests or *Metrosideros polymorpha-Acacia koa* montane mesic forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Diospyros* sp., *Psychotria mariniana*, *P. greenwelliae, Melicope ovata*, *M. anisata*, *M. barbigera*, *Dianella sandwicensis*, *Pritchardia minor*, *Tetraplasandra waimeae*, *Claoxylon sandwicensis*, *Cheirodendron trigynum*, *Pleomele aurea*, *Cryptocarya mannii, Pouteria sandwicensis, Bobea brevipes, Hedyotis terminalis*, *Elaeocarpus bifidus*, or *Antidesma* sp; and (2) elevations between 375 to 1,075 m (1,230 to 3,530 ft).

Family Rutaceae: *Melicope knudsenii* (alani)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Melicope knudsenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) forested flats or talus slopes (a) in lowland dry or montane mesic forests and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Antidesma* sp., *Metrosideros polymorpha, Xylosma* sp., *Hibiscus* sp., *Myrsine lanaiensis, Diospyros* sp., *Rauvolfia sandwicensis, Bobea* sp., *Nestegis sandwicensis, Hedyotis* sp., *Melicope* sp., *Psychotria* sp., or *Pittosporum kauaiensis*; and (2) elevations between 450 to 1,000 m (1,480 to 3,300 ft).

Family Rutaceae: *Melicope pallida* (alani)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Melicope pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep rock faces (a) in lowland or montane mesic or wet forests or shrubland and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Lepidium serra, Pleomele* sp., *Boehmeria grandis, Coprosma* sp., *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Schiedea membranacea, Psychotria mariniana, Dianella sandwicensis, Pritchardia minor, Chamaesyce celastroides* var *hanapepensis, Nototrichium* sp., *Carex meyenii, Artemisia* sp., *Abutilon sandwicense, Alyxia olivaeformis, Dryopteris* sp., *Metrosideros polymorpha, Pipturus albidus, Sapindus oahuensis, Tetraplasandra* sp., or *Xylosma*

hawaiiense; and (2) elevations between 490 to 915 m (1,600 to 3,000 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (a'e)

Kauai I, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Zanthoxylum hawaiiense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) lowland dry or mesic forests, or montane dry forest, (a) dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis*, and (b) containing one or more of the following associated plant species: *Pleomele auwahiensis, Antidesma platyphyllum, Pisonia* sp., *Alectryon macrococcus, Charpentiera* sp., *Melicope* sp., *Streblus pendulinus, Myrsine lanaiensis, Sophora chrysophylla,* or *Dodonaea viscosa*; and (2) elevations between 550 and 730 m (1,800 and 2,400 ft).

Family Santalaceae: *Exocarpos luteolus* (heau)

Kauai G, H, I, L, and S, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Exocarpos luteolus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) wet places bordering swamps; open, dry ridges (a) in lowland or montane *Metrosideros polymorpha* dominated wet forest communities and (b) containing one or more of the following native plant species: *Acacia koa, Cheirodendron trigynum, Pouteria sandwicensis, Dodonaea viscosa, Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus, Melicope haupuensis, Dubautia laevigata, Dianella sandwicensis, Poa sandwicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Santalum freycinetianum, Styphelia tameiameiae,* or *Dicranopteris linearis;* and (2) elevations between 475 and 1,290 m (1,560 and 4,220 ft).

Family Sapindaceae: *Alectryon macrococcus* (mahoe)

Kauai G, I, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Alectryon macrococcus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) dry slopes or gulches (a) in *Diospyros* sp.-*Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* sp. mixed mesic forest, (b) containing one or more of the following native plant species: *Nestegis sandwicensis, Psychotria* sp., *Pisonia* sp., *Xylosma* sp., *Streblus pendulinus, Hibiscus* sp., *Antidesma* sp., *Pleomele* sp., *Acacia koa, Melicope knudsenii, Hibiscus waimeae, Pteralyxia* sp., *Zanthoxylum* sp., *Kokia kauaiensis, Rauvolfia sandwicensis, Myrsine lanaiensis, Canthium odoratum, Canavalia* sp., *Alyxia oliviformis, Nesoluma polynesicum, Munroidendron racemosum, Caesalpinia kauaiense, Tetraplasandra* sp., *Pouteria sandwicensis,* or *Bobea timonioides;* and (2) elevations between 360 to 1,070 m (1,180 to 3,510 ft).

Family Solanaceae: *Nothocestrum peltatum* ('aiea)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Nothocestrum peltatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) rich soil on steep slopes (a) in montane or lowland mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha,* and (b) containing one or more of the following associated native plant species: *Antidesma* sp., *Dicranopteris linearis, Bobea brevipes, Elaeocarpus bifidus, Alphitonia ponderosa, Melicope anisata, M. barbigera, M. haupuensis, Pouteria sandwicensis, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis, Claoxylon sandwicensis, Cheirodendron trigynum, Psychotria mariniana, P. greenwelliae, Hedyotis terminalis, Ilex anomala, Xylosma* sp., *Cryptocarya mannii, Coprosma* sp., *Pleomele aurea, Diplazium sandwicensis, Broussaisia arguta,* or *Perrottetia sandwicensis;* and (2) elevations between 915 to 1,220 m (3,000 to 4,000 ft).

Family Solanaceae: *Solanum sandwicense* ('aiakeaakua, popolu)

Kauai D, G, and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Solanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) open, sunny areas (a) in diverse lowland or montane mesic or wet forests and (b) containing one or more of the following associated plants: *Alphitonia ponderosa, Ilex anomala, Xylosma* sp., *Athyrium sandwicensis, Syzygium sandwicensis, Bidens cosmoides, Dianella sandwicensis, Poa siphonoglossa, Carex meyenii, Hedyotis* sp., *Coprosma* sp., *Dubautia* sp., *Pouteria sandwicensis, Cryptocarya mannii, Acacia koa, Metrosideros polymorpha, Dicranopteris linearis, Psychotria* sp., or *Melicope* sp.; and (2) elevations between 760 and 1,220 m (2,500 and 4,000 ft).

Family Violaceae: *Isodendrion laurifolium* (aupaka)

Kauai G, I, and U, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Isodendrion laurifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse mesic or wet forest (a) dominated by *Metrosideros polymorpha, Acacia koa,* or *Diospyros* sp. and (b) containing one or more of the following associated native plant species: *Kokia kauaiensis, Streblus* sp., *Elaeocarpus bifidus, Canthium odoratum, Antidesma* sp., *Xylosma hawaiiense, Hedyotis terminalis, Pisonia* sp., *Nestegis sandwicensis, Dodonaea viscosa, Euphorbia haeleeleana, Pleomele* sp., *Pittosporum* sp., *Melicope* sp., *Claoxylon sandwicense, Alphitonia ponderosa, Myrsine lanaiensis,* or *Pouteria sandwicensis;* and (2) elevations between 490 and 820 m (1,600 and 2,700 ft).

Family Violaceae: *Isodendrion longifolium* (aupaka)

Kauai F, G, L, M, and P, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Isodendrion longifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) steep slopes, gulches, or stream banks (a) in mesic or wet *Metrosideros polymorpha* forests and (b) containing one or more of the following native species: *Dicranopteris linearis, Eugenia* sp., *Diospyros* sp., *Pritchardia* sp., *Canthium odoratum, Melicope* sp., *Cheirodendron* sp., *Ilex anomala, Pipturus* sp., *Hedyotis fluviatilis, Peperomia* sp., *Bidens* sp., *Nestegis sandwicensis, Cyanea hardyi, Syzygium* sp., *Cibotium* sp., *Bobea brevipes, Antidesma* sp., *Cyrtandra* sp., *Hedyotis terminalis, Peperomia* sp., *Perrottetia sandwicensis, Pittosporum* sp., or *Psychotria* sp.; and (2) elevations between 410 to 760 m (1,345 to 2,500 ft).

Family Violaceae: *Viola helenae* (no common name)

Kauai L, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Viola helenae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components

that provide: (1) stream banks or adjacent valley bottoms with light to moderate shade in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest; and (2) elevations between 610–855 m (2,000–2,800 ft).

Family Violaceae: *Viola kauaiensis* var. *wahiawaensis* (nani wai'ale'ale)

Kauai L, identified in the legal description in (a)(1)(i)(A), constitutes critical habitat for *Viola kauaiensis* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) open montane bog or wet shrubland containing one or more of the following native plant species: *Dicranopteris linearis, Diplopterygium pinnatum, Syzygium sandwicensis,* or *Metrosideros polymorpha;* and (2) elevations between 640 and 865 m (2,100 and 2,840 ft).

(B) Ferns and Allies.

Family Aspleniaceae: *Diellia pallida* (no common name)

Kauai G and I, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Diellia pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) bare soil on steep, rocky, dry slopes (a) in lowland mesic forests and (b) containing one or more of the following native plant species: *Acacia koa, Alectryon macrococcus, Antidesma platyphyllum, Metrosideros polymorpha, Myrsine lanaiensis, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Psychotria mariniana, Carex meyenii, Diospyros hillebrandii, Hedyotis knudsenii, Canthium odoratum, Pteralyxia kauaiensis, Nestegis sandwicensis, Alyxia olivaeformis, Wilkesia gymnoxiphium, Alphitonia ponderosa, Styphelia tameiameiae,* or *Rauvolfia sandwicensis;* and (2) elevations between 530 to 915 m (1,700 to 3,000 ft).

