

Federal Register

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- FOR: Any person who uses the Federal Register and Code of Federal Regulations.
- WHO: Sponsored by the Office of the Federal Register.
- WHAT: Free public briefings (approximately 3 hours) to present:
 1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN: October 22, 1996 at 9:00 a.m.
- WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
- RESERVATIONS: 202-523-4538



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Federal Register

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

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-205-AD; Amendment 39-9767; AD 96-20-01]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 777-200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 777-200 series airplanes. This action requires a one-time inspection to determine the serial numbers of various switch modules on the overhead panel and control stand, and replacement of switch modules with new improved modules. This AD also requires repetitive tests of the cargo fire extinguishing system, and one-time tests of the fuel crossfeed valve, pack, trim air, and alternate flap control switches; and repair or replacement of switch modules with new improved modules, if necessary. This amendment is prompted by a report indicating that the flight crew received a warning of fire in the forward cargo compartment during flight; later inspection revealed that the metered fire bottles failed to discharge due to suspected contamination of the arming switch contacts of the cargo fire extinguishing system. The actions specified in this AD are intended to minimize contamination of the switch contacts and consequent failure of the switches, which, if not corrected, could result in inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems.

DATES: Effective October 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 25, 1996.

Comments for inclusion in the Rules Docket must be received on or before December 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-205-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

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: Jeffrey Duven, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227-2688; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: The FAA received a report indicating that the flight crew received a warning of fire in the forward cargo compartment of a Boeing Model 777-200 series airplane during flight. In response to the warning, the flight crew pushed the forward arming and cargo fire discharge switches in an attempt to discharge the fire extinguishing bottles in the forward cargo compartment; subsequently, the flight crew landed the airplane safely. During a subsequent inspection, no evidence of smoke or fire was found in the forward cargo compartment. Both dump bottles of the fire extinguishing system (bottles 1A and 1B) had discharged. (Discharge of extinguishant from these dump bottles will bring a fire to a controllable level.) None of the three fire bottles of the metered system (bottles 2A, 2B, and 2C) had discharged. (If the fire bottles of the metered system do not discharge, the capability of the fire extinguishing system to suppress a sustained fire is reduced.) Additionally, the ventilation control mode for fire did not operate as designed. (The ventilation control for fire prevents smoke from entering the main deck and

maintains the necessary concentration of Halon extinguishant in the cargo compartment.)

The false fire warning may have been caused by the high moisture content of the cargo located in the forward cargo compartment. Moisture has been known to trigger false detections in other cargo smoke detection systems. Failure of the fire bottles to discharge may have been caused by contamination of the arming switch contacts of the cargo fire extinguishing system. This contamination is a result of particles originating from a component internal to the switch. The internal component is made from a polyester material that has been found to be subject to knicking and chafing during assembly and subsequent operation of the switch. When the switch is pushed and activated, particles from the polyester material can contaminate the switch contacts and can prevent the switch from activating.

Subsequent to the report of the incident described previously, the FAA received several additional reports of failures of switches that are used in systems of the airplane other than the cargo fire extinguishing system, including the fuel, air conditioning, and alternate flaps systems. The FAA has determined that the switches in these systems are equally susceptible to the contamination described previously.

Contamination of the switch contacts and consequent failure of the switches, if not corrected, could result in inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777-26A0004, dated June 21, 1996. The alert service bulletin describes procedures for a one-time inspection to determine the serial numbers of the switch modules of the forward arming switch, the aft arming switch, and the discharge switch of the cargo fire extinguishing system; and replacement of certain switch modules with new improved modules, if necessary. These new improved switch modules are made of a more resilient nylon material that will reduce contamination. The alert service bulletin also describes procedures for functional tests of the cargo fire extinguishing system following

accomplishment of the inspection/replacement. The alert service bulletin references Boeing Component Service Bulletin 233W3212-80-01, dated June 21, 1996, as an additional source of service information for accomplishment of the inspection/replacement.

The FAA also has reviewed and approved Boeing Alert Service Bulletin 777-31A0013, dated August 29, 1996. The alert service bulletin describes procedures for a one-time inspection to determine the serial numbers of the switch modules of the alternate flaps arm switch on the P10 control stand, the forward and aft fuel crossfeed switches on the fuel/fuel jettison module assembly, and the left and right air conditioning pack and trim air switches on the air conditioning module assembly; and replacement of certain switch modules with new improved modules.

The alert service bulletin also describes procedures for a one-time functional test of the fuel crossfeed valve switches; and a one-time operational test of the pack switches, the trim air switches, and the alternate flap control switches following accomplishment of the inspection/replacement.

This alert service bulletin references two other service bulletins as additional sources of service information for accomplishing the inspection/replacement:

1. Boeing Component Service Bulletin 233W3204-21-01, dated August 29, 1996 (for the pack and trim air switches); and
2. Boeing Component Service Bulletin 233W3203-28-01, dated August 29, 1996 (for the fuel crossfeed valve switches).

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 777-200 series airplanes of the same type design, this AD is being issued to minimize contamination of the switch contacts and consequent failure of the switches, which, if not corrected, could result in inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems. This AD requires a one-time inspection to determine the serial numbers of various switch modules on the overhead panel and control stand, and replacement of switch modules with new improved modules. This AD also requires repetitive tests of the cargo fire extinguishing system, and one-time tests of the fuel crossfeed valve, pack, trim air, and alternate flap control switches;

and repair or replacement of switch modules with new improved modules, if necessary. The repair is required to be accomplished in accordance with normal maintenance practices. Other actions are required to be accomplished in accordance with the alert service bulletins described previously.

This AD also prohibits dispatch of an airplane with any air conditioning pack or fuel crossfeed valve inoperative until the one-time inspection of the switch modules of alternate flaps arm switch, the fuel crossfeed switches, and the air conditioning pack and trim air switches is accomplished, switch modules are replaced (as necessary), and the one-time tests of the fuel crossfeed valve, pack, trim air, and alternate flap control switches are accomplished.

Differences Between Relevant Service Information and AD

1. Operators should note that Boeing Alert Service Bulletin 777-31A0013 identifies the new improved switch modules as those on which the first four digits of the serial number are 9544 or greater. However, the FAA has been advised that switch modules on which the first four digits of the serial number are 9634, 9635, 9636, 9637, and 9638 were potentially subjected to excessive heat and pressure during the manufacturing process and are subject to internal shorting, which can cause malfunction of a switch. "New improved modules" are defined in this AD as those on which the first four digits of the serial number are 9544 or greater, excluding 9634, 9635, 9636, 9637, and 9638.

2. In addition, the effectivity listing specified in Boeing Alert Service Bulletin 777-26A0004 does not address recently delivered airplanes having line positions 33 and subsequent. Further, the effectivity listing specified in Boeing Alert Service Bulletin 777-31A0013 does not address airplanes having line positions 37 and subsequent. This AD, however, requires that the actions of paragraph (a), (b), or (c), as applicable, be accomplished on airplanes having line positions 1 through 40 (inclusive).

3. While the effect of all AD's, in conjunction with section 39.3 of the Federal Aviation Regulations (14 CFR 39.3), is to prohibit installation of "bad" parts after the deadline for their replacement, the FAA has determined that it is appropriate to make this prohibition explicit in this case because of the commonality of the part number of the "bad" and "good" parts. The intent of paragraph (d) of this AD is to ensure that any replacement of a switch module associated with certain flight-critical systems that is accomplished as

of 30 days after the effective date of this AD is consistent with the original intent of the AD; that is, the switch module must be replaced with a new improved switch module [that is, a module on which the first four digits of the serial number are 9544 or greater (excluding 9634 through 9638 inclusive)].

Interim Action

The requirements of this AD are considered to be interim action. The FAA has determined that as many as 76 switches on these airplanes may be equally susceptible to the addressed contamination problems. This AD requires actions to address the 10 switches that are associated with the most flight-critical systems. The FAA is considering additional rulemaking to address other switches that are susceptible to contamination.

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.

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 96-NM-205-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96-20-01 Boeing; Amendment 39-9767. Docket 96-NM-205-AD.

Applicability: Model 777-200 series airplanes having line positions 1 through 40 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 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To minimize contamination of the switch contacts and consequent failure of the switches, which, if not corrected, could result in inability of the flight crew to activate the cargo fire extinguishing, fuel, air conditioning, and alternate flap systems; accomplish the following:

(a) For airplanes having line positions 1 through 40 inclusive: Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Boeing Alert Service Bulletin 777-26A0004, dated June 21, 1996.

Note 2: Boeing Alert Service Bulletin 777-26A0004 references Boeing Component Service Bulletin 233W3212-80-01, dated June 21, 1996, as an additional source of service information for accomplishment of the one-time inspection and replacement.

(1) Perform a one-time inspection to determine the serial numbers of the switch modules of the forward arming switch, the aft arming switch, and the discharge switch of the cargo fire extinguishing system; in accordance with the alert service bulletin. If the first four digits of the serial number of the switch module are less than 9544, or if the first four digits of the serial number of the switch module are 9634, 9635, 9636, 9637, or 9638, prior to further flight, replace the switch module with a new improved module (that is, a module on which the first four digits of the serial number are 9544 or greater, excluding 9634 through 9638 inclusive) in accordance with the alert service bulletin. And

(2) Perform a functional test of the cargo fire extinguishing system in accordance with paragraph III.C. of the Accomplishment

Instructions of the alert service bulletin. Thereafter, repeat the functional test at intervals not to exceed 12 months.

(i) If the cargo fire extinguishing system fails any functional test required by paragraph (a)(2) of this AD and the failure is determined to be caused by a defective switch module, prior to further flight, replace any discrepant switch module in that system with a new improved module (a module on which the first four digits of the serial number are 9544 or greater, excluding 9634 through 9638 inclusive) in accordance with the alert service bulletin.

(ii) If the cargo fire extinguishing system fails any functional test required by paragraph (a)(2) of this AD and the failure is determined to be caused by a condition other than a defective switch module, prior to further flight, repair in accordance with normal maintenance practices.

(b) For airplanes having line positions 2 through 9 inclusive, 11 through 13 inclusive, 15 through 17 inclusive, and 19 through 36 inclusive: The airplane may not be dispatched with any air conditioning pack or fuel crossfeed valve inoperative. Once the actions required by paragraph (c) of this AD are accomplished, the airplane may be dispatched with one or both air conditioning packs and one fuel crossfeed valve inoperative, in accordance with the provisions and limitations specified in the Master Minimum Equipment List (MMEL).

(c) For airplanes having line positions 1 through 40 inclusive: Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (c)(1) and (c)(2) in accordance with Boeing Alert Service Bulletin 777-31A0013, dated August 29, 1996.

Note 3: Boeing Alert Service Bulletin 777-31A0013 references Boeing Component Service Bulletin 233W3204-21-01, dated August 29, 1996 (for the pack and trim air switches), and Boeing Component Service Bulletin 233W3203-28-01, dated August 29, 1996 (for the fuel crossfeed valve switches), as additional sources of service information for accomplishment of the one-time inspection and replacement.

(1) Perform a one-time inspection to determine the serial numbers of the switch modules of the alternate flaps arm switch on the P10 control stand, the forward and aft fuel crossfeed switches on the fuel/fuel jettison module assembly, and the left and right air conditioning pack and trim air switches on the air conditioning module assembly; in accordance with the Accomplishment Instructions of the alert service bulletin, with the exception of paragraph A of those Accomplishment Instructions. In lieu of that paragraph of the alert service bulletin, accomplish the following: Open the circuit breakers listed in Table 1 of this AD and attach "DO-NOT-CLOSE" tags:

TABLE 1.—CIRCUIT BREAKERS TO BE OPENED AND TAGGED

Location (panel/grid)	Name	Circuit breaker
P110/L23	FUEL XFEED VLV FWD	C28629.

TABLE 1.—CIRCUIT BREAKERS TO BE OPENED AND TAGGED—Continued

Location (panel/grid)	Name	Circuit breaker
P310/G9	FUEL XFEED VLV AFT	C28612.
P310/A8	SNSR EXC 1	C27513.
P310/D3	FSEU 1	C27601.
P210/F21	SNSR EXC 2	C27514.
P210/K4	FSEU 2	C27602.
P11/D6	OPAS 1	C23603.
P11/G20	OPAS 2	C23602.
P11/B7	OPAS 3	C23605.
P210/K8	SLATS ELEC CNTL RLY PWR	C27630.
P110/K17	FLAPS ELEC CNTL RLY PWR	C27631.
P110/F4	OVHD INST & PNL LTS/FWD PNL FLOOD LTS	C33410.
P110/G4	AISLE STAND INST & PNL LTS	C33492.
P110/N25	MD & T CHANNEL 1	C33605.
P310/B3	MD & T CHANNEL 3	C33610.
P310/F4	MD & T CHANNEL 4	C33611.
P210/M3	MD & T CHANNEL 5	C33604.

If the first four digits of the serial number of the switch module are less than 9544; or if the first four digits of the serial number of the switch module are 9634, 9635, 9636, 9637, or 9638; prior to further flight, replace the switch module with a new improved switch module (a module on which the first four digits of the serial number are 9544 or greater, excluding 9634 through 9638 inclusive) in accordance with the alert service bulletin.

Note 4: Opening the three OPAS circuit breakers will disable control of the air conditioning packs from the air conditioning control panel. If it is desired to turn on the air conditioning pack during incorporation of the alert service bulletin, the pack should be turned on before opening the OPAS circuit breakers.

(2) Perform a one-time functional test of the fuel crossfeed valve switches, a one-time operational test of the pack switches, a one-time operational test of the trim air switches, and a one-time operational test of the alternate flap control switches in accordance with paragraphs III.F., III.G., III.H., and III.I., respectively, of the Accomplishment Instructions of the alert service bulletin.

(i) If any switch module fails any test required by paragraph (c)(2) of this AD and the failure is determined to be caused by a defective switch module, prior to further flight, replace any discrepant switch module in that system with a new improved module (a module on which the first four digits of the serial number are 9544 or greater, excluding 9634 through 9638 inclusive) in accordance with the alert service bulletin.

(ii) If any switch module fails any test required by paragraph (c)(2) of this AD and the failure is determined to be caused by a condition other than a defective switch module, prior to further flight, repair in accordance with normal maintenance practices.

(d) For airplanes having line positions 1 through 40 inclusive: As of 30 days after the effective date of this AD, no person shall install on any airplane a switch module on which the first four digits of the serial number are less than 9544, or a switch module on which the first four digits of the serial number are 9634, 9635, 9636, 9637, or

9638 at the locations listed in paragraphs (d)(1) through (d)(6) of this AD:

(1) the discharge switch of the cargo fire extinguishing system;

(2) the alternate flaps arm switch on the P10 control stand;

(3) the forward and aft arming switches of the cargo fire extinguishing system;

(4) the forward and aft fuel crossfeed switches on the fuel/fuel jettison module assembly;

(5) the left and right air conditioning pack switches on the air conditioning module assembly; and

(6) the left and right trim air switches on the air conditioning module assembly.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. 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 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(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.

(g) The inspection and replacement shall be done in accordance with Boeing Alert Service Bulletin 777-26A0004, dated June 21, 1996, and Boeing Alert Service Bulletin 777-31A0013, dated August 29, 1996. 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 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.

(h) This amendment becomes effective on October 25, 1996.

Issued in Renton, Washington, on October 2, 1996.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 96-25814 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 95-ANE-15; Amendment 39-9742; AD 96-18-16]

RIN 2120-AA64

Airworthiness Directives; CFM International CFM56-2/-2A/-2B/-3/-3B/-3C/-5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CFM International (CFMI) CFM56-2/-2A/-2B/-3/-3B/-3C/-5 series turbofan engines, that requires part number reidentification of certain low pressure turbine rotor (LPTR) stub shafts and conical supports, and reduction of the low cycle fatigue (LCF) retirement lives for these reidentified parts. This amendment is prompted by the results of a refined life analysis performed by the manufacturer which revealed minimum calculated LCF lives significantly lower than published LCF retirement lives. The actions specified by this AD are intended to prevent an LCF failure of the LPTR stub shaft and conical support, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective December 9, 1996.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of December 9, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, One Neumann Way, Cincinnati, OH 45215; telephone (513) 552-2981, fax (513) 552-2816. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Messemer, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7132; fax (617) 238-7199.

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 CFM International (CFMI) CFM56-2/-2A/-2B/-3/-3B/-3C/-5 series turbofan engines was published in the Federal Register on September 1, 1995 (60 FR 45683). That action proposed to require part number reidentification of certain low pressure turbine rotor (LPTR) stub shafts and conical supports, and reduction of the low cycle fatigue (LCF) retirement lives for these reidentified parts in accordance with the following CFMI service bulletins (SB's): CFM56-2 SB No. 72-728, Revision 2, dated December 21, 1994, CFM56-2A SB No. 72-338, dated November 25, 1993, CFM56-2B SB No. 72-476, dated December 7, 1993, and CFM56-3/-3B/-3C SB No. 72-695, dated November 25, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the rule as proposed.

One commenter states that CFM56-3 series engines should be included in compliance paragraph (f) of the proposed rule. The FAA concurs, and paragraph (f) of this final rule has been revised accordingly.

One commenter suggests that the proposed rule be revised to address the LCF retirement lives of CFM56-3B and CFM56-3C series engines that are operated at reduced thrust ratings, since the lives are dependent on the thrust rating. The FAA concurs. Paragraphs (f) and (g) of this final rule have been

revised, and paragraph (j) has been added accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 41 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 0.25 work hours per engine to accomplish the required actions, and that the average labor rate is \$60 per work hour. Assuming that the parts cost is proportional to the reduction of the LCF retirement lives, the required parts will cost approximately \$6,687 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$274,782.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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:

96-18-16 CFM International: Amendment 39-9742. Docket 95-ANE-15.

Applicability: CFM International (CFMI) CFM56-2/-2A/-2B/-3/-3B/-3C/-5 series turbofan engines installed on, but not limited to Airbus A319 and A320 series, McDonnell Douglas DC-8 series, and Boeing 737, as well as Boeing E-3, E-6, and KC-135 (military) series aircraft.

Note: This airworthiness directive (AD) applies to each engine 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 engines 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 (k) 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 a low cycle fatigue (LCF) failure of the low pressure turbine rotor (LPTR) stub shaft and conical support, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Reidentify CFM56-2A LPTR stub shafts, Part Numbers (P/N) 301-330-623-0 and 301-330-624-0, with Serial Numbers (S/N) listed in Table 2 of CFMI CFM56-2A Service Bulletin (SB) No. 72-338, dated November 25, 1993, in accordance with the Accomplishment Instructions of CFMI CFM56-2A SB No. 72-338, dated November 25, 1993, at the next piece-part exposure after the effective date of this AD, but not to exceed 6,400 cycles since new (CSN).

(b) Reidentify CFM56-2B LPTR stub shafts, P/N 301-330-618-0, 301-330-619-0, 301-330-623-0, and 301-330-624-0, with S/N listed in Table 2 of CFMI CFM56-2B SB No. 72-476, dated December 7, 1993, in accordance with the Accomplishment Instructions of CFMI CFM56-2B SB No. 72-476, dated December 7, 1993, at the next piece-part exposure after the effective date of this AD, but not to exceed 8,300 CSN.

(c) Reidentify CFM56-2 LPTR conical supports, P/N 305-056-106-0, 305-056-109-0, 305-056-110-0, and 305-056-111-0, with S/N listed in Table 1 of CFMI CFM56-2 SB No. 72-728, Revision 2, dated December 21, 1994, in accordance with the Accomplishment Instructions of CFMI CFM56-2 SB No. 72-728, Revision 2, dated

December 21, 1994, at the next piece-part exposure after the effective date of this AD, but not to exceed 18,000 CSN.

(d) Reidentify CFM56-2A LPTR conical supports, P/N 305-056-110-0 and 305-056-111-0, with S/N listed in Table 1 of CFMI CFM56-2A SB No. 72-338, dated November 25, 1993, in accordance with the Accomplishment Instructions of CFMI CFM56-2A SB No. 72-338, dated November 25, 1993, at the next piece-part exposure after the effective date of this AD, but not to exceed 5,700 CSN.

(e) Reidentify CFM56-2B LPTR conical supports, P/N 305-056-106-0, 305-056-109-0, 305-056-110-0, and 305-056-111-0, with S/N listed in Table 1 of CFMI CFM56-2B SB No. 72-476, dated December 7, 1993, in accordance with the Accomplishment Instructions of CFMI CFM56-2B SB No. 72-476, dated December 7, 1993, at the next piece-part exposure after the effective date of this AD, but not to exceed 8,700 CSN.

(f) Reidentify CFM56-3/-3B/-3C LPTR stub shafts, P/N 301-330-618-0, 301-330-619-0, 301-330-623-0, and 301-330-624-0, with S/N listed in Table 2 of CFMI CFM56-3/-3B/-3C SB No. 72-695, dated November 25, 1993, in accordance with the Accomplishment Instructions of CFMI CFM56-3/-3B/-3C SB No. 72-695, dated November 25, 1993, as follows:

(1) For CFM56-3/-3B/-3C series engines operating at the Category A thrust rating, at the next piece-part exposure after the effective date of this AD, but not to exceed a total Category A thrust rating life of 20,000 CSN.

(2) For CFM56-3B/-3C series engines operating at the Category B thrust rating, at

the next piece-part exposure after the effective date of this AD, but not to exceed a total Category B thrust rating life of 11,400 CSN.

(3) For CFM56-3C series engines operating at the Category C thrust rating, at the next piece-part exposure after the effective date of this AD, but not to exceed a total Category C thrust rating life of 7,900 CSN.

(g) Reidentify CFM56-3/-3B/-3C LPTR conical supports, P/N 305-056-106-0, 305-056-109-0, 305-056-110-0, and 305-056-111-0, with S/N listed in Table 1 of CFMI CFM56-3/-3B/-3C SB No. 72-695, dated November 25, 1993, in accordance with the Accomplishment Instructions of CFMI CFM56-3/-3B/-3C SB No. 72-695, dated November 25, 1993, as follows:

(1) For CFM56-3/-3B/-3C series engines operating at the Category A thrust rating, at the next piece-part exposure after the effective date of this AD, but not to exceed a total Category A thrust rating life of 12,100 CSN.

(2) For CFM56-3B/-3C series engines operating at the Category B thrust rating, at the next piece-part exposure after the effective date of this AD, but not to exceed a total Category B thrust rating life of 9,300 CSN.

(3) For CFM56-3C series engines operating at the Category C thrust rating, at the next piece-part exposure after the effective date of this AD, but not to exceed a total Category C thrust rating life of 5,700 CSN.

(h) Remove from service CFM56-5 LPTR conical support, P/N 336-000-305-0, prior to accumulating 11,300 CSN.

(i) This action establishes new LCF retirement lives for parts reidentified in

accordance with paragraphs (a) through (g) of this AD, and the new LCF retirement life noted in paragraph (h) of this AD, which are published in Chapter 05 of the applicable engine shop manual (CFM56-2 CFMI-TP.SM.4, CFM56-2A/-2B CFMI-TP.SM.6, CFM56-3 CFMI-TP.SM.5, and CFM56-5 CFMI-TP.SM.7).

(j) The Category A, B, and C thrust rating noted in paragraphs (f) and (g) of this AD are defined in Chapter 05 of CFM56-3 engine shop manual, CFMI-TP.SM.5.

(k) 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, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(l) 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 aircraft to a location where the requirements of this AD can be accomplished.

(m) The actions required by this AD shall be done in accordance with the following CFMI SB's:

Document No.	Pages	Revision	Date
CFM56-2 SB No. 72-728	1 2-7 8 9	2 Original 2 Original	Dec. 21, 1994. Nov. 25, 1993. Dec. 21, 1994. Nov. 25, 1993.
Total Pages: 9.			
CFM56-2A SB No. 72-338	1-8	Original	Nov. 25, 1993.
Total Pages: 8.			
CFM56-2B SB No. 72-476	1-9	Original	Dec. 7, 1993.
Total Pages: 9.			
CFM56-3/-3B/-3C SB No. 72-695	1-9	Original	Nov. 25, 1993.
Total Pages: 9.			

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 CFM International, Technical Publications Department, One Neumann Way, Cincinnati, OH 45215; telephone (513) 552-2981, fax (513) 552-2816. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(n) This amendment becomes effective on December 9, 1996.

Issued in Burlington, Massachusetts, on September 19, 1996.

James C. Jones,

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

[FR Doc. 96-25167 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-NM-198-AD; Amendment 39-9775; AD 96-20-09]

RIN 2120-AA64

Airworthiness Directives; Jetstream Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Jetstream Model HS 748 series airplanes. This action requires a one-time inspection to ensure

proper operation, positioning, and lubrication of the aileron, rudder, and elevator cable tensioners; gust lock levers; and cable pressure seals. It also requires a revision to the maintenance program to include these inspections on a repetitive basis. This amendment is prompted by reports of seizure and consequent jamming of the flight control cable tension regulators and gust lock mechanisms. The actions specified in this AD are intended to prevent the flight control cable tension regulators from jamming, which could result in the inability to achieve full deflection of the associated flight control surfaces, and lead to reduced controllability of the airplane.

DATES: Effective October 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 25, 1996.

Comments for inclusion in the Rules Docket must be received on or before December 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-198-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. 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: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Jetstream HS 748 series airplanes. The CAA advises that there have been reports indicating that it is possible for the aileron, rudder, and elevator cable tension regulators and gust locks to jam, leaving the associated primary control cable in a slack (untensioned) condition. Additionally, the CAA advises that the rear bulkhead and wing pressure seals could become displaced if grease has been applied to the flight control cables

at these locations. These conditions, if not corrected, could result in the inability to achieve full deflection of the associated flight control surfaces, and consequently could lead to reduced controllability of the airplane.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin HS 748-27-126, dated February 29, 1996, which describes procedures for inspecting the aileron, rudder, and elevator cable tensioners and the gust lock levers to ensure that they operate properly. It also describes procedures for inspecting the cable pressure seals for correct positioning and contamination, and correction of any discrepancy found. The CAA classified this service bulletin as mandatory and issued British Airworthiness Directive 005-02-96 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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 the 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 is being issued to prevent jamming of the flight control cables and consequent reduced controllability of the airplane. This AD requires, initially, a one-time inspection of the aileron, rudder, and elevator cable tensioners and gust lock levers to ensure that they operate properly. It also requires a one-time inspection of the cable pressure seals for correct positioning and contamination, and correction of any discrepancy. These actions are required to be accomplished in accordance with the service bulletin described previously.

Additionally, this AD requires that the FAA-approved maintenance program be revised to include these

inspections and follow-on actions on a repetitive basis.

Cost Impact

None of the Model HS 748 series 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 4 work hours to accomplish the required actions, at an average labor charge of \$60 per work hour. Based on these figures, the cost impact of this AD would be \$240 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.

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 96-NM-198-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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:

96-20-09 Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft, Limited): Amendment 39-9775. Docket 96-NM-198-AD.

Applicability: All Model HS 748 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the flight control cable tension regulators from jamming, which could result in the inability to achieve full deflection of the associated flight control surfaces, and lead to reduced controllability of the airplane, accomplish the following:

(a) Within 600 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first, perform an inspection to ensure proper operation, positioning, and lubrication of the aileron, rudder, and elevator cable tensioners; gust lock levers; and cable pressure seals, in accordance with paragraphs A. and B. (1) through (27) of the Accomplishment Instructions of Jetstream Service Bulletin HS 748-27-126, dated February 29, 1996. If any discrepancy is detected, prior to further flight, correct it in accordance with the service bulletin.