Family Grammitidaceae: *Adenophorus periens* (pendant kihi fern)

Kauai F, G, K, L, P, and R, identified in the legal descriptions in (a)(1)(i)(A), constitute critical habitat for *Adenophorus periens* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) well-developed, closed canopy that provides deep shade or high humidity (a) in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest, and (b) containing one or more of the following native plant species: *Athyrium sandwicensis, Broussaisia* sp., *Cheirodendron trigynum, Cyanea* sp., *Cyrtandra* sp., *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Labordia hirtella, Machaerina angustifolia, Psychotria* sp., *Psychotria hexandra,* or *Syzygium sandwicensis;* and (2) elevations between 400 and 1,265 m (1,310 and 4,150 ft).

* * * * *

Dated: August 24, 2000.

Stephen C. Saunders,

Assistant Secretary for Fish and Wildlife and Parks.

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November 7, 2000

Part III

Department of Housing and Urban Development

24 CFR Part 888
Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors, Fiscal Year 2001; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4626–N–01]

Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors, Fiscal Year 2001

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors.

SUMMARY: This Notice announces revised Annual Adjustment Factors (AAFs) for adjustment of Section 8 contract rents on housing assistance payment contract anniversaries from October 1, 2000. The AAFs are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) survey and from HUD's Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Operations Division, Office of Rental Assistance, Office of Public and Indian Housing [(202) 708–0477], for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Allison Manning, Office of Special Needs Assistance Programs, Office of Community Planning and Development, (202) 708–1234, for questions regarding the Single Room Occupancy Moderate Rehabilitation program; Frank M. Malone, Acting Director, Office of Asset Management and Disposition, Office of Housing (202) 708–3730, for questions relating to all other Section 8 programs; and Lynn A. Rodgers, Economic and Market Analysis Division, Office of Policy Development and Research, (202) 708–0590, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Hearing-or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This Notice explains how AAFs are applied to various Section 8 programs.

The first section of the Notice identifies to which programs and under what circumstances AAFs apply. The second section explains when and how to apply the statutory 1 percent reduction to AAFs. The third section describes the actual adjustment procedures.

Next the Notice explains the content and applicability of the two AAF tables included in this Notice and provides detailed information on the geographical coverage of each AAF area. The Notice then explains how to apply AAFs to manufactured home space rentals in the Section 8 tenant-based certificate program.

The Notice closes with a brief explanation of how HUD calculates AAFs.

I. Applicability of AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payments programs, during the term of the HAP contract. There are three categories of Section 8 programs that use the AAFs:

Category 1—The Section 8 new construction and substantial rehabilitation programs and the moderate rehabilitation program.

Category 2—The Section 8 loan management (LM) and property disposition (PD) programs.

Category 3—The Section 8 tenant-based certificate program, the project-based certificate program and the project-based voucher program.

Each Section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the following cases:

- AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are based on the applicable state-by-state operating cost adjustment factor (OCAF) published by HUD; the OCAF is applied to the previous year's contract rent minus debt service.
- AAFs are not used for the Section 8 tenant-based voucher program. (However, AAFs are used for the Section 8 project-based voucher program and project-based certificate program.)
- AAFs are not used for budget-based rent adjustments. Contract rents for projects receiving Section 8 subsidies under the loan management program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the property disposition program (24 CFR part 886, subpart C) are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 207.19(e). Budget-based adjustments are used for most Section 8/202 projects.

Under the Section 8 moderate rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent. For the other covered programs, the AAF is applied to the whole amount of the contract rent.

II. Use of Reduced AAF

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by .01:

- For all tenancies in the Section 8 tenant-based certificate program. (This program is being converted to the Section 8 tenant-based voucher program. See 24 CFR 982.502. The last tenancies under the tenant-based certificate program will terminate by September 29, 2001.)
- For all tenancies assisted in the Section 8 project-based certificate program.
- In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

To implement the law, HUD publishes two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. Each AAF in Table 2 has been computed by subtracting 0.01 from the annual adjustment factor in Table 1.

III. Adjustment Procedures

This section of the notice is intended to provide a broad description of adjustment procedures. Technical details and requirements are described in HUD notices. The notices are issued by the Office of Housing and the Office of Public and Indian Housing.

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for three program categories:

- The Section 8 new construction and substantial rehabilitation programs (including the Section 8 state agency program); and the moderate rehabilitation programs (including the moderate rehabilitation single room occupancy program).
- The Section 8 loan management (LM) Program (Part 886, Subpart A) and property disposition (PD) Program (Part 886 Subpart C).
- The Section 8 certificate program (including the tenant-based certificate and the project-based certificate program) and the Section 8 project-based voucher program.

HUD has not yet issued regulations for the Section 8 project-based voucher program. At this time, the project-based voucher program is administered in accordance with the PBC program regulations, and contract rents are adjusted in the same manner as in the Section 8 PBC program.

Category 1: Section 8 New Construction, Substantial Rehabilitation and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless the contract rent is reduced by comparability):

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (LM; Part 886, Subpart A) and Property Disposition Program (PD; Part 886 Subpart C)

At this time, rent adjustment by the AAF in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Program (tenant-based and project-based) and the Section 8 Project-based Voucher Program

The same adjustment procedure is used for rent adjustment in

(1) The tenant-based certificate program (24 CFR 983.519),

(2) The project-based certificate program (24 CFR part 983),

(3) The project-based voucher program (24 CFR part 983). The following procedures are used:

- The Table 2 AAF is always used; the Table 1 AAF is not used.
- The Table 2 AAF is always applied before determining comparability (rent reasonableness).
- Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.

AAF Tables

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent—i.e., where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent—i.e., where the tenant pays for the highest cost utility.

AAF Areas

Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

- For the metropolitan parts of the ten HUD regions exclusive of CPI areas;
- For the nonmetropolitan parts of these regions; and
- For separate metropolitan AAF areas for which local CPI survey data are available.

With the exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because of their close correspondence to housing market area definitions.

The exceptions are for certain large metropolitan areas, where HUD considers the area covered by the OMB definition to be larger than appropriate for use as a housing market area definition. In those areas, HUD has deleted some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

Metropolitan area	Deleted counties
Chicago, IL	DeKalb, Grundy and Kendall Counties.
Cincinnati-Hamilton, OH–KY–IN	Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX	Henderson County.
Flagstaff, AZ–UT	Kane County, UT.
New Orleans, LA	St. James Parish.
Washington, DC–VA–MD–WV	Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia.

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk (*) next to the area name. The asterisk indicates that there is a difference between the OMB metropolitan area and the HUD AAF area definition for these areas.

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the appropriate HUD regional Metropolitan or Nonmetropolitan AAFs are used.

The AAF area definitions shown in Schedule C are listed in alphabetical order by State. The associated HUD region is shown next to each State name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan CPI areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the metropolitan CPI areas (in those states that have such areas) are the non-CPI metropolitan and nonmetropolitan counties of each State. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the Table as ''STATE: Hawaii,'' which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii Nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey; all other areas in Alaska use the Northwest/Alaska Nonmetropolitan AAFs.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

For a manufactured home space rental in the Section 8 tenant-based certificate program, the AAFs in this publication identified as ''Highest Cost Utility Included'' are to be used to adjust the rent to owner for the manufactured home space. The applicable AAF is determined by reference to the geographic listings contained in Schedule C, as described in the preceding section.

How Factors Are Calculated

For Areas With CPI Surveys

(1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data.

(2) The ''Highest Cost Utility Included'' column in Schedule C was calculated by weighting the rent and utility components with the corresponding components from the 1990 Census.

(3) The ''Highest Cost Utility Excluded'' column in Schedule C was calculated by eliminating the effect of heating costs that are included in the rent of some of the units in the CPI surveys.

For Areas Without CPI Surveys

(1) HUD used random digit dialing (RDD) regional surveys to calculate AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls, and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

(2) The change in rent with the highest cost utility included in the rent was calculated using the average of the ratios of gross rent in the current year RDD survey divided by the previous year's for the respective metropolitan or nonmetropolitan parts of the HUD region.

(3) The change in rent with the highest cost utility excluded (*i.e.,* paid separately by the tenant) was calculated in the same manner, after subtracting the median values of utilities costs from the gross rents in the two years. The median cost of utilities was determined from the units in the RDD sample which reported that all utilities were paid by the tenant.

Other Matters

Environmental Impact

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.19(c)(6).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance programs (Section 8) is 14.156.

Accordingly, the Department publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments Programs as set forth in the following tables which will not appear in the Code of Federal Regulations.

Dated: October 25, 2000.

Andrew Cuomo,

Secretary.

BILLING CODE 4210–62–P

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 080300

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.012	1.016	New England Nonmetropolitan	1.012	1.016
New York/New Jersey Metropolitan	1.005	1.010	New York/New Jersey Nonmetropolitan	1.008	1.014
Mid-Atlantic Metropolitan	1.010	1.013	Mid-Atlantic Nonmetropolitan	1.007	1.012
Southeast Metropolitan	1.017	1.022	Southeast Nonmetropolitan	1.010	1.012
Midwest Metropolitan	1.013	1.017	Midwest Nonmetropolitan	1.011	1.016
Southwest Metropolitan	1.011	1.015	Southwest Nonmetropolitan	1.008	1.010
Great Plains Metropolitan	1.013	1.017	Great Plains Nonmetropolitan	1.008	1.012
Rocky Mountain Metropolitan	1.020	1.022	Rocky Mountain Nonmetropolitan	1.009	1.010
Pacific/Hawaii Metropolitan	1.022	1.025	Pacific/Hawaii Nonmetropolitan	1.011	1.013
Northwest/Alaska Metropolitan	1.009	1.010	Northwest/Alaska Nonmetropolitan	1.006	1.006
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.013	1.020
MSA Anchorage, AK	1.019	1.027	PMSA Ann Arbor, MI	1.030	1.030
MSA Atlanta, GA	1.029	1.033	PMSA Atlantic-Cape May, NJ	1.021	1.028
PMSA Baltimore, MD	1.030	1.031	PMSA Bergen-Passaic, NJ	1.030	1.035
*COUNTY Berkeley, WV	1.030	1.032	PMSA Boston, MA-NH	1.034	1.041
PMSA Boulder-Longmont, CO	1.059	1.064	PMSA Brazoria, TX	1.032	1.042
PMSA Bremerton, WA	1.039	1.043	PMSA Bridgeport, CT	1.029	1.036
PMSA Brockton, MA	1.034	1.041	*COUNTY Brown, OH	1.022	1.032
*Chicago, IL	1.035	1.043	*Cincinnati, OH-KY-IN	1.026	1.031
*COUNTY Clarke, VA	1.030	1.032	PMSA Cleveland-Lorain-Elyria, OH	1.013	1.020
*COUNTY Culpeper, VA	1.030	1.032	*Dallas, TX	1.036	1.042

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 080300

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA Danbury, CT	1.030	1.035
PMSA Denver, CO	1.058	1.064
PMSA Dutchess County, NY	1.030	1.035
PMSA Flint, MI	1.030	1.030
PMSA Fort Worth-Arlington, TX	1.035	1.042
PMSA Galveston-Texas City, TX	1.031	1.043
*COUNTY Grant, KY	1.022	1.032
*COUNTY Grundy, IL	1.031	1.045
PMSA Hamilton-Middletown, OH	1.025	1.031
PMSA Houston, TX	1.033	1.042
PMSA Jersey City, NJ	1.031	1.034
MSA Kansas City, MO-KS	1.031	1.038
PMSA Kenosha, WI	1.033	1.044
PMSA Lawrence, MA-NH	1.033	1.042
PMSA Lowell, MA-NH	1.034	1.041
PMSA Miami, FL	1.008	1.011
PMSA Milwaukee-Waukesha, WI	1.017	1.020
PMSA Monmouth-Ocean, NJ	1.030	1.035
PMSA Nassau-Suffolk, NY	1.030	1.035
PMSA New Haven-Meriden, CT	1.030	1.035
*COUNTY Westchester, NY	1.031	1.034
*COUNTY De Kalb, IL	1.033	1.044
PMSA Detroit, MI	1.030	1.030
PMSA Fitchburg-Leominster, MA	1.034	1.041
PMSA Fort Lauderdale, FL	1.008	1.011
*COUNTY Gallatin, KY	1.021	1.033
PMSA Gary, IN	1.031	1.046
PMSA Greeley, CO	1.058	1.064
PMSA Hagerstown, MD	1.030	1.032
*COUNTY Henderson, TX	1.030	1.043
*COUNTY Jefferson, WV	1.030	1.032
PMSA Kankakee, IL	1.030	1.046
*COUNTY Kendall, Il	1.034	1.044
*COUNTY King George, VA	1.030	1.032
PMSA Los Angeles-Long Beach, CA	1.033	1.036
PMSA Manchester, NH	1.034	1.041
PMSA Middlesex-Somerset-Hunterdon, NJ	1.030	1.035
MSA Minneapolis-St. Paul, MN-WI	1.038	1.039
PMSA Nashua, NH	1.034	1.041
PMSA New Bedford, MA	1.034	1.041
PMSA New York, NY	1.031	1.034
PMSA Newark, NJ	1.030	1.035

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 080300

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA Newburgh, NY-PA	1.030	1.035
*COUNTY Ohio, IN	1.022	1.032
PMSA Orange County, CA	1.034	1.036
PMSA Philadelphia, PA-NJ	1.020	1.028
PMSA Portland-Vancouver, OR-WA	1.021	1.022
PMSA Racine, WI	1.016	1.020
MSA St. Louis, MO-IL	1.009	1.013
MSA San Diego, CA	1.063	1.066
PMSA San Jose, CA	1.068	1.070
PMSA Santa Rosa, CA	1.067	1.070
PMSA Stamford-Norwalk, CT	1.030	1.035
MSA Tampa-St. Petersburg-Clearwater, FL	1.022	1.025
PMSA Vallejo-Fairfield-Napa, CA	1.067	1.070
PMSA Vineland-Millville-Bridgeton, NJ	1.019	1.029
*Washington, DC-MD-VA	1.031	1.031
PMSA Wilmington-Newark, DE-MD	1.021	1.028
PMSA Oakland, CA	1.068	1.070
PMSA Olympia, WA	1.039	1.043
*COUNTY Pendleton, KY	1.022	1.032
PMSA Pittsburgh, PA	1.014	1.021
PMSA Portsmouth-Rochester, NH-ME	1.034	1.041
PMSA Riverside-San Bernardino, CA	1.031	1.036
PMSA Salem, OR	1.021	1.022
PMSA San Francisco, CA	1.068	1.070
PMSA Santa Cruz-Watsonville, CA	1.067	1.070
PMSA Seattle-Bellevue-Everett, WA	1.041	1.043
PMSA Tacoma, WA	1.040	1.043
PMSA Trenton, NJ	1.030	1.035
PMSA Ventura, CA	1.033	1.036
*COUNTY Warren, VA	1.030	1.032
PMSA Waterbury, CT	1.030	1.035
PMSA Worcester, MA-CT	1.034	1.041

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 080300

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.002	1.006	New England Nonmetropolitan	1.002	1.006
New York/New Jersey Metropolitan	1.000	1.000	New York/New Jersey Nonmetropolitan	1.000	1.004
Mid-Atlantic Metropolitan	1.000	1.003	Mid-Atlantic Nonmetropolitan	1.000	1.002
Southeast Metropolitan	1.007	1.012	Southeast Nonmetropolitan	1.000	1.002
Midwest Metropolitan	1.003	1.007	Midwest Nonmetropolitan	1.001	1.006
Southwest Metropolitan	1.001	1.005	Southwest Nonmetropolitan	1.000	1.000
Great Plains Metropolitan	1.003	1.007	Great Plains Nonmetropolitan	1.000	1.002
Rocky Mountain Metropolitan	1.010	1.012	Rocky Mountain Nonmetropolitan	1.000	1.000
Pacific/Hawaii Metropolitan	1.012	1.015	Pacific/Hawaii Nonmetropolitan	1.001	1.003
Northwest/Alaska Metropolitan	1.000	1.000	Northwest/Alaska Nonmetropolitan	1.000	1.000
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.003	1.010
MSA Anchorage, AK	1.009	1.017	PMSA Ann Arbor, MI	1.020	1.020
MSA Atlanta, GA	1.019	1.023	PMSA Atlantic-Cape May, NJ	1.011	1.018
PMSA Baltimore, MD	1.020	1.022	PMSA Bergen-Passaic, NJ	1.020	1.025
*COUNTY Berkeley, WV	1.020	1.022	PMSA Boston, MA-NH	1.024	1.031
PMSA Boulder-Longmont, CO	1.049	1.054	PMSA Brazoria, TX	1.022	1.032
PMSA Bremerton, WA	1.029	1.033	PMSA Bridgeport, CT	1.019	1.026
PMSA Brockton, MA	1.024	1.031	*COUNTY Brown, OH	1.012	1.022
*Chicago, IL	1.025	1.033	*Cincinnati, OH-KY-IN	1.016	1.021
*COUNTY Clarke, VA	1.020	1.022	PMSA Cleveland-Lorain-Elyria, OH	1.003	1.010
*COUNTY Culpeper, VA	1.020	1.022	*Dallas, TX	1.026	1.032