(b) Within 30 days after the effective date of this AD, revise the FAA-approved maintenance program to include a schedule of repetitive inspections to ensure proper operation, positioning, and lubrication of the aileron, rudder, and elevator cable tensioners; gust lock levers; and cable pressure seals; in accordance with Jetstream Service Bulletin HS 748-27-126, dated February 29, 1996. The inspections are to be repeated every 12 months after the accomplishment of the inspection required by paragraph (a) of this AD. If any discrepancy is detected, it must be corrected in accordance with the service bulletin prior to further flight.

(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, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-13.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(e) The inspection and correction of discrepancies shall be done in accordance with Jetstream Service Bulletin HS 748-27-126, dated February 29, 1996. 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 Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. 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.

(f) This amendment becomes effective on October 25, 1996.

Issued in Renton, Washington, on September 24, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-25037 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-NM-91-AD; Amendment 39-9777; AD 96-21-01]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 Series Airplanes and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, that requires either replacement or modification of the hydraulic damper assembly. This amendment is prompted by reports indicating that insufficient damping of the hydraulic shimmy damper in the main landing gear (MLG) can allow high torsional vibration to occur. The actions specified by this AD are intended to prevent such vibration, which can damage the MLG assembly and lead to its collapse.

DATES: Effective November 14, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of November 14, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). 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, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627-5336; fax (310) 627-5210.

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 McDonnell Douglas Model DC-9 series airplanes and C-9 (military) airplanes was published in the Federal Register on July 10, 1996 (61 FR 36307). That action proposed to require either replacing or modifying the hydraulic damper assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Four commenters support the proposal.

Request to Withdraw Proposal

One commenter contends that all reports of torsional vibration that resulted in torque link separations and/or breakage of the apex bolt occurred on Model DC-9-80 series airplanes. Given the number of Model DC-9 series airplanes in service and the number of landings logged on them without reports of torsional vibration caused by insufficient damping, the commenter considers the AD to be unwarranted. Further, this commenter states that the modification should not be mandated; operators should be allowed to accomplish it at their own discretion during a regularly scheduled maintenance visit.

From these comments submitted, the FAA infers that the commenter requests that the proposed rule be withdrawn; in which case, the FAA does not concur. The commenter is incorrect in stating that the problems associated with torsional vibration have occurred only on Model DC-9-80 series airplanes. Such incidents and consequent damage have occurred on several Model DC-9 series airplanes as well. As detailed in the preamble to the notice, the MLG torque link broke on one airplane and, on another airplane, the nut was stripped off of the torque link apex bolt; both of these discrepancies were the result of insufficient damping of the MLG hydraulic shimmy damper. This fact alone affirms the need for this AD action.

As for mandating the modification, the FAA points out that this AD provides operators with the option of either modifying the damper assembly or replacing it with an improved assembly. The compliance time of 24 months assures that operators will be able to schedule the accomplishment of either of these actions during a normal maintenance interval.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 878 Model DC-9 series airplanes and C-9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 590 airplanes of U.S. registry will be affected by this AD.

To accomplish the replacement will take approximately 5.9 work hours per airplane, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$11,139 per airplane (two assemblies at \$5,569 each). Based on these figures, the cost impact of the replacement action on U.S. operators is estimated to be \$11,492 per airplane.

To accomplish the required modification will take approximately 10.9 work hours per airplane, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$2,907 per airplane. Based on these figures, the cost impact of the modification action on U.S. operators is estimated to be \$3,561 per airplane.

Based on the figures discussed above, the cost impact of this AD on the U.S. fleet is between \$2,100,990 and \$6,780,280. These cost impact figures are based on assumptions that no operator has yet accomplished any of

the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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:

96-21-01 McDonnell Douglas: Amendment 39-9777. Docket 96-NM-91-AD.

Applicability: Model DC-9-10, -20, -30, -40, and -50 series airplanes, and C-9 (military) airplanes; as listed in McDonnell Douglas Service Bulletin DC9-32-289, dated March 7, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

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

Compliance: Required as indicated, unless accomplished previously.

To prevent high torsional vibration from occurring, which can damage the main landing gear (MLG) assembly and lead to its collapse, accomplish the following:

(a) Within 24 months after the effective date of this AD, either replace or modify the MLG hydraulic damper assembly, in accordance with the procedures specified as either "Option 1" or "Option 2," respectively, in McDonnell Douglas Service Bulletin DC9-32-289, dated March 7, 1996.

(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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(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.

(d) The actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9-32-289, dated March 7, 1996. 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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 11, 1996.

Issued in Renton, Washington, on September 30, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-25576 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-NM-240-AD; Amendment 39-9776; AD 96-20-10]

RIN 2120-AA64

Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Lockheed Model L-1011-385 series airplanes. This action requires inspections to detect cracking of the canted pressure bulkhead at fuselage station (FS) 1212, and inspections to detect cracking of the web at the fastener rows of the vertical stiffener-to-web; and repair or replacement of the web with a new web, if necessary. This amendment is prompted by a report of fatigue cracking of the canted pressure bulkhead at FS 1212. The actions specified in this AD are intended to detect and correct such fatigue cracking, which could result in blowout of a panel between adjacent stiffeners and consequent cabin depressurization.

DATES: Effective October 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 25, 1996.

Comments for inclusion in the Rules Docket must be received on or before December 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-240-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia. 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, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Curtis Jackson, Aerospace Engineer, Airframe Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7358; fax (404) 305-7348.

SUPPLEMENTARY INFORMATION: The FAA received a report indicating that fatigue cracking was found of the canted pressure bulkhead at fuselage station (FS) 1212 on a Lockheed Model L-1011-385 series airplane that had accumulated 31,749 total landings. Three vertical cracks, each approximately 11 inches long, were found in the areas of left buttock line (LBL) 30.0, LBL 10.0, and right buttock line (RBL) 22.5 along the fastener rows of the vertical stiffener-to-web. Subsequently, another operator found similar fatigue cracking on two other airplanes. Such fatigue cracking, if not detected and corrected in a timely manner, could result in blowout of a panel between adjacent stiffeners and consequent cabin depressurization.

Explanation of Relevant Service Information

The FAA has reviewed and approved Lockheed L-1011 Service Bulletin 093-53-277, dated July 2, 1996, which describes procedures for repetitive close visual inspections to detect cracking of the entire aft surface of the canted pressure bulkhead at FS 1212 between LBL 103 and RBL 103, and repetitive optical inspections to detect cracking of the web at the fastener rows of the vertical stiffener-to-web; and repair or replacement of the web with a new web, if necessary.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Lockheed Model L-1011-385 series airplanes of the same type design, this AD is being issued to detect and correct fatigue cracking of the canted pressure bulkhead at FS 1212, which could result in blowout of a panel between adjacent stiffeners and consequent cabin depressurization. This AD requires repetitive close visual inspections to detect cracking of the entire aft surface of the canted pressure bulkhead at FS 1212 between LBL 103

and RBL 103, and repetitive optical inspections to detect cracking of the web at the fastener rows of the vertical stiffener-to-web; and repair or replacement of the web with a new web, if necessary. The inspections, certain repairs, and replacement are required to be accomplished in accordance with the service bulletin described previously. Other repairs are required to be accomplished in accordance with a method approved by the FAA.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

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.

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 96-NM-240-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96-20-10 Lockheed: Amendment 39-9776. Docket 96-NM-240-AD.

Applicability: Model L-1011-385 series airplanes; serial numbers 1013 through 1250 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the canted pressure bulkhead at fuselage station (FS) 1212, which could result in blowout of a panel between adjacent stiffeners and consequent cabin depressurization, accomplish the following:

(a) Prior to the accumulation of 20,000 total landings, or within 60 days after the effective date of this AD, whichever occurs later: Perform a close visual inspection to detect cracking of the entire aft surface of the canted pressure bulkhead at FS 1212 between left buttock line (LBL) 103 and right buttock line (RBL) 103; and perform an optical inspection using a borescope or other optical device to detect cracking of the web at the fastener rows of the vertical stiffener-to-web; in accordance with Lockheed L-1011 Service Bulletin 093-53-277, dated July 2, 1996. Thereafter, repeat these inspections at intervals not to exceed 1,000 landings.

(b) If any cracking is found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Accomplish either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, as applicable.

(i) If the cracking is found in an area that is specified in Lockheed Repair Drawing LCC-7622-385, repair in accordance with the service bulletin. Accomplishment of a repair constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD at the repaired location. Or

(ii) If the cracking is found in an area that is not specified in Lockheed Repair Drawing LCC-7622-385, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(2) Replace the entire web with a new web in accordance with the service bulletin. Such replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(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, Atlanta ACO. 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 Atlanta ACO.

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

(e) The actions shall be done in accordance with Lockheed Service Bulletin 093-53-277, dated July 2, 1996. 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 Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 25, 1996.

Issued in Renton, Washington, on September 26, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-25305 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-SW-25-AD; Amendment 39-9779; AD 96-18-22]

RIN 2120-AA64

Airworthiness Directives; Robinson Helicopter Company Model R44 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) 96-18-22 which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (Robinson) Model R44 helicopters by individual letters. This AD requires an inspection of the mating surfaces of the main rotor gearbox (gearbox) components for pitting, elongated bolt holes, or machining grooves, and replacement of the gearbox if elongated bolt holes, machining grooves, or an improper amount of pitting is discovered; and replacement of the 18 bolts and washers that attach the gear to the gear carrier assembly (gear carrier). This amendment is prompted by an inflight failure of the gearbox on a French-registered Model R44 helicopter that resulted in an accident. The actions

specified by this AD are intended to prevent loosening of the bolts securing the gear to the gear carrier, which could lead to fatigue failure of the gear carrier within the gearbox, and subsequent loss of power to the main rotor which could lead to a forced landing.

DATES: Effective October 25, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96-18-22, issued on August 29, 1996, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before December 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-SW-25-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The referenced service information may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90506.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712; telephone (310) 627-5265, fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: On August 29, 1996, the FAA issued priority letter AD 96-18-22, applicable to Robinson Model R44 helicopters, which requires an inspection of the mating surfaces of the gearbox components for pitting, elongated bolt holes, or machining grooves, and replacement of the gearbox if elongated bolt holes, machining grooves, or an improper amount of pitting is discovered; and replacement of the 18 bolts and washers that attach the gear to the gear carrier. That action was prompted by inflight failure of the gearbox on a French-registered Model R44 helicopter that resulted in an accident. An inspection of the gearbox revealed that the 18 bolts securing the gear, part number (P/N) C146-3, to the gear carrier, P/N C268-2, had lost clamping torque due to the differences in the mating surface finish of these components. As the rough surface of the gear seated into the smoother surface of the gear carrier, the bolts lost clamping torque, resulting in fretting and failure of the gear carrier. Inspections of two other gearboxes that were returned to the manufacturer for overhaul and maintenance revealed that the bolts securing the gear to the gear carrier had also lost clamping torque. Prior to October 31, 1995, Robinson did not have a requirement in their receiving inspections to verify that the surface finish of the gear was completed in

accordance with the type design. As a result, gears have been found to have an improper surface finish. This condition, if not corrected, could result in loosening of the bolts securing the gear to the gear carrier, which could lead to fatigue failure of the gear carrier within the gearbox, and subsequent loss of power to the main rotor which could lead to a forced landing.

Since the unsafe condition described is likely to exist or develop on other Robinson Model R44 helicopters of the same type design, the FAA issued priority letter AD 96-18-22 to prevent fatigue failure of the gear carrier within the gearbox, and subsequent loss of power to the main rotor which could lead to a forced landing. The AD requires, before further flight, an inspection of the gearbox components for pitting, elongated holes, or machining grooves (which appear similar to grooves on a phonograph record) that can be felt with a fingernail, and replacement of the gearbox with an airworthy gearbox if pits greater than 0.001-inch deep, elongated holes, or machining grooves are discovered on a mating surface; and replacement of the 18 bolts and washers that attach the gear to the gear carrier with NAS6606-5 bolts and spacers, P/N C130-29.

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 August 29, 1996 to all known U.S. owners and operators of Robinson Model R44 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.

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 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. 96-SW25-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 96-18-22 Robinson Helicopter Company: Amendment 39-9779. Docket No. 96-SW-25-AD.

Applicability: Model R44 helicopters, with main rotor gearbox (gearbox), part number (P/N) C006-1, Revisions A through P, 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 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 use the authority provided in paragraph (v) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously. To prevent loosening of the bolts securing the gear to the gear carrier, which could lead to fatigue failure of the gear carrier assembly (gear carrier) within the gearbox, and subsequent loss of power to the main rotor which could lead to a forced landing, accomplish the following:

(a) Drain the oil from the gearbox, part number (P/N) C006-1, and remove the gearbox from helicopter.

(b) Lay the gearbox on its side with input yoke up. Loosen the eight cap screws attaching the mast tube to the gearbox, but do not remove the screws. Remove the twelve bolts and six cap screws holding the sump and baffle in place (Figure 1). Note the location of ground wires.

(c) Gently remove the sump, using care to keep all shim stacks on their respective bolts. With the bolts still attached to the sump, replace the nuts on the bolts and finger-tighten to retain the shim stacks (shim stack is the same at each location). Discard the O-Ring.

(d) Bend out the locking tabs on lockwashers, P/N C269-1 and P/N C269-2, and remove the spanner nuts, P/N C153-1, from the main rotor shaft. A scrap main rotor hub bolt, or equivalent, inserted through the

teeter hinge bolt hole in the main rotor shaft may be used to react torque; clamp the bolt in a vice or fasten to a work bench. Do not clamp the main rotor shaft. Retain the spanner nuts and discard the lockwashers.

(e) Remove the gear carrier from the main rotor shaft. Mark the gear and gear carrier for alignment during reassembly. Remove the 18 NAS6606-3 bolts attaching the gear to the gear carrier and remove the gear. Discard the bolts, washers, and nuts.

(f) Clean the main rotor shaft splines, shoulder, and threads with methyl-ethyl ketone or a comparable solvent that leaves no residue upon evaporation. Clean the gear and gear carrier with the solvent.

(g) Using a Scotch-Brite pad or 320 grit (or finer) sandpaper and a flat block, remove any fretting or stains from the mating surfaces of both the gear and the gear carrier. Visually inspect the mating surfaces around all 18 holes for signs of pitting, elongated holes, or machining grooves (which appear similar to grooves on a phonograph record) that can be felt with a fingernail. If pits greater than 0.001-inch deep, elongated holes, or machining grooves are discovered on a mating surface, replace the gearbox with an airworthy gearbox.

(h) Align the gear to the gear carrier and install NAS6606-5 bolts, spacers, P/N C130-29, and MS21042L6 nuts in 18 places (Figure 2). Keep the mating surfaces and hardware dry, clean, and free of oil. Torque the nuts to 40 ft.-lb. (includes self-locking torque) using the torquing sequence shown on Figure 3.

(i) Install the gear carrier on the main rotor shaft. Keep the main rotor shaft clamping shoulder and the gear carrier clean and dry during reassembly.

(j) For gearboxes, P/N C006-1, Revision P, use the following torques for paragraphs (k) and (m): 560 ft.-lb. to seat the gear carrier; 420-480 ft.-lb. for the first nut; and, 280-320 ft.-lb. for the second nut.

(k) Install an unused lockwasher, P/N C269-2. Apply anti-seize, P/N A257-9, or Loctite Anti-seize 767, to the main rotor shaft threads and to the chamfered-side face and threads of one spanner nut and install the nut with the chamfered side against the lockwasher. Verify the pins are aligned with the holes in the lockwasher. For Revision A through O gearboxes: Torque the nut to 370 ft.-lb. to seat the gear carrier; loosen the nut and retorquer to 280-320 ft.-lb., as required to align the two lockwasher tabs with the nut. Bend the two tabs into the nut and visually inspect the edges of the bent tabs for cracks.

(l) Before installing the unused lockwasher, P/N C2691, note that the edges are sharp on one side and rounded on the other. De-burr the sharp edges on two opposite tabs (Figure 2). This will reduce the chance of cracking when these tabs are bent. Install the lockwasher with the de-burred edges toward the first nut.

(m) Apply anti-seize, P/N A257-9, or Loctite Anti-seize 767, to the chamfered-side face and threads of the second nut. Align the two de-burred tabs with the first nut and install the second nut with the chamfered side against the lockwasher. Hand-tighten the nut to hold the lockwasher in place. Bend the two de-burred tabs to lock the first nut. For

Revision A through Revision O gearboxes: Torque the second nut to 180–220 ft.-lb., as required to align two washer tabs. Bend the two tabs to lock the second nut.

(n) Verify that all six bent tabs properly engage the nuts and visually inspect the edges of the bent tabs for cracks. Replace any cracked lockwashers. Remove any excess anti-seize.

(o) Lubricate the unused O-Ring, P/N C215–279, with oil, P/N A257–2, and install the O-Ring on the sump. Clean and visually inspect the sealing surface of the gearbox housing. Lightly lubricate the sealing surface with oil, P/N A257–2.

(p) Install the sump on the gearbox housing, using care not to damage the O-Ring.

(q) Install the baffle, P/N C747–1, and all the sump attaching hardware. Ensure all the sump bolts have the same shim stack as before. The threaded cap screws can damage the shim stack if not installed properly. Install the ground wires using NAS6604–15, –16, or –17 bolts (the other 11 bolts are NAS6604–15 bolts).

(r) Torque the sump bolts and drain plug assembly as follows: Twelve lock nuts on NAS6604 bolts, 120 in.-lb. (includes locking torque); six NAS1352–4H16P cap screws, 120

in.-lb. and safety wire; A7260 drain plug assembly large hex, 150 in.-lb. and safety wire; small hex, 75 in.-lb. and safety wire.

(s) Torque the eight NAS1356–6H24P cap screws attaching the mast tube to the gearbox to 220 in.-lb. and safety wire.

(t) Reinstall the gearbox. Fill the gearbox with oil, P/N A257–2, to the middle of the sight glass. Perform the main rotor balance procedures.

(u) Report the serial number of any gearbox that has been replaced in accordance with paragraph (g) of this AD, within 10 days after the inspection to Mr. Randall Erwin, Principal Inspector, Los Angeles Manufacturing Inspection District Office, FAA, Northwest Mountain Region, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5294, fax (310) 627–5293. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(v) 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 2: 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.

(w) Compliance with Robinson Helicopter Company Service Bulletin SB–15, dated August 2, 1996, and the reporting requirements contained in paragraph (u) of this AD is an acceptable means of compliance with this AD.

(x) 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.

(y) This amendment becomes effective on October 25, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96–18–22, issued August 29, 1996, which contained the requirements of this amendment.

BILLING CODE 4910–13–U

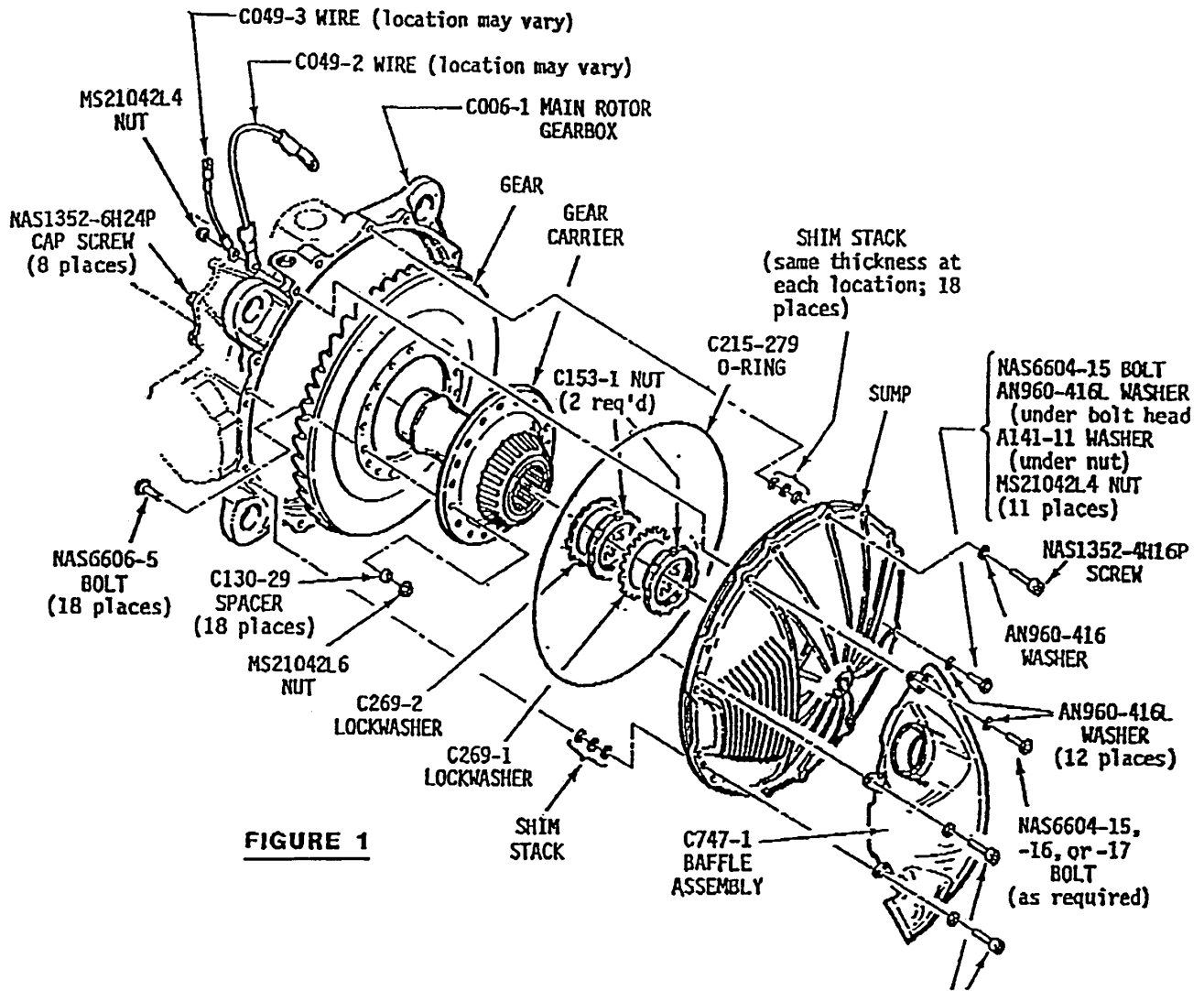


FIGURE 1

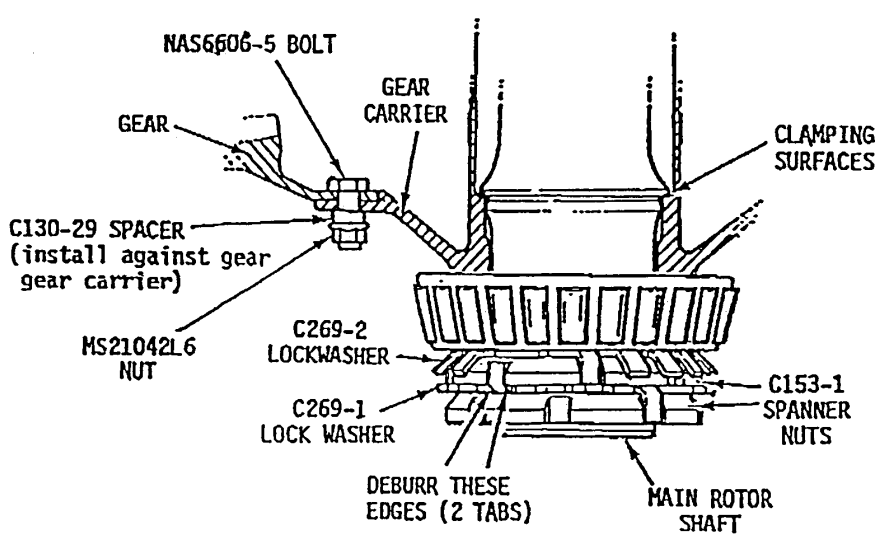


FIGURE 2

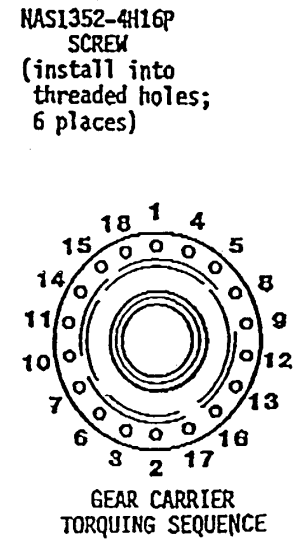


FIGURE 3

NAS1352-4H16P SCREW (install into threaded holes; 6 places)

Issued in Fort Worth, Texas, on September 30, 1996.

Eric Bries,

*Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.*

[FR Doc. 96-26019 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 95-ANM-6]

RIN 2120-AA66

Realignment of VOR Federal Airway V-421; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule extends Federal Airway 421 (V-421) from the Kremmling, CO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to Robert, CO, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the HAHNS Intersection. This action will support an instrument approach procedure, improve traffic flow, and reduce pilot and controller workload.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

History

On June 9, 1995, the FAA proposed to amend Title 14 of the Code of Regulations part 71 (14 CFR part 71) to extend Federal Airway V-421 in Kremmling, CO (60 FR 30481). Interested parties were invited by the FAA to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. Except for editorial changes, this amendment is the same as proposed in the notice. Domestic Very High Frequency Omnidirectional Range (VOR) Federal airways are published in paragraph 6010(a) of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 extends Federal Airway V-421 from the Kremmling, CO, VORTAC to the Robert, CO, VOR/DME to the HAHNS Intersection. In addition, this action creates two new intersections, "ECHO" and "HAHNS," to support a new instrument approach procedure for the Steamboat Springs Bob Adam Airport. This action will improve traffic flow and reduce pilot/controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V-421 [Revised]

From Zuni, NM, via Gallup, NM; Farmington, NM; Durango, CO; Blue Mesa, CO; Red Table, CO; Kremmling, CO; Robert, CO; INT Robert 340° and Hayden, CO, 055° radials.

* * * * *

Issued in Washington, DC, on October 2, 1996.

Harold W. Becker,

*Acting Program Director for Air Traffic
Airspace Management.*

[FR Doc. 96-26093 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 71

[Airspace Docket No. 96-AWP-20]

Amendment of Class E Airspace; Tonopah, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action amends the Class E airspace area at Tonopah, NV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 15 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Tonopah Airport, NV.

EFFECTIVE DATE: 0901 UTC December 5, 1996.

FOR FURTHER INFORMATION CONTACT:

William Buck, Airspace Specialist, Operations Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6556.

SUPPLEMENTARY INFORMATION:

History

On September 5, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Tonopah, NV (61 FR 46743). This action will provide adequate controlled airspace to accommodate a GPS SIAP to RWY 15 at Tonopah Airport, NV.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraphs 6002 and 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

The amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Tonopah, NV. The development of a GPS SIAP to RWY 15 has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 15 SIAP at Tonopah Airport, Tonopah, NV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(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 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, effective September 16, 1996, and is amended as follows:

Paragraph 6002 Class E airspace areas designed as a surface area for an airport.