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 080300

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA Danbury, CT	1.020	1.025
PMSA Denver, CO	1.048	1.054
PMSA Dutchess County, NY	1.020	1.025
PMSA Flint, MI	1.020	1.020
PMSA Fort Worth-Arlington, TX	1.025	1.032
PMSA Galveston-Texas City, TX	1.021	1.033
*COUNTY Grant, KY	1.012	1.022
*COUNTY Grundy, IL	1.021	1.036
PMSA Hamilton-Middletown, OH	1.015	1.021
PMSA Houston, TX	1.023	1.032
PMSA Jersey City, NJ	1.021	1.024
MSA Kansas City, MO-KS	1.021	1.028
PMSA Kenosha, WI	1.023	1.034
PMSA Lawrence, MA-NH	1.023	1.032
PMSA Lowell, MA-NH	1.024	1.031
PMSA Miami, FL	1.000	1.001
PMSA Milwaukee-Waukesha, WI	1.007	1.010
PMSA Monmouth-Ocean, NJ	1.020	1.025
PMSA Nassau-Suffolk, NY	1.020	1.025
PMSA New Haven-Meriden, CT	1.020	1.025
*COUNTY Westchester, NY	1.021	1.024
*COUNTY De Kalb, IL	1.023	1.034
PMSA Detroit, MI	1.020	1.020
PMSA Fitchburg-Leominster, MA	1.024	1.031
PMSA Fort Lauderdale, FL	1.000	1.001
*COUNTY Gallatin, KY	1.011	1.023
PMSA Gary, IN	1.021	1.036
PMSA Greeley, CO	1.048	1.054
PMSA Hagerstown, MD	1.020	1.022
*COUNTY Henderson, TX	1.020	1.033
*COUNTY Jefferson, WV	1.020	1.022
PMSA Kankakee, IL	1.020	1.036
*COUNTY Kendall, Il	1.024	1.034
*COUNTY King George, VA	1.020	1.022
PMSA Los Angeles-Long Beach, CA	1.023	1.026
PMSA Manchester, NH	1.024	1.031
PMSA Middlesex-Somerset-Hunterdon, NJ	1.021	1.025
MSA Minneapolis-St. Paul, MN-WI	1.029	1.029
PMSA Nashua, NH	1.024	1.031
PMSA New Bedford, MA	1.024	1.031
PMSA New York, NY	1.021	1.024
PMSA Newark, NJ	1.020	1.025

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 080300

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA Newburgh, NY-PA	1.020	1.025
*COUNTY Ohio, IN	1.012	1.022
PMSA Orange County, CA	1.024	1.026
PMSA Philadelphia, PA-NJ	1.010	1.018
PMSA Portland-Vancouver, OR-WA	1.011	1.013
PMSA Racine, WI	1.006	1.010
MSA St. Louis, MO-IL	1.000	1.003
MSA San Diego, CA	1.053	1.056
PMSA San Jose, CA	1.058	1.060
PMSA Santa Rosa, CA	1.057	1.060
PMSA Stamford-Norwalk, CT	1.021	1.025
MSA Tampa-St. Petersburg-Clearwater, FL	1.012	1.015
PMSA Vallejo-Fairfield-Napa, CA	1.057	1.060
PMSA Vineland-Millville-Bridgeton, NJ	1.009	1.019
*Washington, DC-MD-VA	1.021	1.021
PMSA Wilmington-Newark, DE-MD	1.011	1.018
PMSA Oakland, CA	1.058	1.060
PMSA Olympia, WA	1.029	1.033
*COUNTY Pendleton, KY	1.012	1.022
PMSA Pittsburgh, PA	1.004	1.011
PMSA Portsmouth-Rochester, NH-ME	1.024	1.031
PMSA Riverside-San Bernardino, CA	1.022	1.026
PMSA Salem, OR	1.011	1.013
PMSA San Francisco, CA	1.058	1.060
PMSA Santa Cruz-Watsonville, CA	1.058	1.060
PMSA Seattle-Bellevue-Everett, WA	1.031	1.033
PMSA Tacoma, WA	1.030	1.033
PMSA Trenton, NJ	1.020	1.025
PMSA Ventura, CA	1.023	1.026
*COUNTY Warren, VA	1.020	1.022
PMSA Waterbury, CT	1.020	1.025
PMSA Worcester, MA-CT	1.024	1.031

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Lee, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

MSA	Anchorage, AK:	Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Dillingham, Lake & Peninsula, Northwest Arctic, Nome, Pr. Wales-Outer Ketchikan, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk, Bristol Bay, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Matanuska-Susitna, North Slope, Sitka

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Coconino, Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Craighead, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS: COUNTIES

PMSA	Los Angeles-Long Beach, CA:	Los Angeles
PMSA	Oakland, CA:	Alameda, Contra Costa
PMSA	Orange County, CA:	Orange
PMSA	Riverside-San Bernardino, CA:	Riverside, San Bernardino
MSA	San Diego, CA:	San Diego
PMSA	San Francisco, CA:	Marin, San Francisco, San Mateo
PMSA	San Jose, CA:	Santa Clara
PMSA	Santa Cruz-Watsonville, CA:	Santa Cruz
PMSA	Santa Rosa, CA:	Sonoma
PMSA	Vallejo-Fairfield-Napa, CA:	Napa, Solano
PMSA	Ventura, CA:	Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

COLORADO (ROCKY MOUNTAIN)

CPI AREAS: COUNTIES
PMSA Boulder-Longmont, CO: Boulder
PMSA Denver, CO: Adams, Arapahoe, Denver, Douglas, Jefferson
PMSA Greeley, CO: Weld

METROPOLITAN COUNTIES
El Paso, Larimer, Mesa, Pueblo

NONMETROPOLITAN COUNTIES
Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

CONNECTICUT (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Bridgeport, CT
Fairfield County part: Bridgeport city, Easton town, Fairfield town, Monroe town, Shelton city, Stratford town, Trumbull town
New Haven County part: Ansonia city, Beacon Falls town, Derby city, Milford city, Oxford town, Seymour town

PMSA Danbury, CT
Fairfield County part: Bethel town, Brookfield town, Danbury city, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
Litchfield County part: Bridgewater town, New Milford town, Roxbury town, Washington town

PMSA New Haven-Meriden, CT
Middlesex County part: Clinton town, Killingworth town
New Haven County part: Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town

PMSA Stamford-Norwalk, CT
Fairfield County part: Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town

PMSA Waterbury, CT
Litchfield County part: Bethlehem town, Thomaston town, Watertown town, Woodbury town
New Haven County part: Middlebury town, Naugatuck borough, Prospect town, Southbury town, Waterbury city, Wolcott town

PMSA Worcester, MA-CT
Windham County part: Thompson town

METROPOLITAN COUNTIES
Hartford County part: Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford city, Manchester town, Marlborough town, New Britain city, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town
Litchfield County part: Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part: Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown city, Portland town, Old Saybrook town
New London County part: Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London city, North Stonington town, Norwich city, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town, Colchester town, Lebanon town
Tolland County part: Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part: Ashford town, Canterbury town, Chaplin town, Plainfield town, Windham town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NONMETROPOLITAN COUNTIES

Hartford County part:	Hartland town
Litchfield County part:	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part:	Chester town, Deep River town, Essex town, Westbrook town
New London County part:	Lyme town, Voluntown town
Tolland County part:	Union town
Windham County part:	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA Wilmington-Newark, DE-MD:	New Castle

METROPOLITAN COUNTIES

Kent

NONMETROPOLITAN COUNTIES

Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

District of Columbia

FLORIDA (SOUTHEAST)

CPI AREAS: COUNTIES

PMSA Fort Lauderdale, FL:	Broward
PMSA Miami, FL:	Miami-Dade

MSA Tampa-St. Petersburg-Clearwater, FL: Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES

Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES

Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS: COUNTIES

*Atlanta, GA:	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton

METROPOLITAN COUNTIES

Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES

Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

HAWAII (PACIFIC/HAWAII)

CPI AREAS: COUNTIES

STATE Hawaii:	Hawaii, Honolulu, Kauai, Maui

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES
Ada, Bannock, Canyon

NONMETROPOLITAN COUNTIES
Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS: COUNTIES

*Chicago, IL:	Cook, Dupage, Kane, Lake, McHenry, Will
*COUNTY De Kalb, IL:	Dekalb
*COUNTY Grundy, IL:	Grundy
PMSA Kankakee, IL:	Kankakee
*COUNTY Kendall, Il:	Kendall
MSA St. Louis, MO-IL:	Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES
Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS: COUNTIES

*Cincinnati, OH-KY-IN:	Dearborn
PMSA Gary, IN:	Lake, Porter
*COUNTY Ohio, IN:	Ohio

METROPOLITAN COUNTIES
Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES
Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES
Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont,

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

IOWA (Cont.)

Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

KANSAS (GREAT PLAINS)

CPI AREAS: COUNTIES

MSA Kansas City, MO-KS: Johnson, Leavenworth, Miami, Wyandotte

METROPOLITAN COUNTIES

Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES

Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS: COUNTIES

*Cincinnati, OH-KY-IN:	Boone, Campbell, Kenton
*COUNTY Gallatin, KY:	Gallatin
*COUNTY Grant, KY:	Grant
*COUNTY Pendleton, KY:	Pendleton

METROPOLITAN COUNTIES

Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES

Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

LOUISIANA (SOUTHWEST)

METROPOLITAN COUNTIES

Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Ouachita, Plaquemines, Rapides, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES

Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, West Carroll, West Feliciana, Winn

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Portsmouth-Rochester, NH-ME	
York County part:	Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES

Androscoggin County part:	Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Cumberland County part:	Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Penobscot County part:	Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town
Waldo County part:	Winterport town
York County part:	Buxton town, Hollis town, Limington town, Old Orchard Beach

NONMETROPOLITAN COUNTIES

Aroostook	
Franklin	
Hancock	
Kennebec	
Knox	
Lincoln	
Oxford	
Piscataquis	
Sagadahoc	
Somerset	
Washington	
Androscoggin County part:	Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Cumberland County part:	Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Penobscot County part:	Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation, Whitney unorg., Winn town, Woodville town
Waldo County part:	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
York County part:	Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA Baltimore, MD:	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
PMSA Hagerstown, MD:	Washington
*Washington, DC-MD-VA:	Calvert, Charles, Frederick, Montgomery, Prince George's
PMSA Wilmington-Newark, DE-MD:	Cecil

METROPOLITAN COUNTIES

Allegany

NONMETROPOLITAN COUNTIES

Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH

Bristol County part:	Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Essex County part:	Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
Middlesex County part:	Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
Norfolk County part:	Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
Plymouth County part:	Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
Suffolk county part:	Boston city, Chelsea city, Revere city, Winthrop town
Worcester County part:	Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town

PMSA Brockton, MA

Bristol County part:	Easton town, Raynham town
Norfolk County part:	Avon town
Plymouth County part:	Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town

PMSA Fitchburg-Leominster, MA

Middlesex County part:	Ashby town
Worcester County part:	Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town

PMSA Lawrence, MA-NH

Essex County part:	Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town

PMSA Lowell, MA-NH

Middlesex County part:	Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town

PMSA New Bedford, MA

Bristol County part:	Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Plymouth County part:	Marion town, Mattapoisett town, Rochester town

PMSA Worcester, MA-CT

Hampden County part:	Holland town
Worcester County part:	Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MASSACHUSETTS (NEW ENGLAND) cont.

METROPOLITAN COUNTIES

Barnstable County part:	Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Berkshire County part:	Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Bristol County part:	Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town,Somerset town, Swansea town, Westport town
Franklin County part:	Sunderland town
Hampden County part:	Agawam town, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
Hampshire County part:	Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES

Dukes
Nantucket

Barnstable County part:	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire County part:	Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Franklin County part:	Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden County part:	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire County part:	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Worcester County part:	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

CPI AREAS: COUNTIES

PMSA Ann Arbor, MI:	Lenawee, Livingston, Washtenaw
PMSA Detroit, MI:	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI:	Genesee

METROPOLITAN COUNTIES

Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES

Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS: COUNTIES

MSA Minneapolis-St. Paul, MN-WI:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES

Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES
Desoto, Forrest, Hancock, Harrison, Hinds, Jackson, Lamar, Madison, Rankin

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL: Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard,Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Cascade, Missoula, Yellowstone

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH
Rockingham County part: Seabrook town, South Hampton town

PMSA Lawrence, MA-NH
Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town

PMSA Lowell, MA-NH
Hillsborough county pt: Pelham town

PMSA Manchester, NH
Hillsborough county pt: Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part: Allenstown town, Hooksett town
Rockingham county part: Auburn town, Candia town, Londonderry town

PMSA Nashua, NH
Hillsborough county pt: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town

PMSA Portsmouth-Rochester, NH-ME
Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES
Belknap
Carroll
Cheshire
Coos
Grafton
Sullivan
Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part: Deerfield town, Northwood town, Nottingham town,
Strafford County part: Middleton town, New Durham town, Strafford town

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Atlantic-Cape May, NJ: Atlantic, Cape May
PMSA Bergen-Passaic, NJ: Bergen, Passaic
PMSA Jersey City, NJ: Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ: Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ: Monmouth, Ocean
PMSA Newark, NJ: Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ: Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ: Mercer

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEW JERSEY (Cont.)

PMSA Vineland-Millville-Bridgeton, NJ: Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Dutchess County, NY :	Dutchess
PMSA Nassau-Suffolk, NY:	Nassau, Suffolk
PMSA New York, NY:	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY:	Westchester
PMSA Newburgh, NY-PA:	Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Erie, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams

OHIO (MIDWEST)

CPI AREAS: COUNTIES

PMSA Akron, OH:	Portage, Summit
*COUNTY Brown, OH:	Brown
*Cincinnati, OH-KY-IN:	Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH:	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH:	Butler

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

OHIO (MIDWEST) cont.

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne, Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
PMSA Portland-Vancouver, OR-WA: Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR: Marion, Polk

METROPOLITAN COUNTIES
Benton, Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Newburgh, NY-PA: Pike
PMSA Philadelphia, PA-NJ: Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA: Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES
Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES
Bristol County part: Barrington town, Bristol town, Warren town
Kent County part: Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Newport County part: Jamestown town, Little Compton town, Tiverton town
Providence County part: Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

RHODE ISLANE (CONT.)

Washington County part:	Charlestown town, Exeter town, Hopkinton town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town, Westerly town

NONMETROPOLITAN COUNTIES

Newport County part:	Middletown town, Newport city, Portsmouth town
Washington County part:	New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES
Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES
Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette, Miner, Moody, Perkins,Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES
Anderson, Blount, Carter, Cheatham, Chester, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES
Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES

PMSA Brazoria, TX:	Brazoria
*Dallas, TX:	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX:	Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX:	Galveston
*COUNTY Henderson, TX:	Henderson
PMSA Houston, TX:	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES
Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

TEXAS (Cont.)

NONMETROPOLITAN COUNTIES

Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt, Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Davis, Kane, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES

Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES

Chittenden County part:	Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part:	Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part:	Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES

Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor

Chittenden County part:	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part:	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part:	Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

*COUNTY Clarke, VA:	Clarke
*COUNTY Culpeper, VA:	Culpeper
*COUNTY King George, VA:	King George
*COUNTY Warren, VA:	Warren

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

VIRGINIA (MID-ATLANTIC) cont.

CPI AREAS: COUNTIES

*Washington, DC-MD-VA:	Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES

Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES

Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

PMSA	Bremerton, WA:	Kitsap
PMSA	Olympia, WA:	Thurston
PMSA	Portland-Vancouver, OR-WA:	Clark
PMSA	Seattle-Bellevue-Everett, WA:	Island, King, Snohomish
PMSA	Tacoma, WA:	Pierce

METROPOLITAN COUNTIES

Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES

Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

*COUNTY Berkeley, WV:	Berkeley
*COUNTY Jefferson, WV:	Jefferson

METROPOLITAN COUNTIES

Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES

Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS: COUNTIES

PMSA	Kenosha, WI:	Kenosha
PMSA	Milwaukee-Waukesha, WI:	Milwaukee, Ozaukee, Washington, Waukesha
MSA	Minneapolis-St. Paul, MN-WI:	Pierce, St. Croix
PMSA	Racine, WI:	Racine

METROPOLITAN COUNTIES

Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

WISCONSIN (Cont.)

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
American Samoa, Guam, Northern Mariana Islands, Palau

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grande, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culerbra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

[FR Doc. 00–28458 Filed 11–6–00; 8:45 am]
BILLING CODE 4210–62–C

Federal Register

Tuesday,
November 7, 2000

Part IV

Department of Defense

Department of the Army, Corps of Engineers

Environmental Protection Agency

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act; Notice

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[FRL–6898–3]

Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act

AGENCIES: Corps of Engineers, Department of the Army, DOD; Environmental Protection Agency; Fish and Wildlife Service, Interior; and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Army Corps of Engineers (Corps), Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) are issuing final policy guidance regarding the use of in-lieu-fee arrangements for the purpose of providing compensation for adverse impacts to wetlands and other aquatic resources. Compensatory mitigation projects are designed to replace aquatic resource functions and values that are adversely impacted under the Clean Water Act Section 404 and Rivers and Harbors Act Section 10 regulatory programs. These mitigation objectives are stated in regulation, the 1990 Memorandum of Agreement on mitigation between Environmental Protection Agency (EPA) and the Department of the Army, the November 28, 1995, Federal Guidance on the Establishment, Use and Operation of Mitigation Banks (''Banking Guidance''), and other relevant policy. The advent of in-lieu-fee approaches to mitigation has highlighted the importance of several fundamental objectives that the agencies established for determining what constitutes appropriate compensatory mitigation. The purpose of this memorandum is to clarify the manner in which in-lieu-fee mitigation may serve as an effective and useful approach to satisfy compensatory mitigation requirements and meet the Administration's goal of no overall net loss of wetlands. This in-lieu-fee guidance elaborates on the discussion of in-lieu-fee mitigation arrangements in the Banking Guidance by outlining the circumstances where in-lieu-fee mitigation may be used, consistent with existing regulations and policy.

EFFECTIVE DATE: The effective date is October 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Chowning (Corps) at (202) 761–4614; Ms. Lisa Morales (EPA) at (202) 260–6013; Mr. Mark Matusiak (FWS) at (703) 358–2183; Ms. Susan-Marie Stedman (NMFS) at (301) 713–2325.

SUPPLEMENTARY INFORMATION: This notice publishes interagency guidance regarding the use of in-lieu-fee arrangements for the purpose of providing compensation for adverse impacts to wetlands and other aquatic resources. Any comments or questions on the document may be directed to the persons listed above in the section entitled: **FOR FURTHER INFORMATION CONTACT.**

Dated: October 20, 2000.

Michael L. Davis,

Deputy Assistant Secretary (Civil Works), Department of the Army.