* * * * *

AWP NV E2 Tonopah, NV [Revised]

Tonopah Airport, NV
(lat. 38°03'29" N, long. 117°05'22" W)
Tonopah VORTAC
(lat. 38°01'50" N, long. 117°02'01" W)

Within a 4.3-mile radius of the Tonopah Airport and within 2 miles each side of the 358° bearing from the Tonopah Airport, extending from the 4.3-mile radius to 10.5

miles north of the Tonopah Airport and within 1.8 miles each side of the Tonopah VORTAC 115° radial, extending from the 4.3-mile radius to 8.7 miles southeast of the Tonopah VORTAC.

* * * * *

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP NV E5 Tonopah, NV [Revised]

Tonopah Airport, NV
(lat. 38°03'29" N, long. 117°05'22" W)
Tonopah VORTAC
(lat. 38°01'50" N, long. 117°02'01" W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Tonopah Airport and that airspace northwest of the Tonopah Airport bounded by a line beginning at lat. 38°18'00" N, long. 117°17'00" W; thence eastbound to lat. 38°18'00" N, long. 117°03'00" W; thence southbound to lat. 38°17'22" N, long. 117°03'00" W; thence clockwise via the 4.3-mile radius of the Tonopah Airport to lat. 38°04'00" N, long. 117°10'46" N; thence northwestbound to lat. 38°12'00" N, long. 117°17'00" W, thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface within the area beginning at lat. 37°53'00" N, long. 117°05'41" W; thence southwestbound along the southeastern edge of V-135 to the 24-mile radius of Tonopah VORTAC; thence clockwise along the 24-mile radius of the Tonopah VORTAC to the southern edge of V-244; thence eastbound along the southern edge of V-244 to the 20-mile radius of the Tonopah VORTAC; thence clockwise along the 20-mile radius of the Tonopah VORTAC to lat. 38°18'00" N, long. 117°17'00" W; thence southbound to lat. 38°18'00" N, long. 117°00'00" W; thence southbound to lat. 38°14'00" N, long. 117°00'00" W; thence eastbound to lat. 38°17'00" N, long. 116°36'00" W; thence southbound to lat. 38°00'00" N, long. 116°33'00" W, thence westbound to lat. 37°59'30" N, long. 116°38'30" W; thence eastbound to lat. 37°53'00" N, long. 116°38'30" W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on September 23, 1996.

George D. Williams,
Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 96-26096 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 96-ASO-17]

RIN: 2120-AA66

Change Controlling Agency for Restricted Areas R-5301, Albemarle Sound and R-5302A, B, and C, Harvey Point, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action changes the controlling agency for Restricted Area R-5301, Albemarle Sound, NC, and all subareas of R-5302, Harvey Point, NC, from “FAA, Washington ARTCC” to “Norfolk Airport Traffic Control Tower (ATCT), Norfolk, VA.”

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Need for Rulemaking**

The recent re delegation of airspace in the vicinity of Elizabeth City Coast Guard/Municipal and Dare County Regional Airports, requires changing the controlling agency to reflect current airspace areas of responsibility.

The Amendment

This amendment to Title 14 of the Code of Federal Regulations part 73 (14 CFR part 73) changes the controlling agency for R-5301, Albemarle Sound, NC, and all subareas of R-5302, Harvey Point, NC, from “FAA, Washington ARTCC” to “FAA, Norfolk ATCT.”

Since this action simply changes the published controlling agency, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.53 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8D dated July 11, 1996.

Environmental Review

This action changes the published controlling agency for R-5301 and R-5302. There are no changes to air traffic control procedures or routes as a result of this action. Also, there are no changes to the dimensions or type of activity conducted in these areas as a result of this action. Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, “Policies and Procedures for Considering Environmental Impacts,” and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.53 [Amended]

2. Section 73.53 is amended as follows:

R-5301 Albemarle, NC [Amended]

By removing the current controlling agency and substituting the following: "Controlling agency. FAA, Norfolk ATCT, Norfolk, VA."

R-5302A Harvey Point, NC [Amended]

By removing the current controlling agency and substituting the following: "Controlling agency. FAA, Norfolk ATCT, Norfolk, VA."

R-5302B Harvey Point, NC [Amended]

By removing the current controlling agency and substituting the following: "Controlling agency. FAA, Norfolk ATCT, Norfolk, VA."

R-5302C Harvey Point, NC [Amended]

By removing the current controlling agency and substituting the following: "Controlling agency. FAA, Norfolk ATCT, Norfolk, VA."

Issued in Washington, DC, on October 2, 1996.

Harold W. Becker,

*Acting Program Director for Air Traffic
Airspace Management.*

[FR Doc. 96-26095 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 73

[Airspace Docket No. 96-ANM-16]

RIN 2120-AA66

Changes to Restricted Areas R-6714A, E, F, G, and H, Yakima, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends restricted airspace at Yakima Firing Center, WA. This action redefines Restricted Areas R-6714A, R-6714E, R-6714G, and R-6714H to delete a congruent point in the airspace description that encroached on the protected airspace for Very High Frequency Omnidirectional Range (VOR) Federal Airway V-187. In

addition, the designated altitude of R-6714F is amended from "surface to 29,000 feet," to "surface to but not including 29,000 feet."

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Background**

In 1962, R-6714 was established to support the firing of long-range weapons for the U.S. Army. Since its inception, many refinements have been made to the restricted area to reflect changing requirements as well as administrative changes. The latest refinement occurred on April 11, 1996, when the FAA published a final rule (61 FR 18062) expanding and redefining the Yakima Firing Center restricted area complex. These changes, effective June 20, 1996, were instituted as part of a U.S. Army review of future training requirements.

Upon further review of this airspace action by the Seattle Flight Procedures Office, it was determined that the current configuration of the Yakima Firing Center restricted areas encroached slightly on the protected airspace for VOR Federal Airway V-187. (As an interim measure, the FAA published a Notice to Airmen indicating that V-187 is unusable when R-6714 is in use.) This action removes that encroachment. In addition, the designated altitude of R-6714F is amended from "surface to 29,000 feet," to "surface to but not including 29,000 feet."

The coordinates for this airspace docket are based on North American Datum 83. Section 73.67 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8D dated July 11, 1996.

The Rule

This amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) amends R-6714A, R-6714E, R-6714F, R-6714G, and R-6714H, Yakima Firing Center, WA. This rule moves a congruent corner defining R-6714A, R-6711E, R-6714G, and R-6714H approximately ¼ quarter mile west to remove the encroachment on the protected airspace of V-187. Additionally, the designated altitude of R-6714F is changed from "surface to 29,000 feet," to "surface to but not including 29,000 feet." Because this

action corrects a minor technical error and reduces restricted airspace, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested.

Environmental Review

This action reduces restricted airspace. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.67 [Amended]

2. Section 73.67 is amended as follows:

R-6714A Yakima, WA [Amended]

By removing the present boundaries and substituting the following:

Boundaries. Beginning at lat. 46°50'59" N., long. 119°58'04" W.; Thence south along the west edge of the Columbia River to lat. 46°42'28" N., long. 119°58'19" W.; to lat. 46°35'04" N., long. 120°02'50" W.; to lat. 46°37'50" N., long. 120°20'26" W.; to lat. 46°38'29" N., long. 120°20'25" W.; to lat. 46°38'59" N., long. 120°22'13" W.; to lat. 46°42'19" N., long. 120°26'12" W.; thence north along the east side of Interstate Highway 82 to lat. 46°47'49" N., long. 120°21'19" W.; to lat. 46°51'09" N., long. 120°09'02" W.; to point of beginning.

R-6714E Yakima, WA [Amended]

By removing the present boundaries and substituting the following:

Boundaries. Beginning at lat. 46°50'59" N., long. 119°58'04" W.; thence south along the west side of the Columbia River to lat. 46°42'28" N., long. 119°58'19" W.; thence south along the west side of the Columbia River to lat. 46°38'59" N., long. 119°56'09" W.; to lat. 46°38'08" N., long. 119°56'13" W.; to lat. 46°38'08" N., long. 119°55'04" W.; to lat. 46°33'55" N., long. 119°55'04" W.; to lat. 46°33'19" N., long. 119°55'04" W.; to lat. 46°32'50" N., long. 119°55'04" W.; to lat. 46°32'50" N., long. 120°04'25" W.; to lat. 46°37'03" N., long. 120°20'26" W.; to lat.

46°37'50" N., long. 120°20'26" W.; to lat. 46°38'29" N., long. 120°20'25" W.; to lat. 46°38'59" N., long. 120°22'13" W.; to lat. 46°38'59" N., long. 120°23'45" W.; to lat. 46°40'34" N., long. 120°26'39" W.; to lat. 46°42'19" N., long. 120°26'12" W.; thence north along the east side of Interstate Highway 82 to lat. 46°47'49" N., long. 120°21'19" W.; thence north along the east side of Interstate Highway 82 to lat. 46°49'35" N., long. 120°21'38" W.; to lat. 46°51'09" N., long. 120°21'38" W.; to lat. 46°51'09" N., long. 120°16'34" W.; to lat. 46°54'29" N., long. 120°15'04" W.; to point of beginning.

R-6714F Yakima, WA [Amended]

By removing the present altitudes and substituting the following:

Designated altitudes. Surface to but not including 29,000 feet MSL.

R-6714G Yakima, WA [Amended]

By removing the present boundaries and substituting the following:

Boundaries. Beginning at lat. 46°51'09" N., long. 120°16'34" W.; to lat. 46°54'29" N., long. 120°15'04" W.; to lat. 46°50'59" N., long. 119°58'04" W.; to lat. 46°51'09" N., long. 120°08'54" W.; to point of beginning.

R-6714H Yakima, WA [Amended]

By removing the present boundaries and substituting the following:

Boundaries. Beginning at lat. 46°54'58" N., long. 120°00'33" W.; excluding that airspace within a 1.5 mile radius of the Vantage Airport to lat. 46°54'39" N., long. 119°59'31" W.; thence south along the west side of the Wanpaum road to lat. 46°50'59" N., long. 119°58'04" W.; to lat. 46°54'29" N., long. 120°15'04" W.; to lat. 46°55'20" N., long. 120°15'04" W., to point of beginning.

Issued in Washington, DC, on October 2, 1996.

Harold W. Becker,

Acting Program Director for Air Traffic
Airspace Management.

[FR Doc. 96-26094 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 97

[Docket No. 28702; Amdt. No. 1757]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of

new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase—*Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a

special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on October 4, 1996.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Dec. 5, 1996*

Mekoryuk, AK, Mekoryuk, NDB or GPS RWY 23, Amdt 1B CANCELLED
Mekoryuk, AK, Mekoryuk, NDB RWY 23, Amdt 1B
Carlisle, AR, Carlisle Muni, VOR/DME or GPS RWY 9, Amdt 1 CANCELLED
Carlisle, AR, Carlisle Muni, VOR/DME RWY 9, Amdt 1
Marshalltown, IA, Marshalltown Muni, VOR or GPS RWY 12, Amdt 7A CANCELLED
Marshalltown, IA, Marshalltown Muni, VOR RWY 12, Amdt 7A
Litchfield, IL, Litchfield Muni, NDB or GPS RWY 9, Amdt 4 CANCELLED
Litchfield, IL, Litchfield Muni, NDB RWY 9, Amdt 4
Litchfield, IL, Litchfield Muni, NDB or GPS RWY 27, Amdt 6 CANCELLED
Litchfield, IL, Litchfield Muni, NDB RWY 27, Amdt 6
Bowling Green, KY, Bowling Green-Warren County Regional, VOR/DME or GPS RWY 21, Amdt 6 CANCELLED
Bowling Green, KY, Bowling Green-Warren County Regional, VOR/DME RWY 21, Amdt 6

Hammond, LA, Hammond Muni, VOR or GPS RWY 31, Amdt 3B CANCELLED
Hammond, LA, Hammond Muni, VOR RWY 31, Amdt 3B
Marshfield, MA, Marshfield, NDB or GPS RWY 6 Amdt 3 CANCELLED
Marshfield, MA, Marshfield, NDB RWY 6, Amdt 3
Sikeston, MO, Sikeston Memorial Muni, VOR or GPS RWY 20, Amdt 2B CANCELLED
Sikeston, MO, Sikeston Memorial Muni, VOR RWY 20, Amdt 2B
Jackson, MS, Hawkins Field, RNAV or GPS RWY 16, Amdt 4A CANCELLED
Jackson, MS, Hawkins Field, RNAV RWY 16, Amdt 4A
Beaufort, NC, Michael J. Smith Field, NDB or GPS RWY 14, Orig CANCELLED
Beaufort, NC, Michael J. Smith Field, NDB RWY 14, Orig
North Wilkesboro, NC, Wilkes County, NDB or GPS RWY 1, Amdt 1B CANCELLED
North Wilkesboro, NC, Wilkes County, NDB RWY 1, Amdt 1B
Broken Bow, NE, Broken Bow Muni, VOR or GPS RWY 14, Amdt 4 CANCELLED
Broken Bow, NE, Broken Bow Muni, VOR RWY 14, Amdt 4
Manchester, NH, Manchester, VOR/DME RNAV or GPS RWY 6, Amdt 3A CANCELLED
Manchester, NH, Manchester, VOR/DME RNAV RWY 6, Amdt 3A
Hammonton, NJ, Hammonton Muni, VOR or GPS-A, Amdt 6 CANCELLED
Hammonton, NJ, Hammonton Muni, VOR-A, Amdt 6
Alva, OK, Alva Muni, NDB or GPS RWY 35, Amdt 4A CANCELLED
Alva, OK, Alva Muni, NDB RWY 35, Amdt 4A
Ardmore, OK, Ardmore Downtown Executive, VOR/DME RNAV or GPS RWY 35, Amdt 5 CANCELLED
Ardmore, OK, Ardmore Downtown Executive, VOR/DME RNAV RWY 35, Amdt 5
Ardmore, OK, Ardmore Muni, NDB or GPS RWY 31, Amdt 4A CANCELLED
Ardmore, OK, Ardmore Muni, NDB RWY 31, Amdt 4A
Clinton, OK, Clinton Muni, NDB or GPS RWY 35 Amdt 5 CANCELLED
Clinton, OK, Clinton Muni, NDB RWY 35 Amdt 5
Chickasha, OK, Chickasha Muni, NDB or GPS RWY 17, Orig CANCELLED
Chickasha, OK, Chickasha Muni, NDB RWY 17, Orig
El Reno, OK, El Reno Muni Air Park, VOR/DME or GPS RWY 35, Orig CANCELLED
El Reno, OK, El Reno Muni Air Park, VOR/DME RWY 35, Orig
Rock Hill, SC, Rock Hill/York Co/Bryant Field, VOR/DME RNAV or GPS RWY 2, Amdt 4B CANCELLED
Rock Hill, SC, Rock Hill/York Co/Bryant Field, VOR/DME RNAV RWY 2, Amdt 4B
Brownfield, TX, Terry County, NDB or GPS RWY 2, Amdt 2 CANCELLED
Brownfield, TX, Terry County, NDB RWY 2, Amdt 2
Center, TX, Center Muni, NDB or GPS RWY 17, Amdt 1 CANCELLED
Center, TX, Center Muni, NDB RWY 17, Amdt 1

Childress, TX, Childress Muni, VOR or GPS RWY 35, Amdt 9 CANCELLED
Childress, TX, Childress Muni, VOR RWY 35, Amdt 9
Crosbyton, TX, Crosbyton Municipal, NDB or GPS RWY 35, Orig CANCELLED
Crosbyton, TX, Crosbyton Municipal, NDB RWY 35, Orig
Dalhart, TX, Dalhart Muni, VOR or GPS RWY 17, Amdt 12A CANCELLED
Dalhart, TX, Dalhart Muni, VOR RWY 17, Amdt 12A
Del Rio, TX, Del Rio Intl, NDB or GPS RWY 13, Amdt 2 CANCELLED
Del Rio, TX, Del Rio Intl, NDB RWY 13, Amdt 2
Jasper, TX, Jasper County-Bell Field, NDB or GPS RWY 18, Amdt 7 CANCELLED
Jasper, TX, Jasper County-Bell Field, NDB RWY 18, Amdt 7
Levelland, TX, Levelland Muni, NDB or GPS RWY 17, Amdt 2A CANCELLED
Levelland, TX, Levelland Muni, NDB RWY 17, Amdt 2a
Levelland, TX, Levelland Muni, NDB or GPS RWY 35, Amdt 1A CANCELLED
Levelland, TX, Levelland Muni, NDB RWY 35, Amdt 1A
Palacios, TX, Palacios Muni, VOR or GPS RWY 13, Amdt 10 CANCELLED
Palacios, TX, Palacios Muni, VOR RWY 13, Amdt 10
Pecos, TX, Pecos Muni, VOR or GPS RWY 14, Amdt 7A CANCELLED
Pecos, TX, Pecos Muni, VOR RWY 14, Amdt 7A
Tyler, TX, Tyler Pounds Field, VOR or GPS RWY 31, Orig CANCELLED
Tyler, TX, Tyler Pounds Field, VOR RWY 31, Orig
Chesapeake, VA, Chesapeake Muni, NDB or GPS RWY 5, Amdt 1 CANCELLED
Chesapeake, VA, Chesapeake Muni, NDB RWY 5, Amdt 1
Martinsville, VA, Blue Ridge, NDB or GPS RWY 30, Amdt 1 CANCELLED
Martinsville, VA, Blue Ridge, NDB RWY 30, Amdt 1
Torrington, WY, Torrington Muni, NDB or GPS RWY 28, Orig CANCELLED
Torrington, WY, Torrington Muni, NDB RWY 28, Orig.

[FR Doc. 96-26100 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 28701; Amdt. No. 1756]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are

needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase—*Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20491; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal

Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the

public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on October 4, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NBD, NBD/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
08/28/96	GA	Marietta	Cobb County-McCollum Field	6/6579	ILS RWY 27, ORIG...
09/19/96	VT	Rutland	Rutland State	6/7299	GPS RWY 19, AMDT 1...
09/20/96	AZ	Prescott	Ernest A. Love Field	6/7318	VOR OR GPS RWY 11 AMDT 1...
09/20/96	ME	Rockland	Knox County Regional	6/7327	LOC RWY 3 AMDT 8B...
09/20/96	NC	Louisburg	Louisburg/Franklin County	6/7320	VOR/DME OR GPS-A, ORIG-A...
09/24/96	GA	Gainesville	Lee Gilmer Memorial	6/7393	THIS CORRECTS TL 96-21
09/24/96	NC	Charlotte	Charlotte/Douglas Intl	6/7395	LOC RWY 4, AMDT 5A...
09/25/96	AZ	Phoenix	Phoenix Sky Harbor Intl	6/7409	ILS RWY 36L AND CAT II, CAT III AMDT 12...
09/25/96	AZ	Prescott	Prescott/Ernest A. Love Field	6/7408	ILS RWY 8R, AMDT 9A...
09/25/96	HI	Kahului	Kahului	6/7427	VOR OR GPS RWY 11, AMDT 1A...
09/25/96	HI	Kahului	Kahului	6/7428	NBD/DME OR GPS RWY 2, AMDT 1A...
09/30/96	NC	Charlotte	Charlotte/Douglas Intl	6/7486	ILS RWY 2, AMDT 22A...
10/2/96	NE	Chadron	Chadron Muni	6/7570	ILS RWY 36R AMDT 7A...
10/2/96	NE	Grand Island	Grand Island/Central Nebraska ...	6/7568	VOR/DME OR GPS RWY 2, AMDT 1...
10/2/96	CA	Santa Ynez	Grand Island/Central Nebraska ...	6/7568	LOC/DME BC RWY 17, AMDT 9...
10/2/96	VT	Rutland	Santa Ynez	6/7562	VOR OR GPS-B AMDT 7...
10/2/96	VT	Rutland	Rutland State	6/7556	LDA 1 RWY 19 AMDT 7...

[FR Doc. 96-26099 Filed 10-9-96; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 28700; Amdt. No. 1755]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase—*Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is

contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight

safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on October 4, 1996.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective December 5, 1996*

Courtland, AL, Industrial Airpark, GPS RWY 13, Orig
 Corning, AR, Corning Muni, GPS RWY 18, Orig
 Corning, AR, Corning Muni, GPS RWY 36, Orig
 Tampa, FL, Tampa Intl, GPS RWY 36R, Orig
 Savannah, GA, Savannah International, GPS RWY 18, Orig
 Savannah, GA, Savannah International, RNAV OR GPS RWY 18, Amdt 8, CANCELLED
 Dawson, GA, Dawson Muni, VOR/DME RWY 31, Orig
 Ames, IA, Ames Muni, LOC RWY 1, Amdt 1, CANCELLED
 Ames, IA, Ames Muni, ILS RWY 1, Orig
 Dixon, IL, Dixon, VOR or GPS—A, Amdt 9
 Litchfield, IL, Litchfield Muni, GPS RWY 9, Orig
 Litchfield, IL, Litchfield Muni, GPS RWY 27, Orig
 Pinckneyville, IL, Pinckneyville-DuQuoin, GPS RWY 36, Orig
 Fort Wayne, IN, Smith Field, VOR or GPS RWY 13, Amdt 8
 Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, VOR OR GPS RWY 4L, Amdt 16
 Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, VOR/DME RWY 22R, Amdt 8
 Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, LOC BC RWY 4L, Amdt 6
 Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, ILS RWY 22R, Amdt 9
 Houma, LA, Houma-Terrebone, VOR RWY 12, Amdt 5
 New Orleans, LA, New Orleans Intl (Moisant Field), LOC BC RWY 19, Amdt 14
 New Orleans, LA, New Orleans Intl (Moisant Field), NDB OR GPS RWY 10, Amdt 26
 New Orleans, LA, New Orleans Intl (Moisant Field), ILS RWY 1, Amdt 16
 New Orleans, LA, New Orleans Intl (Moisant Field), ILS RWY 10, Amdt 2
 New Orleans, LA, New Orleans Intl (Moisant Field), ILS RWY 28, Amdt 4
 Reserve, LA, St John The Baptist Parish, VOR RWY 35, Orig
 Big Rapids, MI, Roben-Hood, GPS RWY 27, Orig
 Hattiesburg/Laurel, MS, VOR—A, ORIG
 Laurel/Hattiesburg, MS, Hattiesburg-Laurel Regional, VOR RWY 36, Amdt 4, CANCELLED
 Fargo, ND, Hector International, VOR/DME RNAV or GPS RWY 13, Amdt 6

Fargo, ND, Hector International, VOR/DME or TACAN or GPS RWY 35, Amdt 12
 Cincinnati, OH, Cincinnati-Blue Ash, GPS RWY 6, Orig
 Alva, OK, Alva Muni, GPS RWY 35, Orig
 Ardmore, OK, Ardmore Muni, GPS RWY 31, Orig
 Buffalo, OK, Buffalo Muni, GPS RWY 17, Orig
 Chickasha, OK, Chickasha Muni, GPS RWY 17, Orig
 El Reno, OK, El Reno Muni Air Park, VOR/DME RWY 35, Amdt 1
 El Reno, OK, El Reno Muni Air Park, NDB RWY 35, Amdt 3
 El Reno, OK, El Reno Muni Air Park, GPS RWY 35, Orig
 Madill, OK, Madill Muni, GPS RWY 18, Orig
 Miami, OK, Miami Muni, GPS RWY 17, Orig
 Mooreland, OK, Mooreland Muni, NDB RWY 17, Amdt 4
 Mooreland, OK, Mooreland Muni, GPS RWY 17, Orig
 Muskogee, OK, Davis Field, VOR RWY 31, Amdt 3
 Muskogee, OK, Davis Field, NDB RWY 31, Amdt 9
 Muskogee, OK, Davis Field, GPS RWY 4, Orig
 Muskogee, OK, Davis Field, GPS RWY 31, Orig
 Tahlequah, OK, Tahlequah Muni, NDB OR GPS RWY 17, Amdt 1
 Tahlequah, OK, Tahlequah Muni, GPS RWY 35, Orig
 Darlington, SC, Darlington County Jetport, GPS RWY 5, Orig
 Rock Hill, SC, Rock Hill/York Co/Bryant Field, GPS RWY 2, Orig
 Rock Hill, SC, Rock Hill/York Co/Bryant Field, GPS RWY 20, Orig
 Sumter, SC, Sumter Muni, GPS RWY 23, Orig
 Childress, TX, Childress Muni, GPS RWY 35, Orig
 Crosbyton, TX, Crosbyton, Municipal, GPS RWY 35, Orig
 Madisonville, TX, Madisonville Muni, GPS RWY 36, Orig
 Sulphur Springs, TX, Sulphur Springs Muni, GPS RWY 36, Orig
 Cheyenne, WY, Cheyenne, GPS RWY 12, Amdt 1
 Torrington, WY, Torrington Muni, GPS RWY 10, Orig
 Torrington, WY, Torrington Muni, GPS RWY 28, Orig

* * * *Effective November 7, 1996*

Conway, AR, Dennis F. Cantrell Field, NDB OR GPS—A, Amdt 1
 El Monte, CA, El Monte, VOR OR GPS—A, Amdt 6
 Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky Intl, ILS RWY 18R, Amdt 18
 Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky Intl, ILS RWY 36L, Amdt 37
 Eunice, LA, Eunice, NDB RWY 16, Orig
 Berlin, NH, Berlin Muni, VOR OR GPS—B, Amdt 2
 Berlin, NH, Berlin Muni, GPS RWY 18, Orig
 Rutherfordton, NC, Rutherford County, LOC RWY 1, Orig
 Amarillo, TX, Amarillo Intl, LOC BC RWY 22, Amdt 17 CANCELLED
 Houston, TX, David Wayne Hooks Memorial, LOC RWY 17R, Orig

Houston, TX, David Wayne Hooks Memorial, LOC/DME RWY 17R, Amdt 1, CANCELLED

Rock Springs, TX Edwards County, VOR OR GPS RWY 14, Amdt 2

The following procedure published in TL 96-19 dated August 23, 1996 with an effective date of October 10, 1996 is hereby rescinded:

Phoenix, AZ, Phoenix-Deer Valley Muni, GPS RWY 7R, Orig

The following procedures published in TL 96-20 dated September 6, 1996 with an effective date of November 7, 1996 are hereby rescinded:

West Milford, NJ, Greenwood Lake, VOR RWY 6, Orig

West Milford, NJ, Greenwood Lake, VOR OR GPS-A, Amdt 3 CANCELLED

Saratoga Springs, NY, Saratoga County, VOR-A, Amdt 5

[FR Doc. 96-26098 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 2452]

Bureau of Consular Affairs; Visas Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; Application for Nonimmigrant Visa—Olympic Procedures

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: In order to accommodate the increased workload as a result of the Summer Olympic Games held in Atlanta in July 1996, the Department made certain temporary changes in established procedures for processing nonimmigrant visas for the great number of participants [61 FR 1521, January 22, 1996]. These changes included: granting the Deputy Assistant Secretary for the Visa Office authority to designate consular posts for processing of NIVs regardless of the applicant's place of residence or physical presence, a waiver of the passport requirement at the time of visa application, and a waiver of the photograph requirement at the time of NIV application and issuance. As these special procedures are no longer applicable, the Department is removing them from the regulations.

DATES: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202 663-1204.

SUPPLEMENTARY INFORMATION:

Background

The Games of the XXVI Olympiad held in Atlanta, Georgia were the largest in history with 10,000 athletes and at least 45,000 persons in the entire Olympic Family. "Olympic Family Members" included: athletes, coaches, trainers, support personnel, senior officials of the International Olympic Committee, International Federations, National Olympic Committees, and other Olympic Games Organizing Committees, as well as official guests, rightsholding broadcasters, accredited international media representatives and international judges and juries. The vast majority of "Olympic Family Members" were aliens and had to be processed for admission into the United States for the Games. The great numbers involved required the Department of State and other agencies engaged in the process to devise means to accommodate "Olympic Family Members" in the most efficient fashion. Visa processing procedures for the Games were specifically designed to minimize the burden on the currently heavily taxed resources at U.S. consular posts abroad and to facilitate visa processing for "Olympic Family Members."

Final Rule

This final rule removes the temporary regulations established for processing nonimmigrant visas for temporary visitors to the United States for purposes of the 1996 Olympic Games in Atlanta. It is being promulgated as a final rule based on the exception found at 5 U.S.C. 553(b), the Department for good cause having found that public notice is unnecessary because the rule merely eliminates regulations that are no longer relevant.

This rule is not expected to have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 605(b). This rule does not impose information collection requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. This rule has been reviewed as required under E.O. 12988. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 41

Aliens, Documentation, Nonimmigrants, Passports and visas.

In view of the foregoing, Part 41 of Title 22 is amended by deleting paragraph (c) to 41.101; paragraph (e) to 41.104; subparagraph (iv) to 41.105(a)(3); and subparagraph (3) to

41.113(k), which were added in 61 FR 1521, January 22, 1996.

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read:

Authority: 8 U.S.C. 1101 and 1104; 19 U.S.C. 3401.

2. Part 41, is amended:

§ 41.101 [Amended]

a. By removing paragraph (c) from § 41.101;

§ 41.104 [Amended]

b. By removing paragraph (e) from § 41.104 ;

§ 41.105 [Amended]

c. By removing paragraph (a)(3)(iv) from § 41.105 and in paragraph (a)(3)(iii) of that section by removing the word "or" and by replacing the semicolon with a period after the word "age".

§ 41.113 [Amended]

d. By replacing the semicolon with a period after the word "card" and by removing the word "or" in the last line of paragraph (k)(2)(ii); and by removing paragraph (k)(3) from § 41.113.

Dated: September 17, 1996.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 96-25834 Filed 10-9-96; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8683]

RIN 1545-AU48

Magnetic Media Filing Requirements for Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) of the Internal Revenue Code (Code). These regulations affect persons filing information returns. These regulations prescribe new magnetic media filing requirements for employers filing wage and tax statements for employees in Puerto Rico, U.S. Virgin Islands, Guam, and American Samoa. In addition, these

regulations provide taxpayers with the guidance to comply with the changes made to the Code and to the administrative practices with respect to filing on magnetic media or in other machine-readable form. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: These regulations are effective on January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Donna Welch, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224; telephone (202) 622-4910 (not a toll-free call), if the inquiry relates to provisions of these regulations. For further information, see telephone numbers listed at the beginning of **SUPPLEMENTARY INFORMATION**.

SUPPLEMENTARY INFORMATION: For persons residing in the following locations, contact the following offices of the Social Security Administration (not a toll-free call), if the inquiry relates to magnetic media filing and magnetic media specifications for Form W-2, Form 499R-2/W-2PR, Form W-2VI, Form W-2GU, and Form W-2AS:

Alabama (404) 331-2587 (Atlanta)
 Alaska (206) 615-2125 (Seattle)
 American Samoa (415) 744-4559 (San Francisco)
 Arizona (415) 744-4559 (San Francisco)
 Arkansas (501) 324-5466 (Little Rock)
 California (415) 744-4559 (San Francisco)
 Colorado (303) 844-2364 (Denver)
 Connecticut (617) 565-2895 (Boston)
 Delaware (215) 597-4632 (Philadelphia)
 District of Columbia (215) 597-4632 (Philadelphia)
 Florida (404) 331-2587 (Atlanta)
 Georgia (404) 331-2587 (Atlanta)
 Guam (415) 744-4559 (San Francisco)
 Hawaii (415) 744-4559 (San Francisco)
 Idaho (206) 615-2125 (Seattle)
 Illinois (312) 353-6717 (Chicago)
 Indiana (312) 353-6717 (Chicago)
 Iowa (816) 426-2095 (Kansas City)
 Kansas (816) 426-2095 (Kansas City)
 Kentucky (404) 331-2587 (Atlanta)
 Louisiana (504) 389-0426 (Baton Rouge)
 Maine (617) 565-2895 (Boston)
 Maryland (215) 597-4632 (Philadelphia)
 Massachusetts (617) 565-2895 (Boston)
 Michigan (312) 353-6717 (Chicago)
 Minnesota (312) 353-6717 (Chicago)
 Mississippi (404) 331-2587 (Atlanta)
 Missouri (816) 426-2095 (Kansas City)
 Montana (303) 844-2364 (Denver)
 Nebraska (816) 426-2095 (Kansas City)
 Nevada (415) 744-4559 (San Francisco)
 New Hampshire (617) 565-2895 (Boston)
 New Jersey (212) 264-0258 (New York)
 New Mexico (505) 262-6048 (Albuquerque)
 New York (212) 264-0258 (New York)
 North Carolina (404) 331-2587 (Atlanta)

North Dakota (303) 844-2364 (Denver)
 Ohio (312) 353-6717 (Chicago)
 Oklahoma (405) 951-3007 (Oklahoma City)
 Oregon (206) 615-2125 (Seattle)
 Pennsylvania (215) 597-4632 (Philadelphia)
 Puerto Rico (809) 766-5574 (San Juan)
 Rhode Island (617) 565-2895 (Boston)
 South Carolina (404) 331-2587 (Atlanta)
 South Dakota (303) 844-2364 (Denver)
 Tennessee (404) 331-2587 (Atlanta)
 Texas-Central/South (210) 229-6433 (San Antonio)
 Texas-Dallas County (214) 767-6777 (Dallas)
 Texas-North (817) 334-3123 (Forth Worth)
 Texas-Southeast (713) 653-4722 (Houston)
 Texas-West (505) 262-6048 (Albuquerque)
 Utah (303) 844-2364 (Denver)
 Vermont (617) 565-2895 (Boston)
 Virgin Islands (809) 766-5574 (San Juan)
 Virginia (215) 597-4632 (Philadelphia)
 Washington (206) 615-2125 (Seattle)
 West Virginia (215) 597-4632 (Philadelphia)
 Wisconsin (312) 353-6717 (Chicago)
 Wyoming (303) 844-2364 (Denver)

Magnetic Media Reporting, Internal Revenue Service, Martinsburg Computing Center, P.O. Box 1359, Martinsburg, West Virginia 25401-1359; telephone (304) 263-8700 (not a toll-free call), if the inquiry relates to either the waiver procedure for all forms described in these regulations or to the magnetic media specifications for Forms 1042-S, 1098, 1099 series, 5498, 8027, or W-2G.

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR Part 301) relating to the requirement under section 6011(e) to file information returns on magnetic media or in other machine-readable form. Section 6011(e) authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media or in other machine-readable form. Section 6011(e) of the Internal Revenue Code (Code) was added to the Code by section 319 of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248, 96 Stat. 610; and was amended by section 109 of the Interest and Dividend Tax Compliance Act of 1983, Public Law 98-67, 97 Stat. 383; and section 7713 of the Revenue Reconciliation Act of 1989 (1989 Act), Public Law 101-239, 103 Stat. 2394.

This document also contains conforming amendments to the Income Tax Regulations (26 CFR Part 1) relating to returns of information of brokers and barter exchanges required under section 6045.

Explanation of Provisions

In order to reduce its administrative burden and increase accurate processing of information, the Social Security Administration (the SSA) requested that regulations be issued to require Forms

499R-2/W-2PR (Withholding Statement), Forms W-2VI (U.S. Virgin Islands Wage and Tax Statement), Forms W-2GU (Guam Wage and Tax Statement), and Forms W-2AS (American Samoa Wage and Tax Statement) to be filed on magnetic media. In Notice 95-64 (1995-2 C.B. 342), the IRS informed taxpayers of its intention to issue regulations requiring these forms to be filed on magnetic media with the SSA and invited public comment on the matter. The Notice stated that the requirement would be effective for wage and tax statements required to be filed after December 31, 1996. No comments were received in response to the Notice. These regulations expand the wage and tax statements required to be filed on magnetic media with the SSA to include Form 499R-2/W-2PR, Form W-2VI, Form W-2GU, and Form W-2AS.

In addition, these regulations reflect the current provisions of section 6011(e). As amended by the 1989 Act, section 6011(e)(2)(A) provides that the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year (250-threshold). Consistent with the provisions of section 6011(e)(2)(A), these regulations provide that no person is required to file on magnetic media unless the person is required to file 250 or more returns during the calendar year. Further, these regulations clarify that each type of information return is considered a separate return, and the 250-threshold applies separately to each type of form required to be filed.

In addition, these regulations reflect the current administrative practices with respect to filing information returns on magnetic media or in other machine-readable form. The IRS and the SSA now permit filing on tape cartridge but no longer permit filing on cassette. Further, the IRS currently permits electronic filing as an alternative method of filing, and the SSA is considering permitting electronic filing in the future. Thus, under these regulations, magnetic media generally include magnetic tape, tape cartridge, diskette, and other media (such as electronic filing) specifically permitted under the applicable regulations, procedures, or publications.

Further, these regulations reflect the current procedures for obtaining consent and authorization from the IRS before filing on magnetic media. These regulations refer to Form 4419 (Application for Filing Information Returns Magnetically/Electronically), which must be filed by a transmitter with the IRS before filing Forms 1042-

S, 1098, 1099 series, 5498, 8027, and W-2G on magnetic media or electronically. These regulations also remove any reference to obtaining consent from the SSA because it no longer requires consent or authorization before filing on magnetic media.

Under the existing regulations, a taxpayer may request a hardship waiver from the magnetic media filing requirements. The principal factor for demonstrating hardship is the amount, if any, by which the cost of filing on magnetic media exceeds the cost of filing on paper. The existing regulations provide that, if an employer is required to make a final return on Form 941, or a variation thereof, and expedited filing of Form W-2 is required, the unavailability of the specifications for magnetic media filing will be treated as creating a hardship, and a waiver of the magnetic media filing requirements for the expedited Forms W-2 may be granted. This document extends this waiver provision to expedited filing of Forms 499R-2/W-2PR, Forms W-2VI, Forms W-2GU, and Forms W-2AS.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that these regulations impose no additional reporting or recordkeeping requirement and only prescribe the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the requirements imposed by statute. Section 6011(e)(2)(A) provides that, in prescribing regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form, the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Consistent with the statutory provision, these regulations do not require information returns to be filed on magnetic media unless 250 or more returns are required to be filed. Further, the economic impact caused by filing on magnetic media should be minimal. If a taxpayer's operations are computerized, reporting in accordance with the regulations should be less costly than filing on paper. If the taxpayer's operations are not computerized, the

incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the existing regulations provide that the IRS may waive the magnetic media filing requirements upon a showing of hardship. It is anticipated that the waiver authority will be exercised so as not to unduly burden taxpayers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Donna Welch, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6045-1 is amended by adding a sentence at the end of paragraph (q) to read as follows:

§ 1.6045-1 Returns of information of brokers and barter exchanges.

* * * * *

(q) * * * With regard to paragraph (l) of this section, see section 6011(e) of the Internal Revenue Code for information returns required to be filed after December 31, 1989, and before January 1, 1997; and see § 1.6045-1T(l) for

information returns required to be filed after December 31, 1996.

Par. 3. Section 1.6045-1T is added to read as follows:

§ 1.6045-1T Returns of information of brokers and barter exchanges (temporary).

(a) through (k) [Reserved] For further guidance, see § 1.6045-1 (a) through (k).

(l) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011-2T of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. For information returns filed prior to January 1, 1997, see § 1.6045-1(l).

Par. 4. Section 1.6045-2 is amended by adding a sentence at the end of paragraph (i) to read as follows:

§ 1.6045-2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(i) * * * With regard to paragraph (g)(2) of this section, see section 6011(e) of the Internal Revenue Code for information returns required to be filed after December 31, 1989, and before January 1, 1997; and see § 1.6045-2T(g)(2) for information returns required to be filed after December 31, 1996.

Par. 5. Section 1.6045-2T is added to read as follows:

§ 1.6045-2T Furnishing statement required with respect to certain substitute payments (temporary).

(a) through (g)(1) [Reserved] For further guidance, see § 1.6045-2 (a) through (g)(1).

(g)(2) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011-2T of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. For information returns filed prior to January 1, 1997, see § 1.6045-2(g)(2).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.6011-2T is added to read as follows:

§ 301.6011-2T Required use of magnetic media (temporary).

This section applies to information returns required to be filed after December 31, 1996. For information returns required to be filed after December 31, 1989, and before January 1, 1997, see section 6011(e) of the

Internal Revenue Code and § 301.6011-2.

(a) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable regulations, revenue procedures, or, in the case of returns filed with the Social Security Administration, Social Security Administration publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media (such as electronic filing) specifically permitted under the applicable regulations, procedures, or publications.

(2) and (3) [Reserved] For further guidance, see § 301.6011-2(a) (2) and (3).

(b) *Returns required on magnetic media.* (1) If the use of Form 1042-S, 1098, 1099 series, 5498, 8027, W-2G, or other form treated as a form specified in this paragraph (b)(1) is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. Returns on magnetic media must be made in accordance with applicable revenue procedures or publications. See § 601.601(d)(2)(ii)(b) of this chapter. Pursuant to these procedures, the consent of the Commissioner of Internal Revenue (or other authorized officer or employee of the Internal Revenue Service) to a magnetic medium must be obtained by submitting Form 4419 (Application for Filing Information Returns Magnetically/Electronically) prior to submitting a return described in this paragraph (b)(1) on the magnetic medium.

(2) If the use of Form W-2 (Wage and Tax Statement), Form 499R-2/W-2PR (Withholding Statement), Form W-2VI (U.S. Virgin Islands Wage and Tax Statement), Form W-2GU (Guam Wage and Tax Statement), Form W-2AS (American Samoa Wage and Tax Statement), or other form treated as a form specified in this paragraph (b)(2) is required for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. Returns described in this paragraph (b)(2) must be made in accordance with applicable Social Security Administration procedures or publications (which may be obtained

from the local office of the Social Security Administration).

(3) [Reserved] For further guidance, see § 301.6011-2(b)(3).

(c) *Exceptions—(1) Low-volume filers/250-threshold—(i) In general.* No person is required to file information returns on magnetic media unless the person is required to file 250 or more returns during the calendar year. Persons filing fewer than 250 returns during the calendar year may make the returns on the prescribed paper form, or, alternatively, such persons may make returns on magnetic media in accordance with paragraph (b) of this section.

(ii) [Reserved] For further guidance, see § 301.6011-2(c)(1)(ii).

(iii) *No aggregation.* Each type of information return described in paragraphs (b) (1) and (2) of this section is considered a separate return for purposes of this paragraph (c)(1). Therefore, the 250-threshold applies separately to each type of form required to be filed.

(iv) *Examples.* The provisions of paragraph (c)(1)(iii) of this section are illustrated by the following examples:

Example 1. For the calendar year ending December 31, 1996, Company X is required to file 200 returns on Form 1099-INT and 350 returns on Form 1099-MISC. Company X is not required to file Forms 1099-INT on magnetic media but is required to file Forms 1099-MISC on magnetic media.

Example 2. During the calendar year ending December 31, 1996, Company Y has 275 employees in Puerto Rico and 50 employees in American Samoa. Company Y is required to file Forms 499R-2/W-2PR on magnetic media but is not required to file Forms W-2AS on magnetic media.

Example 3. For the calendar year ending December 31, 1996, Company Z files 300 original returns on Form 1099-DIV and later files 70 corrected returns on Form 1099-DIV. Company Z is required to file the original returns on magnetic media. However, Company Z is not required to file the corrected returns on magnetic media because the corrected returns fall under the 250-threshold. See § 301.6721-1(a)(2)(ii).

(2) *Waiver.* (i) The Commissioner may waive the requirements of this section if hardship is shown in a request for waiver filed in accordance with this paragraph (c)(2)(i). The principal factor in determining hardship will be the amount, if any, by which the cost of filing the information returns in accordance with this section exceeds the cost of filing the returns on other media. Notwithstanding the foregoing, if an employer is required to make a final return on Form 941, or a variation thereof, and expedited filing of Forms W-2, Forms 499R-2/W-2PR, Forms W-

2VI, Forms W-2GU, or Form W-2AS is required, the unavailability of the specifications for magnetic media filing will be treated as creating a hardship. See § 31.6071(a)-1(a)(3)(ii). A request for waiver must be made in accordance with applicable revenue procedures or publications. See § 601.601(d)(2)(ii)(b) of this chapter. Pursuant to these procedures, a request for waiver should be filed at least 45 days before the due date of the information return in order for the Service to have adequate time to respond to the request for waiver. The waiver will specify the type of information return and the period to which it applies and will be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner.

(ii) The Commissioner may prescribe rules that supplement the provisions of paragraph (c)(2)(i) of this section.

(c) (3) and (4) [Reserved]. For further guidance, see § 301.6011-2(c) (3) and (4).

(d) and (e) [Reserved] For further guidance, see § 301.6011-2 (d) and (e).

(f) *Failure to file.* If a person fails to file an information return on magnetic media when required to do so by this section, the person is deemed to have failed to file the return. In addition, if a person making returns on a paper form under paragraph (c) of this section fails to file a return on machine-readable paper form when required to do so by this section, the person is deemed to have failed to file the return. See sections 6652, 6693, and 6721 for penalties for failure to file certain returns. See also section 6724 and the regulations under section 6721 for the specific rules and limitations regarding the penalty imposed under section 6721 for failure to file on magnetic media.

(g) *Effective date.* (1) [Reserved] For further guidance, see § 301.6011-2(g)(1).

(2) Paragraphs (a)(1), (b) (1) and (2), (c)(1) (i), (iii), and (iv), (c)(2), and (f) of this section are effective for information returns required to be filed after December 31, 1996. For information returns required to be filed after December 31, 1989, and before January 1, 1997, see section 6011(e) of the Internal Revenue Code and § 301.6011-2.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: September 10, 1996.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 96-25542 Filed 10-9-96; 8:45 am]

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26 CFR Parts 1 and 602

[TD 8684]

RIN 1545-AM98

Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final regulations relating to the tax treatment by S corporations and their shareholders of gain from the disposition by an S corporation (and a corporation that was formerly an S corporation) of certain natural resource recapture property (section 1254 property after enactment of the Tax Reform Act of 1986 and oil, gas, or geothermal property before enactment of the Tax Reform Act of 1986), and also rules relating to the disposition of stock in an S corporation that holds certain natural resource recapture property. Changes to the applicable tax law were made by the Tax Reform Act of 1986, and the Subchapter S Revision Act of 1982. The regulations provide the public with guidance in complying with the changed tax laws.

EFFECTIVE DATE: October 10, 1996.**FOR FURTHER INFORMATION CONTACT:** James A. Quinn, 202-622-3060 (not a toll-free number).**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1493. This information is required by the IRS to establish that a portion of the gain recognized upon a sale or exchange of S corporation stock is not attributable to a shareholder's section 1254 costs so as to qualify for the exception contained in § 1.1254-4(c)(2)(i)(A).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from .5 hour to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for

reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 21, 1995, the IRS published in the Federal Register a notice of proposed rulemaking (60 FR 66238) providing rules for applying the provisions of section 1254 to the disposition of natural resource recapture property by an S corporation (and a corporation that was formerly an S corporation) and the disposition of S corporation stock. No written comments responding to this notice were received. No public hearing was held because no hearing was requested. The proposed regulations are adopted without any substantive change by this Treasury decision. However, in the course of preparing the final regulations for publication, the IRS and Treasury Department have determined that §§ 1.1254-2 and 1.1254-3 are in need of minor technical clarifications. Accordingly, §§ 1.1254-2 and 1.1254-3 are clarified as discussed below.

Clarification of §§ 1.1254-2 and 1.1254-3

Section 1.1254-2(d)(1) is amended to state that § 1.1254-2(d)(1) is applied without regard to § 1.1254-1(b)(2)(vii). This amendment clarifies that section 1254 costs must be recaptured in a like-kind exchange or involuntary conversion that involves the acquisition of property that is not natural resource recapture property. The amendment makes clear that the treatment of like-kind exchanges and involuntary conversions involving natural resource recapture property is similar to the treatment of these transactions involving section 1245 property. See §§ 1.1245-3(a)(3), 1.1245-4(d)(1), 1.1245-4(d)(2), *Example 2*, and 1.1245-5(a)(2), *Example*.

Section 1.1254-3(b)(1) provides that if natural resource recapture property is transferred in certain transactions the amount of section 1254 costs with respect to the property in the hands of the transferee equals the amount of

section 1254 costs with respect to the property in the hands of the transferor minus the amount of any gain taken into account as ordinary income under section 1254(a)(1) by the transferor upon the disposition. The intent of this rule is that in these transactions the section 1254 costs with respect to the property are to be transferred to the transferee but reduced by any gain taken into account as ordinary income. However, in the case of an S corporation or partnership transferor, the section 1254 costs have generally been allocated among the shareholders or partners. Consequently, § 1.1254-3(b)(1) is clarified to provide that in the case of an S corporation transferor the section 1254 costs include the section 1254 costs of the shareholders minus any gain taken into account by the shareholders as ordinary income. A similar clarification is added for partnership transferors.

Similarly, § 1.1254-3(d) is clarified for like-kind exchanges and involuntary conversions to provide that in the case of an S corporation the section 1254 costs include the section 1254 costs of the shareholders minus any gain taken into account by the shareholders as ordinary income. A similar clarification is added for a partnership.

Effective Date

Section 1.1254-4 applies to dispositions of natural resource recapture property by an S corporation (and a corporation that was formerly an S corporation) and dispositions of S corporation stock occurring on or after October 10, 1996. The clarifications to §§ 1.1254-2 and 1.1254-3 are effective for dispositions of property occurring on or after October 10, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is James A. Quinn of the

Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * * Section 1.1254-4 also issued under 26 U.S.C. 1254(b). * * *

Par. 2. Section 1.1254-0 is amended by revising the entry for § 1.1254-4 to read as follows:

§ 1.1254-0 Table of contents for section 1254 recapture rules.

* * * * *

§ 1.1254-4 Special rules for S corporations and their shareholders.

- (a) In general.
- (b) Determination of gain treated as ordinary income under section 1254 upon a disposition of natural resource recapture property by an S corporation.
 - (1) General rule.
 - (2) Examples.
- (c) Character of gain recognized by a shareholder upon a sale or exchange of S corporation stock.
 - (1) General rule.
 - (2) Exceptions.
 - (3) Examples.
- (d) Section 1254 costs of a shareholder.
- (e) Section 1254 costs of an acquiring shareholder after certain acquisitions.
 - (1) Basis determined under section 1012.
 - (2) Basis determined under section 1014(a).
 - (3) Basis determined under section 1014(b)(9).
 - (4) Gifts and section 1041 transfers.
- (f) Special rules for a corporation that was formerly an S corporation or formerly a C corporation.
 - (1) Section 1254 costs of an S corporation that was formerly a C corporation.
 - (2) Examples.
 - (3) Section 1254 costs of a C corporation that was formerly an S corporation.
 - (g) Determination of a shareholder's section 1254 costs upon certain stock transactions
 - (1) Issuance of stock.
 - (2) Natural resource recapture property acquired in exchange for stock.
 - (3) Treatment of nonvested stock.
 - (4) Exemption.

- (5) Aggregate of S corporation shareholders' section 1254 costs with respect to natural resource recapture property held by the S corporation
- (6) Examples.

* * * * *

Par. 3. Section 1.1254-2 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 1.1254-2 Exceptions and limitations.

* * * * *

- (d) * * * (1) * * *
- (ii) The fair market value of property acquired that is not natural resource recapture property (determined without regard to § 1.1254-1(b)(2)(vii)) and is not taken into account under paragraph (d)(1)(i) of this section (that is, qualifying property under section 1031 or 1033 that is not natural resource recapture property).

* * * * *

Par. 4. Section 1.1254-3 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii), (d)(1)(i) and (d)(1)(ii) to read as follows:

§ 1.1254-3 Section 1254 costs immediately after certain acquisitions.

* * * * *

- (b) * * * (1) * * *
- (i) The amount of section 1254 costs with respect to the natural resource recapture property in the hands of the transferor immediately before the disposition (and in the case of an S corporation or partnership transferor, the section 1254 costs of the shareholders or partners with respect to the natural resource recapture property); minus
- (ii) The amount of any gain taken into account as ordinary income under section 1254(a)(1) by the transferor upon the disposition (and in the case of an S corporation or partnership transferor, any such gain taken into account as ordinary income by the shareholders or partners).

* * * * *

- (d) * * *
- (1) * * *

(i) The amount of section 1254 costs with respect to the natural resource recapture property disposed of (including the section 1254 costs of the shareholders of an S corporation or of the partners of a partnership with respect to the natural resource recapture property); minus

(ii) The amount of any gain taken into account as ordinary income under section 1254(a)(1) by the transferor upon the disposition (and in the case of an S corporation or partnership transferor, any such gain taken into account as

ordinary income by the shareholders or partners).

* * * * *

Par. 5. Section 1.1254-4 is amended by adding text to read as follows:

§ 1.1254-4 Special rules for S corporations and their shareholders.

(a) *In general.* This section provides rules for applying the provisions of section 1254 to S corporations and their shareholders upon the disposition by an S corporation (and a corporation that was formerly an S corporation) of natural resource recapture property and upon the disposition by a shareholder of stock of an S corporation that holds natural resource recapture property.

(b) *Determination of gain treated as ordinary income under section 1254 upon a disposition of natural resource recapture property by an S corporation—*(1) *General rule.* Upon a disposition of natural resource recapture property by an S corporation, the amount of gain treated as ordinary income under section 1254 is determined at the shareholder level. Each shareholder must recognize as ordinary income under section 1254 the lesser of—

- (i) The shareholder's section 1254 costs with respect to the property disposed of; or
- (ii) The shareholder's share of the amount, if any, by which the amount realized on the sale, exchange, or involuntary conversion, or the fair market value of the property upon any other disposition (including a distribution), exceeds the adjusted basis of the property.

(2) *Examples.* The following examples illustrate the provisions of paragraph (b)(1) of this section:

Example 1. Disposition of natural resource recapture property other than oil and gas property. A and B are equal shareholders in X, an S corporation. On January 1, 1997, X acquires for \$90,000 an undeveloped mineral property, its sole property. During 1997, X expends and deducts \$100,000 in developing the property. On January 15, 1998, X sells the property for \$250,000 when X's basis in the property is \$90,000. Thus, X recognizes gain of \$160,000 on the sale. A and B's share of the \$160,000 gain recognized is \$80,000 each. Each shareholder has \$50,000 of section 1254 costs with respect to the property. Under these circumstances, A and B each are required to recognize \$50,000 of the \$80,000 of gain on the sale of the property as ordinary income under section 1254.