Dated: October 20, 2000.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds, Environmental Protection Agency.

Dated: October 31, 2000.

Jamie Clark,

Director, Fish and Wildlife Service, Department of the Interior.

Dated: October 25, 2000.

Scott B. Gudes,

Deputy Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, Department of Commerce.

Memorandum to the Field

Subject: Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act

I. Purpose

Compensatory mitigation projects are designed to replace aquatic resource functions and values that are adversely impacted under the Clean Water Act Section 404 and Rivers and Harbors Act Section 10 regulatory programs. These mitigation objectives are stated in regulation, the 1990 Memorandum of Agreement on mitigation between Environmental Protection Agency (EPA) and the Department of the Army, the November 28, 1995, Federal Guidance on the Establishment, Use and Operation of Mitigation Banks (''Banking Guidance''), and other relevant policy. The advent of in-lieu-fee approaches to mitigation has highlighted the importance of several fundamental objectives that the agencies established for determining what constitutes appropriate compensatory mitigation. The purpose of this memorandum is to clarify the manner in which in-lieu-fee mitigation may serve as an effective and useful approach to satisfy compensatory mitigation requirements and meet the Administration's goal of no overall net loss of wetlands. This in-lieu-fee guidance elaborates on the discussion of in-lieu-fee mitigation arrangements in the Banking Guidance by outlining the circumstances where in-lieu-fee mitigation may be used, consistent with existing regulations and policy.

II. Background

A. ''In-lieu-fee'' mitigation occurs in circumstances where a permittee provides funds to an in-lieu-fee sponsor instead of either completing project-specific mitigation or purchasing credits from a mitigation bank approved under the Banking Guidance.

B. A fundamental precept of the Section 404(b)(1) Guidelines is that no discharge of dredged or fill material in waters of the U.S. may be permitted unless appropriate and practicable steps have been taken to minimize all adverse impacts associated with the discharge. (40 CFR 230.10(d)) Specifically, the Section 404(b)(1) Guidelines establish a mitigation sequence, under which compensatory mitigation is required to offset wetland losses after all appropriate and practicable steps have been taken to first avoid and then minimize wetland impacts. Compliance with these mitigation sequencing requirements is an essential environmental safeguard to ensure that CWA objectives for the protection of wetlands are achieved. The Section 404 permit program relies on the use of compensatory mitigation to offset unavoidable wetlands impacts by replacing lost wetland functions and values.

C. The agencies further clarified their mitigation policies in a Memorandum of Agreement (MOA) between the EPA and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines (February 6, 1990). That document reiterates that ''the Clean

Water Act and the Guidelines set forth a goal of restoring and maintaining existing aquatic resources. The Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and for wetlands, will strive to achieve a goal of no overall net loss of values and functions.'' Moreover, the MOA clarifies that mitigation ''should be undertaken, when practicable, in areas adjacent or contiguous to the discharge site,'' and that ''if on-site compensatory mitigation is not practicable, off-site compensatory mitigation should be undertaken in the same geographic area if practicable (i.e., in close proximity and, to the extent possible, the same watershed).'' As outlined in the MOA, the agencies have also agreed that ''generally, in-kind compensatory mitigation is preferable to out-of-kind.'' The MOA further states that mitigation banking may be an acceptable form of compensatory mitigation. The agencies recognize the general preference for restoration over other forms of mitigation, given the increased chance for ecological success.

D. Pursuant to these standards, project-specific mitigation for authorized impacts has been used by permittees to offset unavoidable impacts. Project-specific mitigation generally consists of restoration, creation, or enhancement of aquatic resources that are similar to the aquatic resources of the impacted area, and is often located on the project site or adjacent to the impact area. Permittees providing project specific mitigation have a U.S. Army Corps of Engineers (Corps) approved mitigation plan detailing the site, source of hydrology, types of aquatic resource to be restored, success criteria, contingency measures, and an annual reporting requirement. The mitigation and monitoring plan becomes part of the Section 404 authorization in the form of a special condition. The permittee is responsible for complying with all terms and conditions of the authorization and would be in violation of their authorization if the mitigation did not comply with the approved plan.

E. In 1995, the agencies issued the Banking Guidance. Consistent with that guidance, permittees may purchase mitigation credits from an approved bank. Mitigation banks will generally be functioning in advance of project impacts and thereby reduce the temporal losses of aquatic functions and values and reduce uncertainty over the ecological success of the mitigation. Mitigation banking instruments are reviewed and approved by an interagency Mitigation Banking Review Team (MBRT). The MBRT ensures that the banking instrument appropriately addresses the physical and legal characteristics of the bank and how the bank will be established and operated (*e.g.,* classes of wetlands and/or other aquatic resources proposed for inclusion in the bank, geographic service area where credits may be sold, wetland classes or other aquatic resource impacts suitable for compensation, methods for determining credits and debits). The bank sponsor is responsible for the operation and maintenance of the bank during its operational life, as well as the long-term management and ecological success of the wetlands and/or other aquatic resources, and must provide financial assurances.

F. The Banking Guidance describes in-lieu-fee mitigation as follows: ''. . . in-lieu-fee, fee mitigation, or other similar arrangements, wherein funds are paid to a natural resource management entity for implementation of either specific or general wetland or other aquatic resource development project, are not considered to meet the definition of mitigation banking because they do not typically provide compensatory mitigation in advance of project impacts. Moreover, such arrangements do not typically provide a clear timetable for the initiation of mitigation efforts. The Corps, in consultation with the other agencies, may find circumstances where such arrangements are appropriate so long as they meet the requirements that would otherwise apply to an offsite, prospective mitigation effort and provides adequate assurances of success and timely implementation. In such cases, a formal agreement between the sponsor and the agencies, similar to a banking instrument, is necessary to define the conditions under which its use is considered appropriate.''

III. Use of In-Lieu-Fee Mitigation in the Regulatory Program

In light of the above considerations and in order to ensure that decisions regarding the use of in-lieu-fee mitigation are made more consistently with existing provisions of agency regulations and permit policies, the following clarification is provided. It is organized in a tiered manner to reflect and incorporate the agencies' broader mitigation policies, and is based on relative assurances of ecological success.

A. *Impacts Authorized Under Individual Permit:* In-lieu-fee agreements may be used to compensate for impacts authorized by individual permit if the in-lieu-fee arrangement is developed (or revised, if an existing agreement), reviewed, and approved using the process established for mitigation banks in the Banking Guidance. MBRTs should review applications from such in-lieu-fee sponsors to ensure that such agreements are consistent with the Banking Guidance.

B. *Impacts Authorized Under General Permit:* As a general matter, in-lieu-fee mitigation should only be used to compensate for impacts to waters of the U.S. authorized by a Section 404 general permit, as described below:

1. *Where ''On-site'' Mitigation Is Available and Practicable:* As a general matter, compensatory mitigation that is completed on or adjacent to the site of the impacts it is designed to offset (*i.e.,* project-specific mitigation done by permittees consistent with Corps approved mitigation plans) is preferable to mitigation conducted off-site (*i.e.,* mitigation bank or in-lieu-fee mitigation). The agencies' preference for on-site mitigation, indicated in the 1990 Memorandum of Agreement on mitigation between the EPA and the Department of the Army, should not preclude the use of a mitigation bank or in-lieu-fee mitigation when there is no practicable opportunity for on-site compensation, or when use of a bank or in-lieu-fee mitigation is environmentally preferable to on-site compensation, consistent with the provisions in paragraph 2 below.

2. *Where ''On-site'' Mitigation Is Not Available or Practicable:* Except as noted below in a. or b., where on-site mitigation is not available, practicable, or determined to be less environmentally desirable, use of a mitigation bank is preferable to in-lieu-fee mitigation where permitted impacts are within the service area of a mitigation bank approved to sell mitigation credits, and those credits are available. Use of a mitigation bank is also preferable over in-lieu-fee mitigation where both the available in-lieu-fee arrangement and the service area of an approved mitigation bank are outside of the watershed of the permitted project impacts, unless the mitigation bank is determined on a case by case basis to not be practicable and environmentally desirable.

a. *Where Mitigation Bank Does Not Provide ''In-kind'' Mitigation:* In those circumstances where wetlands impacts proposed for general permit authorization are within the service area of an approved mitigation bank with available credits, but the impacted wetland type is not identified by the Mitigation Banking Instrument for compensation within such bank, then the authorized impact may be compensated through an in-lieu-fee arrangement, subject to the considerations described in Section IV below, if the in-lieu-fee arrangement would provide in-kind restoration as mitigation.

b. *Where Mitigation Bank Does Not Provide Restoration, Creation, or Enhancement Mitigation:* In those circumstances where wetlands impacts proposed for general permit authorization are within the service area of an approved mitigation bank, but the only available credits are through preservation, then the authorized impact may

be compensated through an in-lieu-fee arrangement subject to the considerations described in Section IV below, if the in-lieu-fee arrangement would provide in kind restoration as mitigation.

IV. Planning, Establishment, and Use of In-lieu-fee Mitigation Arrangements

This section describes the basic considerations that should be addressed for any proposed use of in-lieu-fee mitigation to offset unavoidable impacts associated with a discharge authorized under a general permit described in Section III above.