Example 2. Disposition of oil and gas property the adjusted basis of which is allocated to the shareholders under section 613A(c)(11). C and D are equal shareholders in Y, an S corporation. On January 1, 1997, Y acquires for \$150,000 an undeveloped oil and gas property, its sole property. During 1997, Y expends in developing the property

\$40,000 in intangible drilling costs which it elects to expense under section 263(c). On January 15, 1998, Y sells the property for \$200,000. C and D's share of the \$200,000 amount realized on the sale is \$100,000 each. C and D each have a basis of \$75,000 in the property and \$20,000 of section 1254 costs with respect to the property. Under these circumstances, C and D each are required to recognize \$20,000 of the \$25,000 gain on the sale of the property as ordinary income under section 1254.

(c) *Character of gain recognized by a shareholder upon a sale or exchange of S corporation stock*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, if an S corporation shareholder recognizes gain upon a sale or exchange of stock in the S corporation (determined without regard to section 1254), the gain is treated as ordinary income under section 1254 to the extent of the shareholder's section 1254 costs (with respect to the shares sold or exchanged).

(2) *Exceptions*—(i) *Gain not attributable to section 1254 costs*—(A) *General rule.* Paragraph (c)(1) of this section does not apply to any portion of the gain recognized on the sale or exchange of the stock that the taxpayer establishes is not attributable to section 1254 costs. The portion of the gain recognized that is not attributable to section 1254 costs is that portion of the gain recognized that exceeds the amount of ordinary income that the shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) if, immediately prior to the sale or exchange of the stock, the corporation had sold at fair market value all of the corporation's property the disposition of which would result in the recognition by the shareholder of ordinary income under section 1254.

(B) *Substantiation.* To establish that a portion of the gain recognized is not attributable to a shareholder's section 1254 costs so as to qualify for the exception contained in paragraph (c)(2)(i)(A) of this section, the shareholder must attach to the shareholder's tax return a statement detailing the shareholder's share of the fair market value and basis, and the shareholder's section 1254 costs, for each of the S corporation's natural resource recapture properties held immediately before the sale or exchange of stock.

(ii) *Transactions entered into as part of a plan to avoid recognition of ordinary income under section 1254.* In the case of a contribution of property prior to a sale or exchange of stock pursuant to a plan a principal purpose of which is to avoid recognition of ordinary income under section 1254,

paragraph (c)(1) of this section does not apply. Instead, the amount recognized as ordinary income under section 1254 is the amount of ordinary income the selling or exchanging shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) had the S corporation sold its natural resource recapture property the disposition of which would have resulted in the recognition of ordinary income under section 1254. The amount recognized as ordinary income under the preceding sentence reduces the amount realized on the sale or exchange of the stock.

This reduced amount realized is used in determining any gain or loss on the sale or exchange.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (c):

Example 1. Application of general rule upon a sale of S corporation stock. C and D are equal shareholders in Y, an S corporation. As of January 1, 1997, Y holds two mining properties: Blackacre, with an adjusted basis of \$5,000 and a fair market value of \$35,000, and Whiteacre, with an adjusted basis of \$20,000 and a fair market value of \$15,000. Y also holds securities with a basis of \$5,000 and a fair market value of \$10,000. On January 1, 1997, D sells 50 percent of D's Y stock to E for \$15,000. As of the date of the sale, D's adjusted basis in the Y stock sold is \$7,500, and D has \$18,000 of section 1254 costs with respect to Blackacre and \$12,000 of section 1254 costs with respect to Whiteacre. Under this paragraph (c), the gain recognized by D upon the sale of Y stock is treated as ordinary income to the extent of D's section 1254 costs with respect to the stock sold, unless D establishes that a portion of such excess is not attributable to D's section 1254 costs. However, because D would recognize \$7,500 in ordinary income under section 1254 with respect to the stock sold if Y sold Blackacre (the only asset the disposition of which would result in ordinary income to D under section 1254), the \$7,500 of gain recognized by D upon the sale of D's Y stock is attributable to D's section 1254 costs. Therefore, upon the sale of stock to E, D recognizes \$7,500 of ordinary income under this paragraph (c).

Example 2. Sale of S corporation stock where gain is not entirely attributable to section 1254 costs. Assume the same facts as in *Example 1*, except that Blackacre has a fair market value of \$25,000, and the securities have a fair market value of \$20,000. Immediately prior to the sale of stock to E, if Y had sold Blackacre (its only asset the disposition of which would result in the recognition of ordinary income to D under section 1254), D would recognize \$5,000 in ordinary income with respect to the stock sold under section 1254. D attaches a statement to D's tax return for 1997 detailing D's share of the fair market values and bases, and D's section 1254 costs with respect to Blackacre and Whiteacre. Therefore, upon the sale of stock to E, of the \$7,500 gain

recognized by D, \$5,000 is ordinary income under this paragraph (c).

Example 3. Contribution of property prior to sale of S corporation stock as part of a plan to avoid recognition of ordinary income under section 1254. H owns all of the stock of Z, an S corporation. As of January 1, 1997, H has \$3,000 of section 1254 costs with respect to property P, which is natural resource recapture property and Z's only asset. Property P has an adjusted basis of \$5,000 and a fair market value of \$8,000. H has a basis of \$5,000 in Z stock, which has a fair market value of \$8,000. On January 1, 1997, H contributes securities to Z which have a basis of \$7,000 and a fair market value of \$4,000. On April 15, 1997, H sells all of the Z stock to J for \$12,000. On that date, H's adjusted basis in the Z stock is also \$12,000. Based on all the facts and circumstances, the sale of stock is part of a plan (along with the contribution by H of the securities to Z) that has a principal purpose to avoid recognition of ordinary income under section 1254. Consequently, under paragraph (c)(2)(ii) of this section, H must recognize \$3,000 as ordinary income under section 1254, the amount of ordinary income that H would recognize as ordinary income under section 1254 if property P were sold at fair market value. In addition, H reduces the amount realized on the sale of the stock (\$12,000) by \$3,000. As a result, H also recognizes a \$3,000 capital loss on the sale of the stock (\$9,000 amount realized less \$12,000 adjusted basis).

(d) *Section 1254 costs of a shareholder.* An S corporation shareholder's section 1254 costs with respect to any natural resource recapture property held by the corporation include all of the shareholder's section 1254 costs with respect to the property in the hands of the S corporation. See § 1.1254-1(b)(1) for the definition of section 1254 costs.

(e) *Section 1254 costs of an acquiring shareholder after certain acquisitions*—(1) *Basis determined under section 1012.* If stock in an S corporation that holds natural resource recapture property is acquired and the acquiring shareholder's basis for the stock is determined solely by reference to its cost (within the meaning of section 1012), the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands is zero on the acquisition date.

(2) *Basis determined under section 1014(a).* If stock in an S corporation that holds natural resource recapture property is acquired from a decedent and the acquiring shareholder's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the stock on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date), the amount of section 1254 costs

with respect to the property held by the corporation in the acquiring shareholder's hands is zero on the acquisition date.

(3) *Basis determined under section 1014(b)(9)*. If stock in an S corporation that holds natural resource recapture property is acquired before the death of the decedent, the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands includes the amount, if any, of the section 1254 costs deducted by the acquiring shareholder before the decedent's death, to the extent that the basis of the stock (determined under section 1014(a)) is required to be reduced under section 1014(b)(9) (relating to adjustments to basis when the property is acquired before the death of the decedent).

(4) *Gifts and section 1041 transfers*. If stock is acquired in a transfer that is a gift, in a transfer that is a part sale or exchange and part gift, or in a transfer that is described in section 1041(a), the amount of section 1254 costs with respect to the property held by the corporation in the acquiring shareholder's hands immediately after the transfer is an amount equal to—

(i) The amount of section 1254 costs with respect to the property held by the corporation in the hands of the transferor immediately before the transfer; minus

(ii) The amount of any gain recognized as ordinary income under section 1254 by the transferor upon the transfer.

(f) *Special rules for a corporation that was formerly an S corporation or formerly a C corporation*—(1) *Section 1254 costs of an S corporation that was formerly a C corporation*. In the case of a C corporation that holds natural resource recapture property and that elects to be an S corporation, each shareholder's section 1254 costs as of the beginning of the corporation's first taxable year as an S corporation include a pro rata share of the section 1254 costs of the corporation as of the close of the last taxable year that the corporation was a C corporation.

(2) *Examples*. The following examples illustrate the application of the provisions of paragraph (f)(1) of this section:

Example 1. Sale of natural resource recapture property held by an S corporation that was formerly a C corporation—(i) Y is a C corporation that elects to be an S corporation effective January 1, 1997. On that date, Y owns Oil Well, which is natural resource recapture property and a capital asset. Y has section 1254 costs of \$20,000 as of the close of the last taxable year that it was a C corporation. On January 1, 1997, Oil Well

has a value of \$200,000 and a basis of \$100,000. Thus, under section 1374, Y's net unrealized built-in gain is \$100,000. Also on that date, Y's basis in Oil Well is allocated to A, Y's sole shareholder, under section 613A(c)(11) and the section 1254 costs are allocated to A under paragraph (f)(1) of this section. In addition, A has a basis in A's Y stock of \$100,000.

(ii) On November 1, 1997, Y sells Oil Well for \$250,000. During 1997, Y has taxable income greater than \$100,000, and no other transactions or items treated as recognized built-in gain or loss. Under section 1374, Y has net recognized built-in gain of \$100,000. Assuming a tax rate of 35 percent on capital gain, Y has a tax of \$35,000 under section 1374. The tax of \$35,000 is treated as a capital loss under section 1366(f)(2). A has a realized gain on the sale of \$150,000 (\$250,000 minus \$100,000) of which \$20,000 is recognized as ordinary income under section 1254, and \$130,000 is recognized as capital gain. Consequently, A recognizes ordinary income of \$20,000 and net capital gain of \$95,000 (\$130,000 minus \$35,000) on the sale.

Example 2. Sale of stock followed by sale of natural resource recapture property held by an S corporation that was formerly a C corporation—(i) Assume the same facts as in *Example 1*(i). On November 1, 1997, A sells all of A's Y stock to P for \$250,000. A has a realized gain on the sale of \$150,000 (\$250,000 minus \$100,000) of which \$20,000 is recognized as ordinary income under section 1254, and \$130,000 is recognized as capital gain.

(ii) On November 2, 1997, Y sells Oil Well for \$250,000. During 1997, Y has taxable income greater than \$100,000, and no other transactions or items treated as recognized built-in gain or loss. Under section 1374, Y has net recognized built-in gain of \$100,000. Assuming a tax rate of 35 percent on capital gain, Y has a tax of \$35,000 under section 1374. The tax of \$35,000 is treated as a capital loss under section 1366(f)(2). P has a realized gain on the sale of \$150,000 (\$250,000 minus \$100,000), which is recognized as capital gain. Consequently, P recognizes net capital gain of \$115,000 (\$150,000 minus \$35,000) on the sale.

(3) *Section 1254 costs of a C corporation that was formerly an S corporation*. In the case of an S corporation that becomes a C corporation, the C corporation's section 1254 costs with respect to any natural resource recapture property held by the corporation as of the beginning of the corporation's first taxable year as a C corporation include the sum of its shareholders' section 1254 costs with respect to the property as of the close of the last taxable year that the corporation was an S corporation. In the case of an S termination year as defined in section 1362(e)(4), the shareholders' section 1254 costs are determined as of the close of the S short year as defined in section 1362(e)(1)(A). See paragraph (g)(5) of this section for rules on

determining the aggregate amount of the shareholders' section 1254 costs.

(g) *Determination of a shareholder's section 1254 costs upon certain stock transactions*—(1) *Issuance of stock*. Upon an issuance of stock (whether such stock is newly-issued or had been held as treasury stock) by an S corporation in a reorganization described in section 368 or otherwise—

(i) Each recipient of shares must be allocated a pro rata share (determined solely with respect to the shares issued in the transaction) of the aggregate of the S corporation shareholders' section 1254 costs with respect to natural resource recapture property held by the S corporation immediately before the issuance (as determined pursuant to paragraph (g)(5) of this section); and

(ii) Each pre-existing shareholder must reduce his or her section 1254 costs with respect to natural resource recapture property held by the S corporation immediately before the issuance by an amount equal to the pre-existing shareholder's section 1254 costs immediately before the issuance multiplied by the percentage of stock of the corporation issued in the transaction.

(2) *Natural resource recapture property acquired in exchange for stock*. If natural resource recapture property is transferred to an S corporation in exchange for stock of the S corporation (for example, in a section 351 transaction, or in a reorganization described in section 368), the S corporation must allocate to its shareholders a pro rata share of the S corporation's section 1254 costs with respect to the property immediately after the transaction (as determined under § 1.1254-3(b)(1)).

(3) *Treatment of nonvested stock*. Stock issued in connection with the performance of services that is substantially nonvested (within the meaning of § 1.83-3(b)) is treated as issued for purposes of this section at the first time it is treated as outstanding stock of the S corporation for purposes of section 1361.

(4) *Exception*. Paragraph (g)(1) of this section does not apply to stock issued in exchange for stock of the same S corporation (as for example, in a recapitalization described in section 368(a)(1)(E)).

(5) *Aggregate of S corporation shareholders' section 1254 costs with respect to natural resource recapture property held by the S corporation*—(i) *In general*. The aggregate of S corporation shareholders' section 1254 costs is equal to the sum of each shareholder's section 1254 costs. The S corporation must determine each

shareholder's section 1254 costs under either paragraph (g)(5)(ii) (written data) or paragraph (g)(5)(iii) (assumptions) of this section. The S corporation may determine the section 1254 costs of some shareholders under paragraph (g)(5)(ii) of this section and of others under paragraph (g)(5)(iii) of this section.

(ii) *Written data.* An S corporation may determine a shareholder's section 1254 costs by using written data provided by a shareholder showing the shareholder's section 1254 costs with respect to natural resource recapture property held by the S corporation unless the S corporation knows or has reason to know that the written data is inaccurate. If an S corporation does not receive written data upon which it may rely, the S corporation must use the assumptions provided in paragraph (g)(5)(iii) of this section in determining a shareholder's section 1254 costs.

(iii) *Assumptions.* An S corporation that does not use written data pursuant to paragraph (g)(5)(ii) of this section to determine a shareholder's section 1254 costs must use the following assumptions to determine the shareholder's section 1254 costs—

(A) The shareholder deducted his or her share of the amount of deductions under sections 263(c), 616, and 617 in the first year in which the shareholder could claim a deduction for such amounts, unless in the case of expenditures under sections 263(c) or 616 the S corporation elected to capitalize such amounts;

(B) The shareholder was not subject to the following limitations with respect to the shareholder's depletion allowance under section 611, except to the extent a limitation applied at the corporate level: the taxable income limitation of section 613(a); the depletable quantity limitations of section 613A(c); or the limitations of sections 613A(d)(2), (3), and (4) (exclusion of retailers and refiners).

(6) *Examples.* The following examples illustrate the provisions of this paragraph (g):

Example 1. Transfer of natural resource recapture property to an S corporation in a section 351 transaction. As of January 1, 1997, A owns all the stock (20 shares) in X, an S corporation. X holds property that is not natural resource recapture property that has a fair market value of \$2,000 and an adjusted basis of \$2,000. On January 1, 1997, B transfers natural resource recapture property, Property P, to X in exchange for 80 shares of X stock in a transaction that qualifies under section 351. Property P has a fair market value of \$8,000 and an adjusted basis of \$5,000. Pursuant to section 351, B does not recognize gain on the transaction. Immediately prior to the transaction, B's

section 1254 costs with respect to Property P equaled \$6,000. Under § 1.1254-2(c)(1), B does not recognize any gain under section 1254 on the section 351 transaction and, under § 1.1254-3(b)(1), X's section 1254 costs with respect to Property P immediately after the contribution equal \$6,000. Under paragraph (g)(2) of this section, each shareholder is allocated a pro rata share of X's section 1254 costs. The pro rata share of X's section 1254 costs that is allocated to A equals \$1,200 (20 percent interest in X multiplied by X's \$6,000 of section 1254 costs). The pro rata share of X's section 1254 costs that is allocated to B equals \$4,800 (80 percent interest in X multiplied by X's \$6,000 of section 1254 costs).

Example 2. Contribution of money in exchange for stock of an S corporation holding natural resource recapture property. As of January 1, 1997, A and B each own 50 percent of the stock (50 shares each) in X, an S corporation. X holds natural resource recapture property, Property P, which has a fair market value of \$20,000 and an adjusted basis of \$14,000. A's and B's section 1254 costs with respect to Property P are \$4,000 and \$1,500, respectively. On January 1, 1997, C contributes \$20,000 to X in exchange for 100 shares of X's stock. Under paragraph (g)(1)(i) of this section, X must allocate to C a pro rata share of its shareholders' section 1254 costs. Using the assumptions set forth in paragraph (g)(5)(iii) of this section, X determines that A's section 1254 costs with respect to natural resource recapture property held by X equal \$4,500. Using written data provided by B, X determines that B's section 1254 costs with respect to Property P equal \$1,500. Thus, the aggregate of X's shareholders' section 1254 costs equals \$6,000. C's pro rata share of the \$6,000 of section 1254 costs equals \$3,000 (C's 50 percent interest in X multiplied by \$6,000). Under paragraph (g)(1)(ii) of this section, A's section 1254 costs are reduced by \$2,000 (A's actual section 1254 costs (\$4,000) multiplied by 50 percent). B's section 1254 costs are reduced by \$750 (B's actual section 1254 costs (\$1,500) multiplied by 50 percent).

Example 3. Merger involving an S corporation that holds natural resource recapture property. X, an S corporation with one shareholder, A, holds as its sole asset natural resource recapture property that has a fair market value of \$120,000 and an adjusted basis of \$40,000. A has section 1254 costs with respect to the property of \$60,000. For valid business reasons, X merges into Y, an S corporation with one shareholder, B, in a reorganization described in section 368(a)(1)(A). Y holds property that is not natural resource recapture property that has a fair market value of \$120,000 and basis of \$120,000. Under paragraph (c) of this section, A does not recognize ordinary income under section 1254 upon the exchange of stock in the merger because A did not otherwise recognize gain on the merger. Under paragraph (g)(2) of this section, Y must allocate to A and B a pro rata share of its \$60,000 of section 1254 costs. Thus, A and B are each allocated \$30,000 of section 1254 costs (50 percent interest in X, each, multiplied by \$60,000).

Par. 6. Section 1.1254-6 is amended by adding two sentences at the end of this section to read as follows:

§ 1.1254-6 Effective date of regulations.

* * * Section 1.1254-4 applies to dispositions of natural resource recapture property by an S corporation (and a corporation that was formerly an S corporation) and dispositions of S corporation stock occurring on or after October 10, 1996. Sections 1.1254-2(d)(1)(ii) and 1.1254-3(b)(1)(i) and (ii) and (d)(1)(i) and (ii) are effective for dispositions of property occurring on or after October 10, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows.

§ 602.101 OMB Control numbers.

* * * * *
(c) * * *

CFR part of section where identified and described	Current OMB control No.
1.1254-4	1545-1493

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved: September 10, 1996.
Donald C. Lubick,
Acting Assistant Secretary of the Treasury.
[FR Doc. 96-25945 Filed 10-9-96; 8:45 am]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA47-7120; FRL-5631-2]

Approval and Promulgation of Air Quality Implementation Plans; Washington; Revision to the State Implementation Plan Puget Sound (Seattle-Tacoma Area) Carbon Monoxide Attainment Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In this action, EPA is approving the attainment demonstration portion of the Central Puget Sound (also

referred to as the Seattle-Tacoma Area carbon monoxide (CO) State Implementation Plan (SIP) revision submitted to EPA on January 28, 1993, and supplemented on September 30, 1994, by the State of Washington Department of Ecology (Washington) for the purpose of documenting attainment of the national ambient air quality standards (NAAQS) for CO. The SIP revision was submitted by Washington to satisfy certain federal requirements for an approvable nonattainment area CO SIP for the Puget Sound nonattainment area in the State of Washington. The rationale for the approval of the attainment demonstration portion of this SIP revision is set forth in this notice. Additional information is available at the addresses indicated below.

EFFECTIVE DATE: This rulemaking is effective as of October 10, 1996.

ADDRESSES: Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA Region 10, Office of Air Quality, 1200 6th Avenue (OAQ-107), Seattle, Washington 981010; and the Washington State Department of Ecology, 300 Desmond Drive, Lacey, Washington 98504-7600.

FOR FURTHER INFORMATION CONTACT: William M. Hedgebeth, EPA Region 10, Office of Air Quality, 1200 6th Avenue (OAQ-107), Seattle, WA 98101, (206) 553-7369.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for moderate CO nonattainment areas are set out in sections 186-187 of the Clean Air Act Amendments of 1990 (CAAA) which pertain to the classification of CO nonattainment areas and to the submission requirements of the SIPs for these areas, respectively. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the CAA, [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's final rulemaking and the supporting rationale.

Those States containing CO nonattainment areas with design values greater than (>) 12.7 parts per million (ppm) were required to submit, among other things, an attainment demonstration by November 15, 1992, showing that the plan will provide for

attainment by December 31, 1995, for moderate CO nonattainment areas. The Puget Sound area, which includes lands within the Puyallup, Tulalip, and Muckleshoot Indian Reservations, had a design value of 14.8 ppm based on 1987 data, and was classified as "moderate > 12.7 ppm," under the provisions of section 186 of the CAA (see 56 FR 56694, November 6, 1991, 40 CFR § 81.348).

The CO NAAQS are for 1-hour and 8-hour periods and are not to be exceeded more than once per year. The 1-hour CO NAAQS is 35 ppm (40 mg/m³) and the 8-hour NAAQS is 9 ppm (10 mg/m³). No demonstration was required to be carried out for the 1-hour NAAQS, as the Puget Sound area has not violated this NAAQS since before the 1990 CAAA were enacted. The same strategies which bring the area into attainment with the 8-hour NAAQS will also contribute to reduced 1-hour concentrations.

II. Review of State Submittal

Section 110(k) of the CAA sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-66). In this action, EPA is granting approval of the attainment demonstration portion of the plan revision submitted to EPA on September 30, 1994, because it meets all of the applicable requirements of the CAA.

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.¹ Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not

made by EPA six months after receipt of the submission. In this instance, a completeness determination was made by operation of law.

With respect to the portions of the tribal lands which lie within the CO nonattainment area, EPA contacted the chairpersons of the Puyallup and Muckleshoot Tribal Councils and the Chairman of the Tulalip Board of Directors of the Tulalip Tribes of Washington to provide them with the information EPA has regarding the CO levels in the ambient air within the entire nonattainment area and to identify the effects that redesignating the entire area as attainment would have on those tribal lands. Mobile sources of CO are the primary sources of concern on the tribal lands within the nonattainment area. No CO "hot spot" problems have been identified on the tribal lands by EPA, Washington, or Puget Sound Air Pollution Control Agency (PSAPCA), nor have any stationary CO sources of concern been identified. EPA provided the three tribes the opportunity to discuss any concerns that they had regarding the pending redesignation; no concerns were identified.

2. Attainment Demonstration

The original CO attainment demonstration for the Central Puget Sound nonattainment area was submitted by Washington to EPA on January 28, 1993,² with supplemental information submitted as part of a SIP revision on September 30, 1994. The rollback approach used in the 1994 SIP supplement incorporated the use of a 90/10 split for emission sources, specifically attributing 90% of the CO emissions to local traffic and 10% of the CO emissions to regional CO sources. (The 1993 submittal had used a 75/25 split.) Because of questions about whether the use of the 90/10 split was adequately justified, Washington submitted supplemental information on May 10, 1996, documenting that the PSAPCA had conducted additional rollback calculations using a 75/25 split, specifically attributing 75% of the CO emission sources to local traffic and

² EPA published a Direct Final Rule on July 25, 1996, approving the Puget Sound Carbon Monoxide Attainment Demonstration. Because of an adverse comment received from the State of New York, EPA withdrew the Direct Final Rule on September 6, 1996. In the July 25, 1996, Federal Register, the SIP submittal date for the Attainment Demonstration was identified as September 30, 1994. The State of Washington Department of Ecology submitted the original Puget Sound CO Attainment Demonstration on January 28, 1993. Supplemental information which included rollback recalculations for the attainment demonstration was submitted in a SIP revision dated September 30, 1994.

¹ Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

25% to regional CO sources. This general approach had been approved by EPA in a letter dated October 16, 1992. Conservative assumptions used in the 1994 calculations were: (1) All sources included in the regional emissions inventory contribute to ambient concentrations at monitoring sites uniformly (i.e., distant point sources contribute just as much as motor vehicles two blocks away); (2) the attainment demonstration for Tacoma (the site of the highest design value in the nonattainment area) uses 1987 data, when the CAA calls for the most recent two years of data (1988 and 1989) and base year air quality data for all other monitoring sites are from 1988 and 1989; and (3) the rollback analysis is based on 1987, 1988, and 1989 air quality and a 1990 base year for emissions. A fundamental assumption of the rollback approach is that there is a proportional relationship between emissions and air quality during a base year and emissions and air quality in a future year. Use of the same base year for air quality and emissions is the norm.

Changes made by PSAPCA in the additional rollback calculations

submitted as supplemental information by Washington in May 1996 included the following four factors. First, the additional calculations used the same base year for emissions and air quality in Tacoma. Second, it conservatively assumed that all emissions other than local traffic emissions were the same in 1987 as in 1990, when in all likelihood, these emissions were higher in 1987. Third, the MOBILE5a model was run for 1987 and 1990 and, using the fleet average emissions factors for CO from these runs, developed a factor by which to multiply the 1990 mobile source emissions to produce a reasonable approximation of 1987 mobile source emissions. (No adjustment was made for traffic volumes, which may have been lower in 1987. See Public Comment/EPA Response below.) And fourth, as noted, the estimated 1987 mobile source emissions were input into the rollback using a 75/25 split. Separate design values were calculated for cold and warm weather since both cold and warm weather exceedances had been recorded. The rollback recalculation predicted attainment for both cold and warm weather in 1995, with a predicted

cold weather design value of 8.6 ppm and a predicted warm weather design value of 8.4 ppm, both in Tacoma, the site of the monitor with the highest recorded CO measurements.

A review of 1995 air quality data entered into the Aerometric Information Retrieval System (AIRS) data base indicated that the actual 1995 design value for the Tacoma CO monitor was 6.3 ppm. The actual 1995 design value for the entire nonattainment area was 6.5 ppm, significantly below the rollback calculated 1995 design value of 9.0 ppm using the 90/10 split or the 1995 cold and warm weather predicted design values using the 75/25 split in the recalculations submitted in May 1996.

Major control measures used by Washington during the winter season to effect annual emission reductions were the State's Emission Check Program, the expansion of the program into new areas, and oxygenated fuel. During the "warm season," there was no oxygenated fuel. The following summarizes the 1990 to 1995 emission inventory reductions.

1990 TO 1995 EMISSION INVENTORY REDUCTIONS

Category	Percent reduction	
	Cold weather	Warm weather
King County:		
On-Road Mobile Sources	36.5	25.6
Total Emission Inventory	27.8	15.9
Pierce County:		
On-Road Mobile Sources	40.0	30.2
Total Emission Inventory	29.7	19.2
Snohomish County:		
On-Road Mobile Sources	37.5	27.0
Total Emission Inventory	28.5	16.7

These are maximum estimates. MOBILE5a was used to develop these figures and assumed a basic inspection and maintenance program rather than Washington's specific program.

3. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (See CAA §§ 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control

measures and other elements in the SIP [see § 110(a)(2)(C)]. There are no specific enforceability issues related to EPA's approval of the Central Puget Sound CO attainment demonstration. General enforceability issues related to EPA's proposed approval of Washington's redesignation request and maintenance plan for the Central Puget Sound CO nonattainment area are discussed in the Federal Register, 61 FR 29515, June 11, 1996.

III. Public Comment/EPA Response

During the public comment period on EPA's proposed finding, the Agency received comments from one commenter, the State of New York Department of Environmental Conservation. No other comments were

received. A discussion of those comments are as follows.

1. Commenter states that "the exclusive use of rollback modeling does not simulate the 'hot spot' scenario and, therefore, is not adequate to address urban CO nonattainment."

Response: EPA accepts the analyses used by PSAPCA for this area to demonstrate attainment of the CO standard. (See Response to Comment 2 below.) The "rollback" approach used by PSAPCA was acceptable under EPA guidance in effect at the time the CO attainment demonstration was originally submitted by the State of Washington in 1993. Therefore, the rollback approach meets criteria identified in a memorandum, "'Grandfathering' of Requirements for Pending SIP

Revisions," from Gerald A. Emison, Director, Office of Air Quality Planning and Standards (June 27, 1988), under which, in certain circumstances, SIPs may be approved under guidance documents that are revised after the SIPs are submitted. EPA also recognizes that air monitoring in the nonattainment area has shown the area to be in attainment of the CO standard since 1991. The Maintenance Plan that EPA proposed to approve on June 11, 1996, utilizes "hot spot" modeling to project continued maintenance of the CO standard for 10 years. EPA believes that actual monitoring data which shows attainment of the standard confirms the results of the rollback analysis used in the attainment demonstration. This has been further supported by annual CO saturation studies conducted by the Washington Department of Ecology at potential hotspots; virtually all of the highly congested intersections in the region have been included in these studies and no exceedances have been recorded.

2. Commenter states that "the Puget Sound SIP rollback calculation does not consider growth in Vehicle Miles Traveled (VMT) relying solely on Mobile5a emission factors to demonstrate the proportional relationship between the base year emissions and air quality in the future. In the Federal Register supplementary information section it states that '(n)o adjustment was made for traffic volumes, which may have been lower in 1987.' New York recognizes that growth in VMT can negate or reduce the benefits from mobile source control measures and should be accounted for in any attainment demonstration."

Response: EPA agrees with the commenter that VMT growth should have been factored into the rollback calculation. As a result of the commenter's concern, PSAPCA recalculated the rollback analysis, incorporating VMT growth factors derived from Highway Performance Monitoring System (HPMS) VMT data for the Puget Sound area. This supplemental information was formally submitted to EPA by Washington on September 12, 1996. EPA has reviewed the recalculations, along with the methodology for deriving the VMT growth factors, and is satisfied that the methodology used was appropriate and that attainment is satisfactorily predicted, with a predicted 1995 design value of 8.98 ppm. It should be noted again that the actual 1995 design values for the Tacoma CO monitor and for the Puget Sound CO nonattainment area as a whole are significantly lower than this predicted design value and that there

have been no violations of the CO NAAQS for five years.

IV. Rulemaking Action

EPA is approving the attainment demonstration portion of Washington's Central Puget Sound CO SIP revision submitted to EPA on September 30, 1994, because Washington's submittal meets the requirements set forth in section 187(a)(7) of the CAA.

Pursuant to Section 553(d)(3) of the Administrative Procedures Act (APA), this final notice is effective upon the date of publication in the Federal Register. Section 553(d)(3) of the APA allows EPA to waive the requirement that a rule be published 30 days before the effective date if EPA determines there is "good cause" and publishes the grounds for such a finding with the rule. Under section 553(d)(3), EPA must balance the necessity for immediate Federal enforceability of these SIP revisions against principles of fundamental fairness which require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule. *United States v. Gavrilovic*, 551 F.2d 1099, 1105 (8th Cir., 1977). The purpose of the requirement for a rule to be published 30 days before the effective date of the rule is to give all affected persons a reasonable time to prepare for the effective date of a new rule.

EPA is making this rule effective upon October 10, 1996 to provide sufficient time for necessary rulemaking for the forthcoming Central Puget Sound Carbon Monoxide Redesignation. Washington will discontinue implementation of the oxygenated fuel program in the Seattle-Tacoma-Everett Consolidated Metropolitan Statistical Area (CMSA) once approval of the carbon monoxide maintenance plan becomes effective. As much time as possible needs to be provided for State and local air authorities to notify fuel distributors so that distribution plans can be modified in response to these changes.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the

procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Approval of the attainment demonstration does not impose any new requirements on small entities. The Regional Administrator certifies that the approval of the attainment demonstration will not affect a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA

to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. § 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a major rule as defined by 5 U.S.C. § 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 26, 1996.

Chuck Clarke,

Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(62) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(62) On September 30, 1994, the Director of WDOE submitted to the Regional Administrator of EPA a revision to the Carbon Monoxide State Implementation Plan for, among other things, the CO attainment demonstration for the Central Puget Sound carbon monoxide nonattainment area. This was submitted to satisfy federal requirements under section 187(a)(7) of the Clean Air Act, as amended in 1990, as a revision to the carbon monoxide State Implementation Plan.

(i) Incorporation by reference.

(A) September 30, 1994, letter from WDOE to EPA submitting an attainment demonstration revision for the Central Puget Sound CO nonattainment area (adopted on September 30, 1994); a supplement letter and document from WDOE, "Reexamination of Carbon Monoxide Attainment Demonstration for the Tacoma Carbon Monoxide Monitoring Site for the Supplement to the State Implementation Plan for Washington State, A Plan for Attaining and Maintaining National Ambient Air Quality Standards for Carbon Monoxide in the Puget Sound Nonattainment Area," dated May 10, 1996; and a supplement letter and document from WDOE, "Revisions to the May 1996 Reexamination of Carbon Monoxide Attainment Demonstration for the Tacoma Carbon Monoxide Monitoring Site", dated September 12, 1996.

[FR Doc. 96-25980 Filed 10-9-96; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AD46

Endangered and Threatened Wildlife and Plants; Determination of Endangered or Threatened Status for Nineteen Plant Species From the Island of Kauai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 17 plants: *Alsinidendron lychnoides* (kuawawaenuhu), *Alsinidendron viscosum* (No common name (NCN)), *Cyanea remyi* (haha), *Cyrtandra cyaneoides* (mapele), *Delissea rivularis* ('oha), *Hibiscadelphus woodii* (hau kuahiwi), *Hibiscus waimeae* ssp. *hannerae* (koki'o ke'oke'o), *Kokia kauaiensis* (koki'o), *Labordia tinifolia* var. *wahiawaensis* (kamakahala), *Phyllostegia knudsenii* (NCN), *Phyllostegia wawrana* (NCN), *Pritchardia napaliensis* (loulou), *Pritchardia viscosa* (loulou), *Schiedea helleri* (NCN), *Schiedea membranacea* (NCN), *Schiedea stellarioides* (lauhilihi), and *Viola kauaensis* var. *wahiawaensis* (nani wai'ale'ale). The Service also determines threatened status for two plant species: *Cyanea recta* (haha) and *Myrsine linearifolia* (kolea). All of the species are endemic to the island of Kauai, Hawaiian Islands. The 19 plant taxa and their habitats have been variously affected or are currently threatened by one or more of the following: competition, predation or habitat degradation from introduced species, natural disasters, and trampling by humans. This rule implements the Federal protection provisions provided by the Act. Listing under the Act also triggers listed status for these 19 taxa under State law.

EFFECTIVE DATE: This rule takes effect November 12, 1996.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3108, P.O. Box 5088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Brooks Harper, Field Supervisor, Ecological Services (see ADDRESSES

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SUPPLEMENTARY INFORMATION:

Background

Alsinidendron lychnoides, *Alsinidendron viscosum*, *Cyanea recta*, *Cyanea remyi*, *Cyrtandra cyaneoides*, *Delissea rivularis*, *Hibiscadelphus woodii*, *Hibiscus waimeae* ssp. *hannerae*, *Kokia kauaiensis*, *Labordia tinifolia* var. *wahiawaensis*, *Myrsine linearifolia*, *Phyllostegia knudsenii*, *Phyllostegia wawrana*, *Pritchardia napaliensis*, *Pritchardia viscosa*, *Schiedea helleri*, *Schiedea membranacea*, *Schiedea stellarioides*, and *Viola kauaiensis* var. *wahiawaensis* are endemic to the island of Kauai.

The island of Kauai is the northernmost and oldest of the eight major Hawaiian Islands (Foote *et al.* 1972). This highly eroded island, characterized by deeply dissected canyons and steep ridges, is 1,430 square kilometers (sq km) (553 sq miles (mi)) in area (Department of Geography 1983). Kauai was formed about six million years ago by a single shield volcano. Its caldera, once the largest in the Hawaiian Islands, now extends about 16 km (10 mi) in diameter and comprises the extremely wet, elevated tableland of Alakai Swamp (Department of Geography 1983). Because the highest point on Kauai, at Kawaikini Peak, is only 1,598 m (5,243 ft) in elevation (Walker 1990), it lacks the contrasting leeward montane rainfall patterns found on other Hawaiian islands that have higher mountain systems. Rainfall is distributed throughout the upper elevations, especially at Mount Waialeale, Kauai's second highest point at 1,569 m (5,148 ft) in elevation (Walker 1990) and one of the wettest spots on earth, where annual rainfall averages 1,145 centimeters (cm) (450 inches (in)) (Wagner *et al.* 1990). To the west of the Alakai Swamp is the deeply dissected Waimea Canyon, extending 16 km (10 mi) in length and up to 1.6 km (1 mi) in width. Later volcanic activity on the southeastern flank of the volcano formed the smaller Haupu caldera. Subsequent erosion and collapse of its flank formed Haupu Ridge (Macdonald *et al.* 1983). One of the island's most famous features is the Na Pali Coast, where stream and wave action have cut deep valleys and eroded the northern coast to form precipitous cliffs as high as 910 m (3,000 ft) (Joesting 1984).

Because of its age and relative isolation, levels of floristic diversity and endemism are higher on Kauai than on any other island in the Hawaiian archipelago. However, the vegetation of

Kauai has undergone extreme alterations because of past and present land use. Land with rich soils was altered by the early Hawaiians and, more recently, converted to agricultural use (Gagne and Cuddihy 1990) or pasture. Intentional or inadvertent introduction of alien 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 and wet regions within Kauai's conservation district. The 19 taxa in this final rule occur in that district, between 150 and 1,310 m (500 and 4,300 ft) elevation, within large State-owned tracts of natural area reserves, forest reserves, and parks, and smaller privately owned tracts. Most of the taxa 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 alien animal and plant species.

The 19 taxa in this final rule are distributed mostly in the northern and northwestern portions of the island and grow in a variety of vegetation communities (shrublands, forests, and mixed communities), elevational zones (lowland to montane), and moisture regimes (dry to wet). Only one species, *Pritchardia napaliensis*, is found in lowland dry communities. These once abundant communities are now fragmented due to fire, development, and the ingression of alien plants and animals. Lowland dry forests in Hawaii are characterized by an annual rainfall of 50 to 200 cm (20 to 80 in) that falls between November and March, and a well-drained, highly weathered substrate rich in aluminum (Gagne and Cuddihy 1990).

Most populations of the 19 taxa in this final rule are in lowland mesic or wet shrubland or forest communities. Lowland mesic shrublands lie between 30 and 850 m (100 and 2,790 ft) elevation and are characterized by an open or closed canopy up to 3 m (10 ft) tall with little or no herbaceous layer development. These shrublands usually occur in habitats where forests cannot develop, such as on cliffs, ridges, and steep slopes. The annual rainfall of 100 to 200 cm (40 to 80 in) falls primarily during the winter months (Gagne and Cuddihy 1990). Lowland mesic forest communities lie between 30 and 1,600 m (100 and 5,250 ft) elevation and are characterized by a 2 to 20 m (6.5 to 65 ft) canopy and a diverse understory of shrubs, herbs, and ferns. The annual rainfall of 120 to 380 cm (45 to 150 in) falls predominantly between October

and March (Gagne and Cuddihy 1990). Lowland mesic forests often grade into lowland wet forests that are typically found on the windward sides of islands or in sheltered leeward situations between 100 and 1,200 m (330 and 3,940 ft) elevation. The rainfall in this lowland wet community may exceed 500 cm (200 in) per year. These forests were once the predominant vegetation on Kauai but now exist only on steep rocky terrain or cliff faces. The substrate is generally well-drained soils that may support tree canopies up to 40 m (130 ft) in height (Cuddihy and Stone 1990, Gagne and Cuddihy 1990). The habitat of eight of the 19 taxa in this final rule extends to the higher elevation montane mesic or wet forests. *Alsinidendron lychnoides*, *Delissea rivularis*, and *Schiedea helleri* are the only taxa found strictly within these montane communities, which typically occur above 910 m (3,000 ft) elevation (Hawaii Heritage Program (HHP) 1994a). The annual rainfall in montane communities may exceed 700 cm (280 in) (Gagne and Cuddihy 1990).

The land that supports these 19 plant taxa is owned by various private parties and the State of Hawaii (including State parks, forest reserves, and natural area reserves).

Discussion of the 19 Plant Taxa Included in This Final Rule

Alsinidendron lychnoides was first described by Wilhelm Hillebrand (1888) as *Schiedea lychnoides* based on a specimen collected by Valdemar Knudsen (between about 1853 and 1871) above Waimea, Kauai. While both Hillebrand and Amos Heller (1897) believed that there were good reasons to place *Schiedea lychnoides* in the genus *Alsinidendron*, it wasn't until 1944 that Earl Sherff transferred the species to this genus.

Alsinidendron lychnoides, a member of the pink family (Caryophyllaceae), is a weakly climbing or sprawling subshrub. The main stems are 0.4 to 3 m (1.3 to 9.8 ft) long with short side branches. The plant is woody, at least at the base, and densely covered with fine glandular hairs throughout. The thin leaves are egg-shaped to elliptic and are 3.5 to 6.5 cm (1.4 to 2.6 in) long and 1.5 to 3.8 cm (0.6 to 1.5 in) wide. Scattered clusters of 18 to 21 flowers range from 2 to 2.4 cm (0.8 to 0.9 in) in length. The four sepals are white and thin, and remain so at maturity. The outer two sepals greatly overlap the inner ones. The sepals are oblong-ovate, 10 to 12 millimeters (mm) (0.4 to 0.5 in) long, but enlarge to 12 to 16 mm (0.5 to 0.6 in) long in fruit, completely enclosing the fruit at maturity. The stamens are

scarcely fused at the base with basal outgrowths 2.5 to 3.5 mm (0.1 in) long, nearly as wide, and two- to three-toothed. The fruit are egg-shaped capsules, 9 to 12 mm (0.4 to 0.5 in) long, with 8 to 11 valves. The black seeds are approximately 1 mm (0.04 in) long with low transverse ridges on the surface. This 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. *Alsinidendron lychnoides* is closely related to *Alsinidendron viscosum*, which differs primarily in having narrower leaves, fewer capsule valves, and fewer flowers per cluster (Wagner *et al.* 1990).

Historically, *Alsinidendron lychnoides* has been 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 (HHP 1994b2 to 1994b4, 1994b7; Wagner *et al.* 1990). This species is extant on State-owned land in the Alakai Swamp, including the Alakai Wilderness Preserve, and on State-owned land on the east rim of Kalalau Valley. This latter population occurs on the boundary of Hono O Na Pali Natural Area Reserve (NAR) and Na Pali Coast State Park. The four known populations contain a total of between 50 and 100 plants (HHP 1994b1, 1994b5, 1994b6; Hawaii Plant Conservation Center (HPCC) 1992a; Wood and Perlman 1993a; Yoshioka 1992; Diane Ragone, National Tropical Botanical Garden (NTBG), *in litt.* 1995). *Alsinidendron lychnoides* typically grows in montane wet forest dominated by *Metrosideros polymorpha* ('ohi'a) and *Cheirodendron* sp. ('olapa), or by 'ohi'a and *Dicranopteris linearis* (uluhe), trailing on the ground or on other vegetation, and at elevations between 1,100 and 1,320 m (3,600 and 4,330 ft). Associated plant species include *Athyrium* sp., *Carex* sp., *Cyrtandra* sp. (ha'iwale), *Machaerina* sp. ('uki), *Vaccinium* sp. ('ohelo), *Peperomia* sp. ('ala 'ala wai nui), *Hedyotis terminalis* (manono), *Astelia* sp. (pa'iniu), and *Broussaisia arguta* (kanawao) (HHP 1994b5, 1994b6; HPCC 1992a; Wagner *et al.* 1990; Marie M. Brueggemann, U.S. Fish and Wildlife Service, *in litt.* 1994).

The major threats to *Alsinidendron lychnoides* are competition from the aggressive alien plant species *Rubus argutus* (prickly Florida blackberry), habitat degradation by feral pigs (*Sus scrofa*), and trampling by humans. One plant has died since Hurricane 'Iniki struck Kauai in September 1992. This species is also threatened by a risk of

extinction from naturally occurring events (such as landslides or hurricanes) and/or reduced reproductive vigor due to the small number of extant individuals (Center for Plant Conservation (CPC) 1990; HHP 1994b1, 1994b5, 1994b6; HPCC 1992a; M. Brueggemann, *in litt.* 1994).

Horace Mann, Jr. (1866) originally described *Alsinidendron viscosum* as *Schiedea viscosa* based on a collection he made with William Brigham (between 1864 and 1865) on Kauai (Wagner *et al.* 1990). He chose the specific name in reference to the sticky hairs covering the whole plant. Later, Sherff (1944) placed the taxon in the genus *Alsinidendron* based on a reassessment of this species and *Schiedea lychnoides*, as suggested by Hillebrand (1888) and Heller (1897).

Alsinidendron viscosum, a member of the pink family, is a weakly climbing or sprawling subshrub. The stems are 0.6 to 3 m (2.0 to 9.8 ft) long, and densely covered with fine glandular hairs throughout. The thin and membranous leaves are narrowly elliptic and are 2.5 to 5 cm (1.0 to 2.0 in) long and 0.8 to 1.8 cm (0.3 to 0.7 in) wide. Usually three to nine flowers are arranged in loose clusters with stalks ranging from 2 to 3.5 cm (0.8 to 1.4 in) long. The four sepals are white, thin, and membranous, and remain so at maturity. The outer two sepals greatly overlap the inner ones. The sepals are oblong in shape and 8 to 9 mm (0.3 in) long, but enlarge to approximately 12 mm (0.5 in) long in fruit, completely enclosing the fruit at maturity. The stamens are sparsely fused at the base and the basal outgrowths are about 3 mm (0.1 in) long, nearly as wide, and two-toothed. The fruits are egg-shaped capsules, 8 to 12 mm (0.3 to 0.5 in) long, and opening by five to seven valves. The seeds are dark reddish brown, and approximately 0.8 mm (0.03 in) long with a minutely hairy surface. This 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. *Alsinidendron viscosum* is closely related to *Alsinidendron lychnoides*, which differs primarily in having wider leaves and more capsule valves and flowers per cluster (Wagner *et al.* 1990).

Historically, *Alsinidendron viscosum* was known from the Kaholuamano, Kokee, Halemanu, Nawaimaka, and Waialae areas of northwestern Kauai (HHP 1994c1 to 1994c3). This species had not been seen since Charles Noyes Forbes' 1917 collection near Kauaikinana in Kokee when, in 1991, Steven Perlman and Kenneth Wood of

HPCC discovered a population of 11 mature plants on the ridge between Waialae and Nawaimaka valleys. In 1993, another 20 to 30 plants were discovered in the same general area on a north-facing ridge in Nawaimaka Valley. In 1992, Timothy Flynn and David Lorence of the National Tropical Botanical Garden (NTBG) located 10 plants along the Mohihi-Waialae Trail. The two known populations (two subpopulations in Nawaimaka Valley and one population on Mohihi-Waialae Trail) total between 40 and 60 mature plants on State-owned land. One population is within the Alakai Wilderness Preserve (Flynn and Lorence 1992; HHP 1994c4; HPCC 1993a1, 1993a2; Yoshioka 1992; Flynn and Wood, NTBG, pers. comms. 1994). *Alsinidendron viscosum* is typically found at elevations between 820 and 1,070 m (2,700 and 3,510 ft), on steep slopes in *Acacia koa* (koa)-'ohi'a lowland mesic or wet forest. Associated plant species include *Alyxia oliviformis* (maile), *Bohea* sp. ('ahakea), *Carex* sp., *Dodonaea viscosa* ('a'ali'i), *Ilex anomala* ('aiea), *Melicope* sp. (alani), *Pleomele* sp. (hala pepe), and *Psychotria* sp. (kopiko) (HHP 1994c4; HPCC 1993a1, 1993a2; Flynn and Lorence 1992; Wagner *et al.* 1990; K. Wood, pers. comm. 1994).

Destruction of habitat by feral pigs and goats (*Capra hircus*); competition with the alien plant species prickly Florida blackberry, *Lantana camara* (lantana), and *Melinis minutiflora* (molasses grass); and a risk of extinction from naturally occurring events and/or reduced reproductive vigor, due to the small number of extant populations and individuals, are the major threats to *Alsinidendron viscosum* (HHP 1994c4; HPCC 1993a1, 1993a2; S. Perlman, and K. Wood, NTBG, pers. comms. 1994; Christa Russell, The Nature Conservancy of Hawaii (TNCH), *in litt.* 1994).

While a member of the Austrian East Asiatic Exploring Expedition, Dr. Heinrich Wawra collected a new lobelioid on Kauai which he later described and named *Delissea recta* (Wawra 1873). In 1888, Hillebrand transferred this species to the genus *Cyanea*, and this is the name accepted in the current treatment of the family (Lammers 1990). Other published names that Lammers (1990) considers to be synonymous with *Cyanea recta* include *Cyanea larrisonii*, *Cyanea rockii*, *Cyanea salicina*, *Delissea larrisonii*, and *Delissea rockii* (Rock 1915, St. John 1987b, Wimmer 1968).

Cyanea recta, a member of the bellflower family, is an unbranched shrub 1 to 1.5 m (3.3 to 4.9 ft) tall. The

narrowly elliptic leaves are 12 to 28 cm (4.7 to 11 in) long and 1.2 to 5 cm (0.5 to 2 in) wide, with minutely toothed margins. The upper surface is green and smooth, while the lower surface is whitish green to pale green, and smooth or hairy. Five to seven flowers are arranged on an inflorescence stalk 7 to 10 cm (3 to 4 in) long, each having an individual stalk 5 to 17 mm (0.2 to 0.7 in) in length. The densely hairy flowers are purple or white with purple longitudinal stripes, 30 to 40 mm (1.2 to 1.6 in) long, and 3 to 4 mm (0.1 to 0.2 in) wide, with spreading lobes. The staminal column is smooth or sparsely hairy at the base. The anthers are covered with minute epidermal projections, the lower two with tufts of white hairs at the tip. The fruit is an egg-shaped, purple berry. *Cyanea recta* 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 1990).

Historically, *Cyanea recta* was known from scattered locations of northeastern and central Kauai, including upper Hanalei Valley, Waioli Valley, Hanapepe Valley, Kalalau cliffs, Wainiha Valley, Makaleha Mountains, Limahuli Valley, Powerline Trail, and the Lehua Makanoe-Alakai area (HHP 1994d1 to 1994d7). Currently, six populations of this species, totalling approximately 500 to 1,500 individuals, are found on State and private land in the following areas: upper Waioli Valley, with more than 150 plants; Wainiha Valley, with several hundreds of plants; Makaleha Mountains, with an estimated 123 plants; Limahuli Valley with fewer than 50 plants; Powerline Trail with a single plant; and the back of Hanalei Valley with an unknown number of plants (HHP 1994d3, 1994d8 to 1994d10; HPCC 1992b, 1993c1, 1993c2; Lorence and Flynn 1993a, 1993b; K. Wood and S. Perlman, pers. comms. 1994). *Cyanea recta* grows in lowland wet or mesic 'ohi'a forest or shrubland, usually in gulches or on slopes, and typically from 400 to 940 m (1,300 to 3,070 ft) elevation. Associated plant species include kopiko, *Antidesma* sp. (hame), *Cheirodendron platyphyllum* (lapalapa), *Cibotium* sp. (hapu'u), and *Diplazium* sp. (HHP 1992; HPCC 1992b, 1993c1, 1993c2; Lammers 1990; Lorence and Flynn 1993a, 1993b).

The major threats to *Cyanea recta* are bark removal by rats; habitat degradation by feral pigs; browsing by goats; and competition with the alien plant species *Blechnum occidentale* (blechnum fern), lantana, *Rubus*

rosifolius (thimbleberry), *Clidemia hirta* (Koster's curse), *Crassocephalum crepidioides*, *Deparia petersenii*, *Erechtites valerianifolia* (fireweed), *Melastoma candidum*, *Paspalum conjugatum* (Hilo grass), *Sacciolepis indica* (Glengrass), and *Youngia japonica* (Oriental hawkbeard) (Lorence and Flynn 1993a, 1993b; Wood and Perlman 1993b; K. Wood, pers. comm. 1994).

The French naturalist and ethnologist Ezechiel Jules Remy first collected *Cyanea remyi* on Kauai or Niihau between 1851 and 1855. The specimen, labelled as an unidentified *Delissea*, languished in the herbarium of the Natural History Museum in Paris until Joseph Rock formally described it and named it in honor of the collector, in 1917. In the current treatment of the family, Lammers (1990) surmised that the taxon may be synonymous with *Cyanea truncata* due, at that time, to the inadequate material available for study. However, several recent collections by botanists from NTBG have confirmed the distinctness of this species (Lammers 1993; Thomas Lammers, Field Museum of Natural History, and S. Perlman, pers. comms. 1994).

Cyanea remyi, a member of the bellflower family, is a shrub 0.9 to 2 m (3 to 6.6 ft) tall with generally unbranched stems 1 to 2.5 cm (0.4 to 1 in) in diameter. The stems are erect, unarmed (lacking prickles), dark purple and hairy toward the apex, and brown and hairless below. The leaves are broadly elliptic, egg-shaped, or broadly oblong, and 16 to 40 cm (6 to 16 in) long and 9.5 to 19.5 cm (3.7 to 7.7 in) wide. The upper leaf surface is green, glossy, and hairless. The lower leaf surface is whitish green and glossy with scattered short white hairs on the midrib and veins. The leaf margins are hardened and slightly toothed. The inflorescence rises upward, contains six to 13 flowers, and is covered with short white hairs. The dark maroon sepal lobes are triangular or narrowly triangular, spreading or ascending, and 4 to 6 mm (0.2 in) long and 1 to 2 mm (0.04 to 0.08 in) wide. The tubular flowers, 40 to 53 mm (2 in) long, have two lips, are dark purple (shading to purplish white at the apex of the lobes on their inner surface), and are densely covered with short white hairs. The flower tube is curved, 30 to 31 mm (1 in) long and 5 to 5.5 mm (0.2 in) in diameter. The staminal column is slightly protruding. The maroon or dark purple fruit is a round berry, 10 to 13 mm (0.4 to 0.5 in) in diameter, with orange flesh and small projections on the outer surface. *Cyanea remyi* is distinguished from others in the genus that grow on Kauai by its

shrubby habit; relatively slender, unarmed (lacking prickles) 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 and Lorence 1993).