A. Planning Considerations

1. *Qualified Organizations:* Given the goal to ensure long-term mitigation success, the Corps, in consultation with the other Federal agencies, should carefully evaluate the demonstrated performance of natural resource management organizations (*e.g.*, governmental organizations, land trusts) prior to approving them to manage in-lieu-fee arrangements. In fact, given the unique strengths and specialties of such organizations, it may be useful for the Corps, in consultation with other Federal resource agencies, to establish formal arrangements with several natural resource management organizations to ensure there are sufficient options to effectively replace lost functions and values. In any event, in-lieu-fee arrangements and subsequent modifications should be made in consultation with the other Federal agencies and only after an opportunity for public notice and comment has been afforded.

2. *Operational Information:* Those organizations considered qualified to implement formal in-lieu-fee arrangements should work in advance with the Corps to ensure that authorized impacts will be offset fully on a project-by-project basis consistent with Section 10/404 permit requirements. As detailed in the paragraphs that follow, organizations should supply the Corps with information in advance on (1) potential sites where specific restoration projects or types of restoration projects are planned, (2) the schedule for implementation, (3) the type of mitigation that is most ecologically appropriate on a particular parcel, and (4) the financial, technical, and legal mechanisms to ensure long-term mitigation success. The Corps should ensure that the formal in-lieu-fee arrangements and project authorizations contain distinct provisions that clearly state that the legal responsibility for ensuring mitigation terms are satisfied fully rests with the organization accepting the in-lieu-fee. In-lieu-fee sponsors should be able to demonstrate approval of all necessary State and local permits and authorizations. In-lieu-fee sponsors (*e.g.*, State) should notify the Corps and MBRT if the service area of any mitigation bank overlaps the jurisdiction in which their in-lieu-fees may be spent.

3. *Watershed Planning:* Local watershed planning efforts, as a general matter, identify wetlands and other aquatic resources that have been degraded and usually have established a prioritization list of restoration needs. In-lieu-fee mitigation projects should be planned and developed to address the specific resource needs of a particular watershed.

4. *Site Selection:* The Federal agencies and in-lieu-fee sponsor should give careful consideration to the ecological suitability of a site for achieving the goal and objectives of compensatory mitigation (*e.g.*, posses the physical, chemical and biological characteristics to support the desired aquatic resources and functions, preferably in-kind restoration or creation of impacted aquatic resources). The location of the site relative to other ecological features, hydrologic sources, and compatibility with adjacent land uses and watershed management plans shall be considered by the Federal agencies during the evaluation process.

5. *Technical Feasibility:* In-lieu-fee mitigation should be planned and designed to be self-sustaining over time to the extent possible. The techniques for establishing aquatic resources must be carefully selected. The restoration of historic or substantially degraded aquatic resources (*e.g.*, prior-converted cropland, farmed wetlands) utilizing proven techniques increases the likelihood of success and typically does not result in the loss of other valuable resources. Thus, restoration should be the first option considered for siting in-lieu-fee mitigation. This guidance recognizes that in some circumstances aquatic resources must be actively managed to ensure their sustainability. Furthermore, long-term maintenance requirements may be necessary and appropriate in some cases (*e.g.*, to maintain fire dependent habitat communities in the absence of natural fire, to control invasive exotic plant species). Proposed mitigation techniques should be well-understood and reliable. When uncertainties surrounding the technical feasibility of a proposed mitigation technique exist, appropriate arrangements may be phased-out or reduced once the attainment of prescribed performance standards is demonstrated. In any event, a plan detailing specific performance standards should be submitted to ensure the technical success of the project can be evaluated.

6. *Role of Preservation:* As described in the Banking Guidance, simple purchase or ''preservation'' of existing wetlands may be accepted as compensatory mitigation only in exceptional circumstances. Mitigation credit may be given when existing wetlands and/or other aquatic resources are preserved in conjunction with restoration, creation or enhancement activities, and when it is demonstrated that the preservation will augment the functions of the restored, created or enhanced aquatic resource.

7. *Collection of Funds:* Funds collected under any in-lieu-fee arrangement should be used for replacing wetlands functions and values and not to finance non-mitigation programs and priorities (*e.g.*, education projects, research). Funds collected should be based upon a reasonable cost estimate of all funds needed to compensate for the impacts to wetlands or other waters that each permit is authorized to offset. Funds collected should ensure a minimum of one-for-one acreage replacement, consistent with existing regulation and permit conditions. Land acquisition and initial physical and biological improvements should be completed by the first full growing season following collection of the initial funds. However, because site improvements associated with in-lieu-fee mitigation may take longer to initiate, initial physical and biological improvements may be completed no later than the second full growing season where (1) initiation by the first full growing season is not practicable, (2) mitigation ratios are raised to account for increased temporal losses of aquatic resource functions and values, and (3) the delay is approved in advance by the Corps.

8. *Monitoring and Management:* The in-lieu-fee sponsor is responsible for securing adequate funds for the operation and maintenance of the mitigation sites. The wetlands and/or other aquatic resources in the mitigation site should be protected in perpetuity with appropriate real estate arrangements (*e.g.*, conservation easements, transfer of title to Federal or State resource agency or non-profit conservation agency). Such arrangements should effectively restrict harmful activities (*e.g.*, incompatible uses) that might otherwise jeopardize the purpose of the compensatory mitigation. In addition, there should be appropriate schedules for regular (*e.g.*, annual) monitoring reports to document funds received, impacts permitted, how

funds were disbursed, types of projects funded, and the success of projects conducted under the in-lieu-fee arrangement. The Corps, in conjunction with other Federal and State agencies, should evaluate the reports and conduct regular reviews to ensure that the arrangement is operating effectively and consistent with agency policy and the specific agreement. The Corps will track all uses of in-lieu-fee arrangements and report those figures by public notice on an annual basis.

B. Establishment of In-Lieu-Fee Agreements

A formal in-lieu-fee agreement, consistent with the planning provisions above, should be established by the sponsor with the Corps, in consultation with the other agencies. It may be appropriate to establish an ''umbrella'' arrangement for the establishment and operation of multiple sites. In such circumstances, the need for supplemental information (*e.g.*, site specific plans) should be addressed in specific in-lieu-fee agreements. The in-lieu-fee agreement should contain:

1. a description of the sponsor's experience and qualifications with respect to providing compensatory mitigation;

2. potential site locations, baseline conditions at the sites, and general plans that indicate what kind of wetland compensation can be provided (*e.g.*, wetland type, restoration or other activity, proposed time line, *etc.*);

3. geographic service area;

4. accounting procedures;

5. methods for determining fees and credits;

6. a schedule for conducting the activities that will provide compensatory mitigation or a requirement that projects will be started within a specified time after impacts occur;

7. performance standards for determining ecological success of mitigation sites;

8. reporting protocols and monitoring plans;

9. financial, technical and legal provisions for remedial actions and responsibilities (*e.g.*, contingency fund);

10. financial, technical and legal provisions for long-term management and maintenance (*e.g.*, trust); and

11. provision that clearly states that the legal responsibility for ensuring mitigation terms are fully satisfied rests with the organization accepting the fee.

In cases where initial establishment of in-lieu-fee compensatory mitigation involves a discharge into waters of the United States requiring Section 10/404 authorization, submittal of a Section 10/404 application should be accompanied by the in-lieu-fee agreement.

V. General

A. *Effect of Guidance.* This guidance does not change the substantive requirements of the Section 10/404 regulatory program. Rather, it interprets and provides guidance and procedures for the use of in-lieu fee mitigation consistent with existing regulations. The policies set out in this document are not final agency action, but are intended solely as guidance. The guidance is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. This guidance does not establish or affect legal rights or obligations, establish a binding norm on any party and it is not finally determinative of the issues addressed. Any regulatory decisions made by the agencies in any particular matter addressed by this guidance will be made by applying the governing law and regulations to the relevant facts.

B. *Definitions.* Unless otherwise noted, the terms used in this guidance have the same definitions as those terms in the Banking Guidance. Note that as part of the Administration's Clean Water Action Plan, the Federal agencies have proposed a tracking system to more accurately account for wetland losses and gains that includes definitions of terms such as restoration used in wetland programs. Future notice will be given when these definitions will be applied to Section 10/404 regulatory program.

C. *Effective Date.* This guidance is effective immediately on the date of the last signature below. Therefore, existing in-lieu-fee arrangements or agreements should be reviewed and modified as necessary in light of the above.

D. *Conversion to Banks:* If requested by the in-lieu-fee sponsor, the Corps, in conjunction with the other Federal agencies, will provide assistance and recommendations on the steps necessary to convert individual in-lieu-fee arrangements to mitigation banks, consistent with the Banking Guidance.

E. *Future Revisions.* The agencies are supporting a comprehensive, independent evaluation of the effectiveness of compensatory mitigation by the National Academy of Sciences. The technical results of this evaluation are expected to be used by the public to improve the quality of wetlands and aquatic resource restoration, creation, and enhancement. The agencies will take note of the results of this evaluation and other relevant information to make any necessary revisions to guidance on compensatory mitigation, to ensure the greatest opportunity for ecological success of restored, created, and enhanced wetlands and other aquatic resources. At a minimum, a review of the use of this guidance will be initiated no later than 12 months after the effective date.