Cyanea remyi was originally known only from Remy's nineteenth century collection. In 1991, after more than 130 years, *Cyanea remyi* was rediscovered in the Blue Hole on Kauai by botanists from NTBG. Currently, this species is known from four widely separated locations in northeastern and southeastern Kauai: a population of 14 plants in Waioli Valley; several hundred plants at the base of Mount Waialeale; about 140 to 180 plants in the Wahiawa Mountains, near Hulua; and a population of about ten to 50 plants on the summit plateau of the Makaleha Mountains. This species, therefore, totals over several hundred plants on State and private land. *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 hame, kanawao, 'ohi'a, *Freycinetia arborea* ('ie'ie), and *Perrottetia sandwicensis* (olomea) (HHP 1992, 1994e; HPCC 1991a1, 1991a2, 1992c; Lorence and Flynn 1991, 1993a, 1993b).

Competition with the alien plant species fireweed, Hilo grass, *Psidium cattleianum* (strawberry guava), thimbleberry, and *Melastoma candidum*; habitat degradation by feral pigs; browsing by goats; predation by rats; unidentified slugs that feed on the stems; and a risk of extinction from naturally occurring events, due to the small number of remaining populations, are the major threats to *Cyanea remyi* (HPCC 1991a1, 1991a2, 1992c; Lorence and Flynn 1991, 1993b; S. Perlman, pers. comm. 1994).

In 1909, Rock collected a plant specimen on Kauai that he named *Cyrtandra cyaneoides* (Rock 1913a). The specific epithet refers to the resemblance of this distinctive plant to a species of the endemic Hawaiian genus *Cyanea*.

Cyrtandra cyaneoides, a member of the African violet family (Gesneriaceae), is an erect or ascending, fleshy, unbranched shrub, about 1 to 1.3 m (3.3 to 4.3 ft) tall. The opposite, symmetrical, egg-shaped leaves are fleshy and leathery, 40 to 55 cm (16 to 22 in) long and 22 to 35 cm (9 to 14 in) wide. The upper surface of the toothed leaves is wrinkled with impressed veins and sparsely covered with long hairs. The lower surface has raised veins and is sparsely covered with hairs. The leaf

stalks are 4.5 to 14 cm (1.8 to 5.5 in) long and winged. The white flowers, covered with shaggy brown hairs, arise from the leaf axils in small dense clusters. The corolla tube (fused petals) is narrowly funnellform, curved near the middle, about 25 mm (1 in) long, and hairless. The corolla lobes are elliptic and about 7 mm (0.3 in) long. The bilaterally symmetrical calyx is spindle-shaped in bud and about 26 to 36 mm (1 to 1.4 in) in length when the flower is fully open, but falls off after the flower matures. The fruit is an egg-shaped berry which is covered with shaggy hairs, at least when young. Although poorly known, *Cyrtandra cyaneoides* is a very distinctive species (Wagner et al. 1990). It 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 that 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. 1990).

Cyrtandra cyaneoides was originally known only from the type collection made at Kaholuamanu 80 years ago, along the trail to Waialae Valley on the island of Kauai (HHP 1994f1, Wagner et al. 1990). In 1991, botanists from NTBG discovered a population of 50 to 100 individuals at Namolokama above Lumahai Valley. Three additional populations were discovered over the next 2 years: one plant on the Makaleha Plateau; more than 300 plants in Wainiha Valley; and one plant in upper Waioli Valley for a total of between 350 and 400 plants (HHP 1994f2; Lorence and Flynn 1993a, 1993b; Wood and Perlman 1993b). The four known populations occur on private and State land, between 550 and 1,220 m (1,800 and 4,000 ft) elevation. This species typically grows on steep slopes or cliffs near streams or waterfalls in lowland or montane wet forest or shrubland dominated by 'ohi'a or a mixture of 'ohi'a and uluhe. Associated species include *Boehmeria grandis* ('akolea), *Pipturus* sp. (mamaki), 'olapa, 'uki, *Athyrium* sp., and *Hedyotis* sp. (manono) (Lorence and Flynn 1993a, 1993b; Wood and Perlman 1993b).

The major threat to *Cyrtandra cyaneoides* is competition with alien plant species such as fireweed, Hilo grass, thimbleberry, *Deparia petersenii*, and *Drymaria cordata* (pipili). Because of the small number of known populations, this species is especially vulnerable to extinction by reduced reproductive vigor and/or naturally occurring events (for example,

landslides and hurricanes). Feral pigs are reported to occur in lower Wainiha Valley; however, no evidence exists of their incursion into the upper valley to date (HHP 1994f2; HPCC 1993d; Lorence and Flynn 1993a, 1993b; S. Perlman, pers. comm. 1994).

In 1909, Rock collected a plant specimen on Kauai that he later named *Cyanea rivularis* (Rock 1913b). In 1943, F.E. Wimmer transferred this species to *Delissea*, and Lammers (1990) concurred in the current treatment of this endemic Hawaiian genus. The specific epithet refers to streams or brooks, the typical habitat of this plant.

Delissea rivularis, a member of the bellflower family, is a shrub, unbranched or branched near the base, with hairy stems 4 to 5 m (13 to 16 ft) long. The leaves are arranged in a rosette at the tips of the stems. The elliptic to lance-shaped leaves are 20 to 30 cm (8 to 12 in) long and 3 to 8 cm (1.2 to 3.2 in) wide, with minutely toothed margins. Both leaf surfaces are covered with hairs. Six to twelve flowers are arranged on an inflorescence stalk 4 to 8 cm (1.6 to 3.2 in) long, each having an individual stalk 10 to 15 mm (0.4 to 0.6 in) in length. The curved, hairy flowers are white with blue longitudinal stripes, 30 to 40 mm (1.2 to 1.6 in) long, with one dorsal knob. The fruit is a spherical, dark purple berry 10 to 15 mm (0.4 to 0.6 in) in diameter. This 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 1990).

Historically, *Delissea rivularis* was known from Waiakealoha waterfall (location unknown), Waialae Valley, Hanakoa Valley, and Kaholuamanu on the island of Kauai (HHP 1994g1 to 1994g3, Lammers 1990). This species, recently recollected after almost 80 years, is now known only from the upper Hanakoa Valley stream area of northwestern Kauai (HPCC 1993e; S. Perlman, pers. comm. 1994). This population of 15 to 20 plants, scattered over an area of more than 100 sq m (1,100 sq ft), is on State land within the Hono O Na Pali NAR at about 1,190 m (3,900 ft) elevation. *Delissea rivularis* is found on steep slopes in 'ohi'a-'olapa montane wet or mesic forest, near streams. Associated native species include kanawao, *Athyrium* sp., *Carex* sp., *Coprosma* sp. (pilo), and *Sadleria* sp. ('ama'u) (HPCC 1993e; Lammers 1990; S. Perlman, pers. comm. 1994).

The major threats to *Delissea rivularis* are competition with the encroaching alien plant prickly Florida blackberry, habitat destruction by feral pigs, and

reduced reproductive vigor and/or a risk of extinction from naturally occurring events due to the small number of remaining individuals in the single remaining population (HPCC 1993e; S. Perlman, pers. comm. 1994).

In 1991, several new species were collected by K. Wood, M. Query, and Steve Montgomery on the cliff walls of Kalalau Valley, Kauai, including a new species in the endemic Hawaiian genus *Hibiscadelphus*. *Hibiscadelphus woodii* was described in 1995 by Lorence and Warren Wagner (1995; Wood and Perlman 1993a; D. Lorence and K. Wood, pers. comms. 1994).

Hibiscadelphus woodii, a member of the mallow family (Malvaceae), is a small branched tree 2.5 to 5 m (8.2 to 16.4 ft) tall with a rounded crown. The leaves have stalks 2.8 to 5.8 cm (1.1 to 2.3 in) long, with star-shaped hairs when young which are mostly lost as the leaf matures. Awl-shaped stipules, also covered with star-shaped hairs, are found at the base of the leaf stalk. The leaf blade is ovate, 7 to 9 cm (2.6 to 3.5 in) long, and 6.5 to 8.4 cm (2.6 to 3.3 in) wide. Star-shaped hairs are scattered along the veins of the leaves. The leaf margins are irregularly and coarsely toothed with the teeth either pointed or rounded. Flowers are borne individually on stalks 1.4 to 2.1 cm (0.6 to 0.8 in) long with star-shaped hairs. Below each flower are four to six bracts 11 to 15 mm (0.4 to 0.6 in) long and 1.8 to 4 mm (0.07 to 0.16 in) wide. The calyx is tubular, 1.3 to 1.5 cm (0.5 to 0.6 in) long, green, shallowly lobed, and moderately hairy with star-shaped hairs. The corolla is 4.5 to 4.7 cm (1.8 to 1.9 in) long, yellow with a coppery tinge when fresh which rapidly turns purplish-maroon. The staminal column extends about 7 mm (0.3 in) beyond the lobes of the corolla. Fruits are not known from this species. *Hibiscadelphus woodii* differs from the other known Kauai species by differences in leaf surface and involucral bract characters, and by flower color (Lorence and Wagner 1995; D. Lorence, pers. comm. 1994).

Hibiscadelphus woodii is known only from the site of its discovery in Kalalau Valley on the island of Kauai within the Na Pali Coast State Park, from about 990 to 1,000 m (3,250 to 3,280 ft) elevation. Only four trees of this species are known. The plants grow on cliff walls in an 'ohi'a montane mesic forest with alani, *Dubautia* sp. (na'ena'e), *Lepidium serra* ('anaunau), *Lipochaeta* sp. (nehe), *Lysimachia* sp., *Chamaesyce* sp. ('akoko), manono, *Nototrichium* sp. (kulu'i), *Myrsine* sp. (kolea), and the federally endangered species *Stenogyne campanulata*, *Lobelia niihauensis*, and *Poa mannii* (Mann's bluegrass) (HPCC

1991c; Lorence and Wagner 1995; D. Lorence and K. Wood, pers. comms. 1994).

Habitat degradation by feral goats and pigs, competition and invasion by the alien plant species *Erigeron karvinskianus* (daisy fleabane), nectar robbing by Japanese white-eye (*Zosterops japonicus*), and a risk of extinction from naturally occurring events (e.g., rock slides) and/or reduced reproductive vigor, due to the small number of existing individuals in the only known population, are the major threats to *Hibiscadelphus woodii* (HPCC 1991c; Lorence and Wagner 1995; D. Lorence, pers. comm. 1994).

Reverend John Mortimer Lydgate collected *Hibiscus waimeae* ssp. *hannerae* on Kauai in 1913, and more than 60 years passed before it was collected again, in 1978, by Perlman. Otto and Isa Degener named Lydgate's collection as a variety of *H. waimeae* in honor of Mrs. Ruth Knudsen Hanner, a supporter of their work on Kauai (Degener and Degener 1962). David M. Bates, the author of the current treatment of the Hawaiian members of the family, elevated the plant to subspecies rank (Bates 1989, 1990).

Hibiscus waimeae ssp. *hannerae*, a member of the mallow family, is a gray-barked tree, 6 to 10 m (20 to 33 ft) tall, with star-shaped hairs densely covering its leaf and flower stalks and branchlets. The circular to broadly egg-shaped leaves are usually 5 to 18 cm (2 to 7 in) long and 3 to 13 cm (1.2 to 5 in) wide. The strongly fragrant flowers are borne singly near the ends of the branches on flower stalks 2 to 3 cm (0.8 to 1.2 in) long. The calyx is tubular, normally 3 to 4.5 cm (1.2 to 1.8 in) long, with lobes 8 to 15 mm (0.2 to 0.6 in) long. The flaring petals are white when the flower opens in the morning, but fade to pinkish in the afternoon. The petals, usually 4 to 6 cm (1.6 to 2.4 in) long, are basally attached to the staminal column to form a tube about 1.5 cm (0.6 in) long. The exerted staminal column is up to 15 cm (6 in) long and reddish to crimson at the tip. The filaments arise in the upper half of the staminal column and spread up to 2.5 cm (1 in) long. The fruit is a cartilaginous, egg-shaped capsule 1.8 to 2.5 cm (0.7 to 1 in) long and hairless. Two subspecies are recognized, both occurring on Kauai: ssp. *hannerae* and ssp. *waimeae*. Subspecies *hannerae* is distinguished by having larger leaves but smaller flowers (Bates 1990). The 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 (Bates 1990).

Three collections of *Hibiscus waimeae* ssp. *hannerae* are known, all from the island of Kauai (HHP 1994i2). The Kalihiwai population of this subspecies is apparently extinct and the two remaining populations are found in adjacent valleys on Kauai's northern coast on State and private land, and total between 75 and 125 individuals. Between 50 and 100 plants are scattered over a 100 sq m (1,100 sq ft) area along the stream in Limahuli Valley, and another 50 or so plants were distributed over a 10 to 100 sq m (110 to 1,100 sq ft) area below the cliffs in the back of Hanakapiai Valley before Hurricane 'Iniki (HPCC 1990a, 1991d). After the hurricane, only 25 plants remain in Hanakapiai Valley (M. Brueggemann, *in litt.* 1994). In Limahuli Valley, *H. waimeae* ssp. *hannerae* is growing in an 'ohi'a-uluhe lowland wet forest between 190 and 560 m (620 and 1,850 ft) elevation. At this location, associated species include 'ahakea, 'ama'u, haha, ha'iwale, and *Syzygium* sp. The Hanakapiai Valley population is growing in *Pisonia* sp. (papala kepau)—*Charpentiera elliptica* (papala) lowland mesic forest with 'ahakea, hame, kopiko, mamaki, and the alien species *Aleurites moluccana* (kukui), between 220 and 370 m (720 and 1,200 ft) (Bates 1990; HHP 1990a, 1994i1, 1994i2; HPCC 1990a, 1991d).

The major threats to *Hibiscus waimeae* ssp. *hannerae* are habitat degradation by feral pigs; competition with alien plant species, including thimbleberry, Koster's curse, and lantana; and a risk of extinction from naturally occurring events (e.g., hurricanes) and/or reduced reproductive vigor due to the small number of remaining populations (HHP 1994i2, 1994i3; HPCC 1990a, 1991d; M. Brueggemann, *in litt.* 1994).

In 1919, Rock and Augustus Knudsen collected a specimen of a tree that Rock (1919) named as *Kokia rockii* var. *kauaiensis*. Later, Otto Degener and Albert Duvel (1934) elevated the variety to a full species, *Kokia kauaiensis*. The current treatment of the family upholds this designation (Bates 1990).

Kokia kauaiensis, a member of the mallow family, is a tree 5 to 10 m (16.4 to 33 ft) tall. The seven- or nine-lobed, circular leaves are 12 to 25 cm (5 to 10 in) wide with a heart-shaped base. The solitary, brick-red flowers are clustered near the ends of the branches on stout flower stalks 3 to 9 cm (1.2 to 3.5 in) long. The broadly egg-shaped floral bracts are 4 to 6 cm (1.5 to 2.4 in) long and hairless except toward the base, which has a sparse covering of long, soft

hairs. The curved petals, 10 to 15 cm (4 to 6 in) long, are twisted at the base and densely covered with yellowish, silky hairs. The fruit is an egg-shaped capsule. The egg-shaped seeds are 10 to 12 mm (0.4 to 0.5 in) long and densely covered with reddish, woolly hairs up to 10 mm (0.4 in) long. This 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 1990).

Kokia kauaiensis is known from six scattered populations on northwestern Kauai, but only five of these populations have been relocated within the last six years (HHP 1994j1 to 1994j4). The five extant populations are found on State land in the following areas: Paai Valley; Mahanaloa-Kuia Valley junction within or on the boundary of Kuia NAR; the western side of Kalalau Valley, and Pohakuao Valley, both within Na Pali Coast State Park; and Koaie Stream branch of Waimea Canyon, where some plants may be within the boundary of the Alakai Wilderness Preserve. The three largest populations contain between 30 and 70 individuals each, with the others each numbering fewer than 10 individuals. Estimates of the total number of individuals range from 145 to 170 (HHP 1994j1, 1994j3 to 1994j6; Joel Lau, Hawaii Heritage Program, and S. Perlman, pers. comms. 1994). This species typically grows in diverse mesic forest at elevations between 475 and 795 m (1,960 and 2,600 ft). Associated species include 'ahakea, koa, kukui, *Diospyros sandwicensis* (lama), manono, hala pepe, papala, *Nestegis sandwicensis* (olopua), and 'ohi'a (Bates 1990; HHP 1990a, 1994j1, 1994j3 to 1994j6; HPCC 1990b1 to 1990b3; Wood and Perlman 1993a; M. Brueggemann, *in litt.* 1994; J. Lau, pers. comm. 1994).

Competition with and habitat degradation by the invasive alien plant species lantana, *Passiflora ligularis* (sweet granadilla), thimbleberry, *Kalanchoe pinnata* (air plant), strawberry guava, and *Triumfetta semitriloba* (Sacramento bur); substrate loss; habitat degradation and browsing by feral goats and mule deer (*Odocoileus hemionus*); predation by rats, which eat the seeds; and a risk of extinction from naturally occurring events due to the small number of remaining populations are the major threats affecting the survival of *Kokia kauaiensis* (HHP 1994j1, 1994j3 to 1994j6; HPCC 1990b1 to 1990b3; Wood and Perlman 1993a; M. Brueggemann, *in*

litt. 1994; J. Lau, S. Perlman, and K. Wood, pers. comms. 1994).

Based upon a specimen collected by Perlman on Kauai in 1980, Harold St. John (1984) described *Labordia tinifolia* var. *wahiawaensis*, naming it for the Wahiawa Mountains where it was first collected.

Labordia tinifolia var. *wahiawaensis*, a member of the logania family (Loganiaceae), is a shrub or small tree, usually 2 to 8 m (6.6 to 26.2 ft) tall. The young branches are cylindrical or nearly so and hairless. The elliptic to lance-shaped leaves are usually 4.5 to 21 cm (1.8 to 8.3 in) long and 2 to 5 cm (0.8 to 2 in) wide. The membranous leaves are medium green, hairless, and the veins are not impressed on the upper leaf surface. Normally, 9 to 12 hairless flowers are clustered on a downward curving inflorescence stalk 9 to 22 mm (0.35 to 0.9 in) long, each having an individual stalk 8 to 11 mm (0.2 to 0.4 in) in length. The pale yellowish green flower is narrowly urn-shaped, 17 to 19 mm (0.7 to 0.75 in) long. The tubular portion of the flower is 5.5 to 7.8 mm (0.2 to 0.3 in) long with long, white hairs inside, while the egg-shaped lobes are 1.7 to 2.3 mm (0.07 to 0.09 in) long. The fruit is an egg-shaped capsule, 8 to 17 mm (0.2 to 0.7 in) long, usually with two valves and an apex with a beak 0.5 to 1.5 mm (0.02 to 0.1 in) long. Three varieties of *Labordia tinifolia* are recognized: var. *lanaiensis* on Lanai and Molokai, var. *tinifolia* on Kauai and four other islands, and var. *wahiawaensis*, endemic to Kauai. Variety *wahiawaensis* is distinguished from the other two by its larger corolla. This 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.* 1990).

Labordia tinifolia var. *wahiawaensis* is only known from the Wahiawa Drainage in the Wahiawa Mountains of Kauai from about 630 to 740 m (2,070 to 2,430 ft) elevation on privately owned land, within a 0.8 by 1.2 km (0.5 by 0.75 mi) area (HHP 1994k; HPCC 1991e1, 1991e2; Lorence and Flynn 1991). More than 100 plants were known from the area before Hurricane 'Iniki swept over Kauai in 1992. During a 1994 visit to the area, only 20 to 30 surviving individuals were found (S. Perlman, pers. comm. 1994). The plants grow along streams in lowland wet forests dominated by 'ohi'a and often in association with 'olapa or uluhe. Plants found in association with this taxon include ha'iwale, hame, kopiko, manono, and *Athyrium* sp. (HPCC 1991e1, 1991e2).

The primary threats to the remaining individuals of *Labordia tinifolia* var. *wahiawaensis* are competition with the alien plant strawberry guava, habitat degradation by pigs, trampling by humans, and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of individuals in the only known population (HPCC 1991e1, 1991e2; S. Perlman, pers. comm. 1994).

Lydgate first collected *Myrsine linearifolia* on Kauai in 1912. Edward Hosaka (1940) chose the specific epithet to describe its distinctive linear-lanceolate curved leaves. In an action that was not supported by other taxonomists, Otto and Isa Degener (1971, 1975) transferred several species from the genus *Myrsine* to the genus *Rapanea* based upon minute floral features. The currently accepted treatment of the Hawaiian members of the family follows Hosaka's earlier, broad concept of *Myrsine* (Wagner *et al.* 1990).

Myrsine linearifolia, a member of the myrsine family (Myrsinaceae), is a branched shrub, 2.5 to 8 m (8.2 to 26.2 ft) tall. The slightly fleshy, linear leaves are 5 to 9 cm (1.7 to 3 in) long, 0.25 to 0.4 cm (0.09 to 0.14 in) wide, often yellowish purple toward the base, and tend to be clustered toward the upper branches. The margins of the leaves are smooth and roll slightly toward the underside of the leaf. One to three apparently perfect (containing male and female parts) flowers, on stalks 1 to 4.2 mm (0.04 to 0.17 in) long, occur in clusters among the leaves. The greenish petals are inversely lance-shaped, about 2.2 to 2.5 mm (0.09 to 0.1 in) long, and also have margins fringed with hairs. At maturity, the fruits are black elliptic-shaped drupes, about 6 mm (0.2 in) long. This 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.* 1990).

Historically, *Myrsine linearifolia* was known from nine scattered locations on Kauai: Olokele Valley, Kalualea, Kalalau Valley and Kahuamaa Flat, Limahuli-Hanakapiai Ridge, Koaie Stream, Pohakuao, Namolokama Summit Plateau, and Haupū (HHP 1994L1, 1991L4, 1994L6, 1994L9). This species is currently known from six populations on State and private land: Kalalau Valley including Kahuamaa Flat above Kalalau, Limahuli-Hanakapiai Ridge, Wahiawa Drainage, Koaie Stream, Pohakuao, and Namolokama Summit Plateau (HHP 1994L2, 1994L3, 1994L5, 1994L7; HPCC 1991f5; Wood and Perlman 1993a; J. Lau, pers. comm. 1994). *Myrsine linearifolia* typically

grows in mesic to wet 'ohi'a forests that are sometimes co-dominant with 'olapa or uluhe from 585 to 1,280 m (1,920 to 4,200 ft) elevation (HHP 1994L2, 1994L3, 1994L5, 1994L7; HPCC 1991f5; Wood and Perlman 1993a; J. Lau and K. Wood, pers. comms. 1994). The largest population, located in Kalalau Valley, contains several hundreds of individuals (S. Perlman, pers. comm. 1994). The remaining five populations total about 100 plants; hence, approximately 1,000 to 1,500 individuals are known for the entire species. Plants growing in association with this species include 'ahakea, 'aiea, alani, *Eurya sandwicensis* (anini), kopiko, *Lysimachia* sp., and native ferns.

Competition with alien plants such as daisy fleabane, lantana, prickly Florida blackberry, strawberry guava, thimbleberry, and air plant, and habitat degradation by ungulates such as pigs and goats are major threats to *Myrsine linearifolia* (HPCC 1991f1 to 1991f5, 1993f; J. Lau, S. Perlman, and K. Wood, pers. comms. 1994).

Hillebrand (1888) described *Phyllostegia knudsenii* from a specimen collected by Knudsen in the 1800s. He chose the specific epithet to honor the collector.

Phyllostegia knudsenii, a member of the mint family (Lamiaceae), is an erect, perennial herb or vine. The opposite leaves are limp, ovate, faintly pubescent, 11.5 to 18 cm (4.5 to 7 in) long, and 5.1 to 9 cm (2 to 3.5 in) wide. Flowers are borne in groups of two to four along a flower stalk 4 to 6.5 cm (1.6 to 2.6 in) long. The corolla is 6 to 8 mm (0.2 to 0.3 in) long. The fruits are four black fleshy nutlets in each flower and are 1.5 to 2 mm (0.06 to 0.8 in) long. This species differs from others in this genus in its specialized flower stalk. It differs from the closely related *Phyllostegia floribunda* in often having four flowers per group (Hillebrand 1888, HPCC 1993j, Sherff 1935, Wagner *et al.* 1990).

Until 1993, *Phyllostegia knudsenii* was only known from the type collection made in the 1800s, from the woods of Waimea (HHP 1991a, Hillebrand 1888, Sherff 1935, Wagner *et al.* 1990). In 1993, botanists at NTBG rediscovered one individual of this species in Koaie Canyon. This species is found in 'ohi'a lowland mesic forest at 865 m (2,840 ft) elevation. Associated species include olomea, *Cyrtandra kauaiensis* (ulunahale), *Cyrtandra paludosa* (moa), *Elaeocarpus bifidus* (kalia), *Cryptocarya mannii* (holio), *Doodia kunthiana*, *Selaginella arbuscula*, lama, *Zanthoxylum dipetalum* (a'e), *Pittosporum* sp.

(ho'awa), *Pouteria sandwicensis* ('ala'a), and *Pritchardia minor* (loulu) (HPCC 1993j; S. Perlman, pers. comm. 1994).

Major threats to *Phyllostegia knudsenii* include habitat degradation by pigs and goats; competition with alien plant species such as pipili, Hilo grass, lantana, and air plant; and a risk of extinction from naturally occurring events (e.g., landslides) and reduced reproductive vigor due to the small number of individuals in the only known population (HPCC 1993j).

Phyllostegia wawrana was described by Sherff (1934) from a collection made in the 1800s. Sherff chose the specific epithet to honor the collector, Dr. Heinrich Wawra.

Phyllostegia wawrana, a member of the mint family, is a perennial vine that is woody toward the base and has long, crinkly hairs along the stem. The leaves are opposite, ovate, and covered with hairs, especially along the veins of the lower surface. The leaves are 10.5 to 20 cm (4.1 to 7.8 in) long and 4 to 11 cm (1.6 to 4.3 in) wide. Flowers are borne in groups of four to six along a leafy flower stalk with one or two short lateral branches. Each of these lateral branches has a pair of leaves at the base. The corolla tube is about 10 mm (0.03 in) long, with an upper lip about 2 mm (0.08 in) long. The fruits are four greenish-black nutlets in each flower and are about 2 mm (0.8 in) long. This species may be related to *Phyllostegia floribunda* and *Phyllostegia knudsenii*, but has a less specialized flower stalk (Degener 1946, Sherff 1934, Wagner *et al.* 1990).

Phyllostegia wawrana was reported from Hanalei in the 1800s and was last observed along Kokee Stream in 1926, until 1993 when NTBG botanists found two populations on State-owned land. Currently there are a total of 20–30 individuals in the Makaleha Mountains and five or six in Honopu Valley (HHP 1991b1, 1991b2; HPCC 1993k1, 1993k2; Sherff 1934, 1935; Wagner *et al.* 1990; D. Ragone, *in litt.* 1995). This species grows in 'ohi'a-dominated forest with either 'olapa or uluhe as codominant species. Associated species include *Diplazium sandwichianum*, 'ohelo, kanawao, kolea, kopiko, *Dubautia knudsenii* (na'ena'e), *Scaevola procera* (naupaka kuahiwi), *Gunnera* sp., *Pleomele aurea* (hala pepe), *Claoxylon sandwicense* (po'ola), *Elaphoglossum* sp., 'ala 'ala wai nui, manono, hapu'u, 'ama'u, ho'awa, 'uki, and *Syzygium sandwicensis* ('ohi'a ha) (HPCC 1993k1, 1993k2).