Michael L. Davis,
Deputy Assistant Secretary (Civil Works), Department of the Army.
Robert H. Wayland III,
Director, Office of Wetlands, Oceans, and Watersheds Environmental Protection Agency.
Jamie Clark,
Director, Fish and Wildlife Service, Department of the Interior.
Scott B. Gudes,
Deputy Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, Department of Commerce.

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Federal Register

Tuesday,
November 7, 2000

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 2 et al.

Federal Acquisition Regulation; Preference for U.S.-Flag Vessels; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 12, 32, 47, and 52

[FAR Case 1999–024]

RIN 9000–AI97

Federal Acquisition Regulation; Preference for U.S.-Flag Vessels

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) regarding the applicability of statutory requirements for use of U.S.-flag vessels in the transportation of supplies by sea. The FAR presently waives these requirements for subcontracts for the acquisition of commercial items.

DATES: Interested parties should submit comments in writing on or before January 8, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.1999–024@gsa.gov.

Please submit comments only and cite FAR case 1999–024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 1999–024.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2631 and 46 U.S.C. 1241(b) provide a preference for use of U.S.-flag vessels for ocean transportation of supplies purchased under Government contracts. FAR Part 12 presently waives the requirements of 46 U.S.C. 1241(b) for subcontracts for the acquisition of commercial items. This rule proposes to amend FAR Part 12 by adding 10 U.S.C. 2631 to the list of laws inapplicable to subcontracts for the acquisition of commercial items, since civilian agencies may buy supplies for use of military departments. However, this rule modifies FAR Parts 12, 47, and associated clauses, to limit the types of subcontracts for which the waiver of cargo preference statutes is applicable. The rule is intended to ensure compliance with cargo preference statutes if ocean cargoes are clearly destined for Government use, while avoiding disruption of commercial delivery systems.

This rule also deletes the existing Alternate II of the clause, 52.247–64, as unnecessary and replaces it with a new Alternate II. The rule adds two definitions, *i.e.,* ''contingency operation'' and ''humanitarian or peacekeeping operation'' to define terms used in the definition of ''simplified acquisition threshold'', Part 32, Subpart 47.5, and the clause at 52.247–64. These changes are consistent with previously issued guidance from OFPP.

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 Councils do 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 most entities providing ocean transportation are not small business concerns. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–024), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule will increase the flowdown of FAR clause 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels, to certain commercial subcontracts. This information collection requirement is currently approved by the Office of Management and Budget under OMB Control Number 9000–0061, which also covers other transportation related information collection requirements. We anticipate an increase of 9,000 responses per year as a result of this proposed rule, and a corresponding increase of 900 burden hours per year.

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .05 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 65,000.

Responses per respondent: 21.

Total annual responses: 1,385,990.

Preparation hours per response: .05 hours.

Total response burden hours: 65,870.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than January 8, 2001 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVR), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control Number 9000–0061, FAR Case 1999–024, Preference for U.S.-Flag Vessels, in all correspondence.

List of Subjects in 48 CFR Parts 2, 12, 32, 47, and 52

Government procurement.

Dated: November 2, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 12, 32, 47, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 12, 32, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding the definitions ''Contingency operation'' and ''Humanitarian or peacekeeping operation'', and by revising the definition ''Simplified acquisition threshold'' to read as follows:

2.101 Definitions.

* * * * *

Contingency operation means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. 688, 12301(a), 12302, 12304, 12305, or 12406; chapter 15 of 10 U.S.C.; or any other provision of law during a war or during a national emergency declared by the President or Congress (10 U.S.C. 101(a)(13)).

* * * * *

Humanitarian or peacekeeping operation means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing (10 U.S.C. 2302(8) and 41 U.S.C. 259(d)(2)(B)).

* * * * *

Simplified acquisition threshold means $100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation, the term means $200,000.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 12.504 by redesignating paragraphs (a)(1) through (a)(11) as (a)(2) through (a)(12), respectively; by adding a new paragraph (a)(1); and by revising newly designated paragraph (a)(11) to read as follows:

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(1) 10 U.S.C. 2631, Transportation of Supplies by Sea (except for the types of subcontracts listed at 47.504(d)).

* * * * *

(11) 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see subpart 47.5) (except for the types of subcontracts listed at 47.504(d)).

* * * * *

PART 32—CONTRACT FINANCING

32.1103 [Amended]

4. Amend section 32.1103 in paragraph (e) by removing ''10 U.S.C. 101(a)(13)'' and adding ''2.101'' in its place.

PART 47—TRANSPORTATION

5. Amend section 47.504 by revising paragraph (d) to read as follows:

47.504 Exceptions.

* * * * *

(d) Subcontracts for the acquisition of commercial items or commercial components (see 12.504(a)(1) and (a)(11)). This exception does not apply to—

(1) Grants-in-aid shipments, such as agricultural and food-aid shipments;

(2) Shipments covered under 46 App. U.S.C. 1241–1, such as those generated by Export-Import Bank loans or guarantees;

(3) Subcontracts under—

(i) Government contracts or agreements for ocean transportation services; or

(ii) Construction contracts; or

(4) Shipments of commercial items that are—

(i) Items the contractor is reselling or distributing to the Government without adding value (see FAR 12.501(b)). Generally, the contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment; or

(ii) Shipped in direct support of U.S. military—

(A) Contingency operations;

(B) Exercises; or

(C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

6. Revise section 47.507 to read as follows:

47.507 Contract clauses.

(a)(1) Insert the clause at 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels, in solicitations and contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954. (For application of the Cargo Preference Act of 1954, see 47.502(a)(3), 47.503(a), and 47.504.)

(2) If an applicable statute requires, or if it has been determined under agency procedures, that the supplies to be furnished under the contract must be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.502(a)(1) and 47.503(b)), use the clause with its Alternate I.

(3) Except for contracts or agreements for ocean transportation services or construction contracts, use the clause with its Alternate II if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military—

(i) Contingency operations;

(ii) Exercises; or

(iii) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(b) The contracting officer may insert in solicitations and contracts, under agency procedures, additional appropriate clauses concerning the vessels to be used.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.212–5 by revising the date of the clause, the introductory text of paragraph (e), and paragraph (e)(4) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by addenda to this paragraph to establish the reasonableness of prices under part 15), in a subcontract for commercial items or commercial components—

* * * * *

(4) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241 and 10 U.S.C. 2631). (Flowdown

required in accordance with paragraph (d) of the clause in the contract entitled ''Preference for Privately Owned U.S.-Flag Commercial Vessels'' (FAR 52.247–64)); and

* * * * *

(End of clause)

8. Amend section 52.244–6 by revising the date of the clause and paragraph (c)(4) to read as follows:

52.244–6 Subcontracts for Commercial Items and Commercial Components.

* * * * *

Subcontracts for Commercial Items and Commercial Components (Date)

* * * * *

(c) * * *

(4) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241 and 10 U.S.C. 2631). (Flowdown required in accordance with paragraph (d) of the clause in this contract entitled ''Preference for Privately Owned U.S.-Flag Commercial Vessels'' (FAR 52.247–64).)

* * * * *

(End of clause)

9. Amend section 52.247–64 by—

a. Revising the date of the clause;

b. Removing ''The'' from the beginning of the introductory text of paragraph (a) and adding ''Except as provided in paragraph (e) of this clause, the'' in its place;

c. Removing the period at the end of paragraph (d) and adding '', except those described in paragraph (e)(4).'' in its place;

d. Removing ''and'' at the end of paragraph (e)(2);

e. Removing the period at the end of paragraph (e)(3) and adding ''; and'' in its place;

f. Adding paragraph (e)(4); and

g. Revising Alternates I and II to read as follows:

52.247–64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

* * * * *

Preference for Privately Owned U.S.-Flag Commercial Vessels (Date)

* * * * *

(e) * * *

(4) Subcontracts or purchase orders for the acquisition of commercial items unless—

(i) This contract is—

(A) A contract or agreement for ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are—

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

(*1*) Contingency operations;

(*2*) Exercises; or

(*3*) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

* * * * *

Alternate I (Date). As prescribed in 47.507(a)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Except as provided in paragraphs (b) and (e) of this clause, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify the Contracting Officer and request (1) authorization to ship in foreign-flag vessels, or (2) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.

Alternate II (Date). As prescribed in 47.507(a)(3), substitute the following paragraph (e) for paragraph (e) of the basic clause:

(e) The requirement in paragraph (a) does not apply to—

(1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders under this contract for the acquisition of commercial items unless the supplies being transported are—

(i) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(ii) Shipments in direct support of U.S. military—

(A) Contingency operations;

(B) Exercises; or

(C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations. (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.)

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H.J. Res. 123/P.L. 106–426

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Nov. 3, 2000; 114 Stat. 1897)

H.J. Res. 124/P.L. 106–427

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Nov. 4, 2000; 114 Stat. 1898)

H.J. Res. 84/P.L. 106–428

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Nov. 4, 2000; 114 Stat. 1899)

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