The major threats to *Phyllostegia wawrana* include degradation of habitat by feral pigs and competition with alien plant species such as thimbleberry,

Passiflora mollissima (banana poka), prickly Florida blackberry, *Melastoma candidum*, fireweed, and daisy fleabane (HPCC 1993k1, 1993k2).

St. John described *Pritchardia napaliensis* based upon a specimen collected by Charles Christensen on Kauai in 1976 (St. John 1981). He named this plant for the Na Pali Coast of Kauai where it was first collected.

Pritchardia napaliensis, a member of the palm family (Arecaceae), is a small palm with about 20 leaves and an open crown. The palm ranges from 4 to 6 m (13 to 20 ft) tall and has a slender trunk measuring 18 to 20 cm (7 to 8 in) in diameter. The green leaf blades are about 85 cm (33.5 in) long and are almost flat (irrespective of the longitudinal folds). The lower leaf surface is covered with elliptic, pale, thin, flexible, and somewhat translucent scales with fringed margins. Upon maturity, the leaves are almost smooth and the leaf segments are lax, flexible, and droop with increasing age. The flowers are arranged in branched clusters about 14 cm (5.5 in) long which are equal or shorter in length than the leaf stalks. Each flower is associated with a small, bristly bract. Bracts associated with the flowers or flower stalks are sparsely and inconspicuously coated with scales which are usually lost at maturity. The black fruits are 1.7 to 2.3 cm (0.7 to 0.9 in) long, 1.4 to 1.8 cm (0.6 to 0.7 in) in diameter, and inversely egg-shaped. 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 1990).

Pritchardia napaliensis is known from three locations on the island of Kauai on State-owned land: 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) (HHP 1994m1, 1994m2; K. Wood, pers. comm. 1994). This species is not known to occur anywhere else (HHP 1994m1, 1994m2). *Pritchardia napaliensis* typically grows in a wide variety of habitats ranging from lowland dry to mesic forests to montane wet forests dominated by lama and sometimes, kukui, 'ohi'a, and uluhe from 150 to about 1,160 m (500 to about 3,800 ft) elevation (HHP 1994m1, 1994m2; HPCC 1990c1, 1990c2, 1991g; S. Perlman and K. Wood, pers. comms. 1994). The largest population in Hoolulu Valley contains between 60 and 80 plants and the two other populations each contain three or fewer plants, giving

a total of fewer than 90 known individuals for this species (HHP 1994m1, 1994m2; HPCC 1991g; S. Perlman and K. Wood, pers. comms. 1994). Several associated plant species besides those mentioned above include hala pepe, kopiko, *Cordyline fruticosa* (ti), *Cheirodendron trigynum* ('olapa), and *Ochrosia* sp. (holei) (HHP 1994m1, 1994m2; HPCC 1990c1, 1990c2, 1991g).

Major threats to *Pritchardia napaliensis* include habitat degradation and/or grazing by goats and pigs; seed predation by rats; competition with the alien plants air plant, daisy fleabane, lantana, *Psidium guajava* (common guava), and possibly ti; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining populations and individuals (HPCC 1990c1, 1990c2, 1991g; Donald Hodel, Univ. of California and County of Los Angeles Cooperative Extension, *in litt.* 1995).

Pritchardia viscosa was first described by Rock in 1921, based on a specimen he collected on Kauai a year earlier (Beccari and Rock 1921). The specific epithet refers to the very viscous inflorescence, calyx, and corolla.

Pritchardia viscosa, a member of the palm family, is a small palm 3 to 8 m (10 to 26 ft) tall. The lower surface of the leaf blades is silvery grey and covered with small scales. The inflorescences are about the same length as the leaf stalks and consist of one to three loosely branched panicles, each about 15 to 20 cm (6 to 8 in) long. The flowers occur in two opposite rows and are extremely sticky and shiny. The elliptic, pear-shaped fruit are up to 4 cm (1.6 in) long and about 2.5 cm (1 in) wide. This species differs from others of the genus that grow on Kauai by the degree of hairiness of lower surface of the leaves and main axis of the flower cluster, and length of the flower cluster (Read and Hodel 1990).

Historically, *Pritchardia viscosa* was known only from the 1920 collection from Kalihiwai Valley on the island of Kauai (HHP 1994n2). It was not seen again until 1990, when naturalist John Obata and NTBG botanist Ken Wood observed it in the same general area as Rock's type locality off the Powerline Road at 510 m (1,680 ft) elevation on State land (HHP 1994n1; Obata, pers. comm. 1991; S. Perlman, pers. comm. 1994). This population of one juvenile and two mature plants comprise the only known extant individuals; three additional plants from this population were destroyed by Hurricane 'Iniki in 1992. The plants are found in an 'ohi'a-uluhe lowland wet forest associated with plant species including 'aiea,

'ahakea, hame, hapu'u, and kopiko (S. Perlman, pers. comm. 1994).

Strawberry guava and alien grasses such as Hilo grass are major threats to *Pritchardia viscosa* because these alien plants are effective competitors for space, light, nutrients, and water. Rats are known to eat the fruit of *Pritchardia viscosa* and are, therefore, a serious threat to the reproductive success of this species (S. Perlman, pers. comm. 1994). At least one of the remaining mature trees has been damaged by spiked boots used either by a botanist or seed collector to scale these trees (Hodel, *in litt.* 1995; Mehrhoff, *in litt.* 1994). Also, because of the small numbers of individuals in the only known population, this species is susceptible to extinction because a single naturally occurring event (e.g., a hurricane) could destroy all remaining plants.

In 1895, Heller collected a plant specimen on Kauai that Sherff (1943) later named *Schiedea helleri* in honor of its collector. Listed as possibly extinct in the current treatment of the family (Wagner *et al.* 1990), *Schiedea helleri* was recently collected on Kauai by botanists from NTBG (HPCC 1993g).

Schiedea helleri, a member of the pink family, is a vine. The stems, smooth below and minutely hairy above, are probably prostrate and at least 0.15 m (0.5 ft) long with internodes at least 4 to 15 cm (1.6 to 6 in) long. The opposite leaves are somewhat thick and range from 10 to 14 cm (4 to 5.5 in) long and 4.5 to 6 cm (1.8 to 2.4 in) wide. The leaves are triangular, egg-shaped to heart-shaped, conspicuously three-veined, and nearly hairless to sparsely covered with short, fine hairs, especially along the margins. The perfect flowers occur in loose, open branched clusters, each branch being 20 to 26 cm (8 to 10.2 in) long. The flower contains three styles and probably ten stamens. The fruits are capsules, about 3 to 3.4 mm (0.12 to 0.13 in) long. This species differs from others of the genus that grow on Kauai by its viney habit (Wagner *et al.* 1990).

Schiedea helleri was originally known only from a single location above Waimea, at Kaholuamano on the island of Kauai, collected 100 years ago (HHP 1994a). 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 (HPCC 1993g). The only known population consists of 30 to 40 mature individuals found on a steep cliff in closed 'ohi'a-uluhe montane wet forest on State-owned land, within or close to the Alakai Wilderness Preserve, at approximately 1,070 m (3,500 ft) elevation (HPCC 1993g; S. Perlman,

pers. comm. 1994). Other native plants growing in association with this population include hapu'u, kanawao, 'olapa, *Cyanea hirtella* (haha), *Dianella sandwicensis* ('uki'uki), and *Viola wailenalenae* (HPCC 1993g). The federally endangered *Poa sandwicensis* is also found here (M. Brueggemann, *in litt.* 1994).

Competition with the noxious alien plant prickly Florida blackberry and a risk of extinction from naturally occurring events and/or reduced reproductive vigor, due to the small number of extant individuals in the only known population, are serious threats to *Schiedea helleri* (HPCC 1993g). Pigs have not yet been reported from this drainage, but pose a potential threat since they are found in nearby areas (M. Brueggemann, *in litt.* 1994).

Robert Hobdy collected a specimen of *Schiedea membranacea* on Kauai in 1969. St. John (1972) later described and named the taxon. The specific epithet refers to the membranous texture of the leaves.

Schiedea membranacea, a member of the pink family, is a perennial herb. The unbranched, fleshy stems rise upwards from near the base and are somewhat sprawling. They are 0.5 to 1 m (1.6 to 3.3 ft) long with internodes 6 to 12 cm (2.4 to 4.7 in) long. During dry seasons, the plant dies back to a woody, short stem at or beneath the ground surface. The oppositely arranged leaves, 13 to 20 cm (5 to 8 in) long and 5 to 8 cm (2 to 3.2 in) wide, 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. The inflorescences are about 25 to 27 cm (10 to 10.6 in) long. The purple, lance-shaped sepals are about 2 mm (0.08 in) long and have thin, dry, membranous margins. The flowers contain three to five styles and probably ten stamens. The capsular fruits, 2.5 to 3 mm (0.1 to 0.12 in) long, are purple at the apex. This species differs from others of the genus that grow on Kauai by having five- to seven-nerved leaves and an herbaceous habit (Wagner *et al.* 1990).

Schiedea membranacea is known from six current populations on the western side of the island of Kauai: Mahanaloa-Kuia, Paaiki, Kalalau, Nualolo, Wainiha and Waiialae valleys on State (including Kuia NAR and Na Pali Coast State Park) and privately owned land (HHP 1994p1 to 1994p3; Wood and Perlman 1993a; S. Perlman and K. Wood, pers. comms. 1994). This species is not known to have occurred at any other locations. Although the

number of plants of this species remaining in Paaiki Valley is not known, about 200 to 250 individuals are known in the other five populations (HHP 1994p1 to 1994p3; S. Perlman and K. Wood, pers. comms. 1994). This species is typically found on cliffs and cliff bases in a wide variety of mesic to wet habitats between 520 and 1,160 m (1,700 and 3,800 ft) elevation. The vegetation ranges from open to closed lowland to montane shrubland to forest communities with either a variety of canopy and understory species or dominated by kukui, mamaki, or 'ohi'a (HHP 1994p1 to 1994p3; HPCC 1990d1 to 1990d3, 1991h, 1993h; S. Perlman, pers. comm. 1994).

Habitat degradation by feral ungulates (mule deer, goats, and pigs); competition with the alien plant species daisy fleabane, lantana, prickly Florida blackberry, thimbleberry, strawberry guava, *Ageratina adenophora* (Mauia pamakani), *A. riparia* (Hamakua pamakani), and banana poka; and landslides are the primary threats to *Schiedea membranacea* (CPC 1990; HPCC 1990d1 to 1990d3, 1991h, 1993h; Wood and Perlman 1993a; M. Brueggemann, *in litt.* 1994; S. Perlman, pers. comm. 1994).

Mann and Brigham first collected a specimen of *Schiedea stellarioides* in the mountains of Kauai between 1864 and 1865. Benedict Hochreutner (1925) and Sherff (1943, 1945, 1954) described several varieties of this species, characterized only by slight differences in leaf shape and size, that are not recognized in the current treatment of the family (Wagner *et al.* 1990).

Schiedea stellarioides, a member of the pink family, is a slightly erect to prostrate subshrub 0.3 to 0.6 m (1 to 2 ft) tall with branched stems and internodes generally 3.5 to 6.5 cm (1.4 to 2.5 in) long. The opposite leaves are very slender to oblong-elliptic, 2.7 to 8.2 cm (1.1 to 3.2 in) long, 0.2 to 1.3 cm (0.1 to 0.5 in) wide, and one-veined. The perfect flowers lack petals and occur in open branched clusters. The inflorescence ranges from 15 to 32 cm (6 to 12.6 in) long. The flower stalks are 7 to 10 mm (0.28 to 0.4 in) long and the narrowly egg-shaped sepals are 2.9 to 3.3 mm (0.11 to 0.13 in) long. The flowers contain ten stamens, three styles, and a two-lobed nectary. The capsular fruits are 2.2 to 3.4 mm (0.09 to 0.13 in) long and contain tiny, dark brown, circular to kidney-shaped, slightly wrinkled seeds. This 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.* 1990).

Historically, *Schiedea stellarioides* was known from the sea cliffs of Hanakapiai Beach, Kaholuamano-Opaewela region, the ridge between Waialae and Nawaimaka valleys, and Haupu Range on the island of Kauai (HHP 1994q1 to 1994q3). This species is now known only from the ridge between Waialae and Nawaimaka valleys on State land, just 0.8 km (0.5 mi) northwest of the Kaholuamano-Opaewela region (HHP 1994q4). This population of approximately 500 to 1,000 individuals is found on steep slopes in a closed koa-'ohi'a lowland to montane mesic forest between 610 and 1,120 m (2,000 and 3,680 ft) elevation (HHP 1994q4, HPCC 1993i). The plants are scattered in an approximately 2 km (1.25 mi) by 0.3 km (0.2 mi) area. Associated plant species include 'a'ali'i, alani, 'uki'uki, *Bidens cosmoides* (po'ola nui), *Mariscus* sp., and *Styphelia tameiameia* (pukiawe) (HHP 1994q4).

The primary threats to this species include habitat degradation by feral ungulates (pigs and goats), direct destruction of plants by goats, competition with the alien plants molasses grass and prickly Florida blackberry, and a risk of extinction of the one remaining population from naturally occurring events (HPCC 1993i; S. Perlman, pers. comm. 1994).

Forbes collected a specimen of *Viola kauaensis* var. *wahiawaensis* on Kauai in 1909. In 1920, he described the variety, naming it for Wahiawa Bog where it was first collected.

Viola kauaensis var. *wahiawaensis*, a member of the violet family (Violaceae), is a perennial herb with upward curving or weakly rising, hairless, lateral stems about 10 to 50 cm (4 to 20 in) long. The kidney- to heart-shaped leaves are usually 2 to 5 cm (0.8 to 2 in) long and 3.5 to 6 cm (1.4 to 2.4 in) wide, and widely spaced. The toothed leaf blades are unlobed or rarely three-lobed, hairless or covered with a few minute hairs, with a broadly wedge-shaped base. The solitary flowers are borne in the leaf axils. Two types of flowers are present. One is self-pollinating and does not open, while the other opens and requires cross-pollination. The flowers that open have hairless petals which are white on the upper surface and purple or blue to white on the lower surface. These petals are narrowly spatula-shaped, the upper petals measuring about 15 to 19 mm (0.6 to 0.7 in) long, the lateral ones about 18 to 23 mm (0.7 to 0.9 in) long, and the lower ones about 18 to 23 mm (0.7 to 1 in) long. The non-opening flowers usually occur on short lateral stems. Their greenish petals are

hairless, the upper ones being three-lobed and about 1 to 1.6 mm (0.04 to 0.06 in) long. The fruit is a deeply lobed capsule 8 to 13 mm (0.3 to 0.5 in) long. Two varieties of this species are recognized, both occurring on Kauai: var. *kauaensis* and var. *wahiawaensis*. Variety *wahiawaensis* is distinguished by having broadly wedge-shaped leaf bases, whereas var. *kauaensis* has heart-shaped to truncate leaf bases. The species is distinguished from others of the genus by its non-woody habit, widely spaced leaves, and by having two types of flowers: conspicuous, open flowers and smaller, unopened flowers (Wagner *et al.* 1990).

Viola kauaensis var. *wahiawaensis* is known only from the Wahiawa Mountains of Kauai on privately owned land (HHP 1994r, Lorence and Flynn 1991). This taxon is not known to have occurred beyond its current range. Fewer than 100 individuals are known to remain in Kanaele Swamp (often referred to as Wahiawa Bog), an open bog surrounded by low scrub of 'ohi'a, uluhe, and 'ohi'a ha at about 640 m (2,100 ft) elevation. Another eight plants are on a nearby ridge between Mount Kapalaoa and Mount Kahili in wet shrubland dominated by uluhe-*Diplopterygium pinnatum* ground cover, with scattered 'ohi'a and *Syzygium* sp., at about 865 m (2,840 ft) elevation (HHP 1994r; Lorence and Flynn 1991; K. Wood, pers. comm. 1994).

The primary threats to *Viola kauaensis* var. *wahiawaensis* are a risk of extinction from naturally occurring events and/or 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* and *Pterolepis glomerata* (HHP 1994r; Lorence and Flynn 1991; K. Wood, pers. comm. 1994).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act (16 U.S.C. 1533), 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, *Hibiscus waimeae* ssp. *hannerae* (as *H. waimeae*), *Kokia kauaiensis*, *Myrsine linearifolia* (as *Myrsine linearifolia* var. *linearifolia*), *Phyllostegia knudsenii*, and *Viola kauaensis* var. *wahiawaensis* were considered to be endangered. *Delissea rivularis* and *Schiedea membranacea*

were considered to be threatened. 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 giving 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 species, including all of the above taxa considered to be endangered. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, Federal Register publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 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 an updated notice 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). Fourteen of the species in this proposal (including synonymous taxa) were at one time or another considered either category 1 or category 2 candidates for Federal listing. Category 1 species were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals but for which listing proposals were not published because they were precluded by other listing activities. Category 2 species were those for which listing as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats was not currently available. *Schiedea membranacea* and *Kokia kauaiensis* were considered category 2 species in all notices of review prior to the February 28, 1996, Federal Register notice which discontinued the designation of categories for candidate species. In the 1980 and 1985 notices,

Myrsine linearifolia (as *M. linearifolia* var. *linearifolia*), *Phyllostegia knudsenii*, and *Viola kauaensis* var. *wahiawaensis* were considered category 1 species. In the 1990 and 1993 notices, *Myrsine linearifolia* and *Viola kauaensis* var. *wahiawaensis* were moved to category 2 status. *Phyllostegia knudsenii* was considered category 3A in the 1990 notice. Category 3A species were those for which the Service has persuasive evidence of extinction. *Delissea rivularis* was considered a category 2 species in the 1980 and 1985 notices, but was believed to be extinct and considered category 3A in the 1990 notice. In the 1985 notice, *Alsinidendron viscosum*, *Schiedea helleri*, and *Schiedea stellarioides* were considered category 1*, and were moved to category 3A in the 1990 notice. Category 1* species were those which were possibly extinct. *Cyanea recta* and *Phyllostegia wawrana* were considered category 3A species in the 1990 notice. Because new information indicates their current existence and provides support for listing, the above seven taxa have been included in this final rule. *Hibiscus waimeae* ssp. *hannerae* (as *H. waimeae*) was considered category 3C in the 1980 and 1985 notices. Category 3C species were those proven to be more abundant or widespread than previously believed and/or were not subject to any identifiable threat. In the 1990 and 1993 notices, this subspecies was considered a category 2 species, along with *Pritchardia napaliensis* and *Pritchardia viscosa*. *Alsinidendron lychnoides* and *Cyrtandra cyaneoides* were considered category 2 species in the 1993 notice. Current information suggests that the numbers and distribution are sufficiently restricted and threats sufficient for the above nine species, as well as *Cyanea remyi* and the recently discovered *Hibiscadelphus woodii*, to warrant listing. Seventeen of the taxa were considered proposed endangered and *Cyanea recta* and *Myrsine linearifolia* proposed threatened in the 1996 notice, since the proposed listing rule had already been published.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions that present substantial information indicating that the petitioned action may be warranted within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments

further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the Service to consider the petition as having been resubmitted, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually in October of 1984 through 1993. Publication of the proposed rule constituted the final 12-month finding for these taxa.

On September 25, 1995, the Service published in the Federal Register (60 FR 49359) a proposal to list 17 plant taxa as endangered and 2 plant taxa as threatened, from the island of Kauai. This proposal was based primarily on information supplied by the Hawaii Heritage Program, National Tropical Botanical Garden, and observations of botanists and naturalists. Based on comments received in response to the proposal (see Comments and Recommendations, below), the Service now determines 17 taxa to be endangered and 2 taxa to be threatened, from the island of Kauai, with the publication of this rule.

Summary of Comments and Recommendations

In the September 25, 1995, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The public comment period ended on Nov. 24, 1995. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the "Kauai Times" on October 18, 1995, which invited general public comment. Four letters of comment were received. No requests for public hearings were received. Three letters supported the listing of these taxa from Kauai and two of these letters provided additional biological information for four taxa. This information has been incorporated into

this final rule. One letter suggested listing *Pritchardia napaliensis* as threatened rather than endangered based on observations made over 20 years ago. However, current distribution, population, and threat information supports the designation of endangered status for *Pritchardia napaliensis*.

The Service also solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for these 19 species. No responses were received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Alsinidendron lychnoides* (Hillebr.) Sherff (kuawawaenohu), *Alsinidendron viscosum* (Mann) Sherff (NCN), *Cyanea remyi* Rock (haha), *Cyrtandra cyaneoides* Rock (mapele), *Delissea rivularis* (Rock) Wimmer ('oha), *Hibiscadelphus woodii* Lorence and Wagner (hau kuahiwi), *Hibiscus waimeae* ssp. *hannerae* Heller (koki'o ke'oke'o), *Kokia kauaiensis* (Rock) Degener & Duvel (koki'o), *Labordia tinifolia* var. *wahiawaensis* St. John (kamakahala), *Phyllostegia knudsenii* Hillebr. (NCN), *Phyllostegia wawrana* Sherff (NCN), *Pritchardia napaliensis* St. John (loulou), *Pritchardia viscosa* Rock (loulou), *Schiedea helleri* Sherff (NCN), *Schiedea membranacea* St. John (NCN), *Schiedea stellarioides* Mann (lauhilihi), *Viola kauaensis* var. *wahiawaensis* Forbes (nani wai'ale'ale) should be classified as endangered species and that *Cyanea recta* (Wawra) Hillebr. (haha) and *Myrsine linearifolia* Hosaka (kolea) should be classified as threatened species.

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these 19 taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Alien mammals				Alien plants	Substrate loss/hurricane	Human impacts	Limited numbers*	Other
	Deer	Goats	Pigs	Rats					
<i>Alsinidendron lychnoides</i>			X		X	X	X	X1,3	Slugs. White-eye.
<i>Alsinidendron viscosum</i>		X	X		X	X	P	X1,3	
<i>Cyanea recta</i>		X	X	X	X	X	P		
<i>Cyanea remyi</i>		X	X	X	X			X1	
<i>Cyrtandra cyaneoides</i>			P	P	X	X		X1	
<i>Delissea rivularis</i>			X	P	X	X		X1,3	
<i>Hibiscadelphus woodii</i>		X	X		X	X		X1,2	
<i>Hibiscus waimeae</i> ssp. <i>hanneriae</i>			X		X	X		X1	
<i>Kokia kauaiensis</i>	X	X		X	X	X		X1	
<i>Labordia tinifolia</i> var. <i>wahiawaensis</i>			X		X	X	X	X1,3	
<i>Myrsine linearifolia</i>		X	X		X				
<i>Phyllostegia knudsenii</i>		X	X		X	X		X1,2	
<i>Phyllostegia wawrana</i>			X		X			X1,3	
<i>Pritchardia napaliensis</i>		X	X	X	X			X1,3	
<i>Pritchardia viscosa</i>				X	X	X	X	X1,2	
<i>Schiedea helleri</i>			P		X		P	X1,3	
<i>Schiedea membranacea</i>	X	X	X		X	X			
<i>Schiedea stellarioides</i>		X	X		X			X1	
<i>Viola kauaensis</i> var. <i>wahiawaensis</i>			X		X			X1,3	

KEY

X=Immediate and significant threat.

P=Potential threat.

*=No more than 100 individuals and/or no more than 5 populations.

1=No more than 5 populations.

2=No more than 10 individuals.

3=No more than 100 individuals.

These factors and their application to the 19 plant taxa in this rule are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitats of the plants included in this final rule have undergone extreme alteration because of past and present land management practices, including deliberate alien animal and plant introductions, agricultural development, and recreational use. Natural disturbances such as storms and landslides also destroy habitat and can have a significant effect on small populations of plants. Destruction and modification of habitat by introduced animals and competition with alien plants are the primary threats facing these 19 taxa (See Table 1).

When Polynesian immigrants settled in the Hawaiian Islands, they brought with them water-control and slash-and-burn systems of agriculture and encouraged plants that they introduced to grow in valleys. Their use of the land resulted in erosion, changes in the composition of native communities, and a reduction of biodiversity (Cuddihy and Stone 1990, HHP 1990b, Kirch 1982, Wagner *et al.* 1985). Hawaiians settled and altered many areas of Kauai including areas in which some of the taxa in this final rule grew (Department of Land and Natural Resources (DLNR) 1981a; HHP 1990a, 1990b). Many

forested slopes were denuded in the mid-1800s to supply firewood to whaling ships, plantations, and island residents. Native plants were undoubtedly affected by this practice. Also, sandalwood and tree fern harvesting occurred in many areas, changing forest composition and affecting native species (Cuddihy and Stone 1990).

Beginning with Captain James Cook in 1792, early European explorers introduced livestock, which became feral, increased in number and range, and caused significant changes to the natural environment of Hawaii. The 1848 provision for land sales to individuals allowed large-scale agricultural and ranching ventures to begin. So much land was cleared for these enterprises that climatic conditions began to change, and the amount and distribution of rainfall were altered (Wenkam 1969). Plantation owners supported reforestation programs which resulted in many alien trees being introduced in the hope that the watershed could be conserved. Beginning in the 1920s, water collection and diversion systems were constructed in upland areas to irrigate lowland fields, and this undoubtedly destroyed individuals and populations of native plants. The irrigation system also opened new routes for the invasion of alien plants and animals into native forests (Cuddihy and Stone 1990,

Culliney 1988, Wagner *et al.* 1990, Wenkam 1969).

Past and present activities of introduced alien mammals are the primary factor altering and degrading vegetation and habitats on Kauai. Feral ungulates trample and eat native vegetation and disturb and open areas. This causes erosion and allows the entry of alien plant species (Cuddihy and Stone 1990, Wagner *et al.* 1990). Sixteen taxa in this final rule are directly threatened by habitat degradation resulting from introduced ungulates: 15 taxa are threatened by pigs, ten by goats, and two by deer.

The pig (*Sus scrofa*) is originally native to Europe, northern Africa, Asia Minor, and Asia. European pigs, introduced to Hawaii by Captain James Cook in 1778, became feral and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. They are currently present on Kauai and four other islands, and inhabit rain forests and grasslands. Pig hunting is allowed on all islands either year-round or during certain months, depending on the area (DLNR n.d.-a, n.d.-b, n.d.-c, 1990). While rooting in the ground in search of the invertebrates and plant material they eat, feral pigs disturb and destroy vegetative cover, trample plants and seedlings, and threaten forest regeneration by damaging seeds and seedlings. They disturb soil and cause erosion, especially on slopes. Alien

plant seeds are dispersed on their hooves and coats as well as through their digestive tracts, and the disturbed soil is fertilized by their feces, helping these plants to establish. Pigs are a major vector in the spread of banana poka and strawberry guava, and enhance populations of common guava, Hamakua pamakani, Maui pamakani, and prickly Florida blackberry, all of which threaten one or more of the taxa (Cuddihy and Stone 1990, Medeiros *et al.* 1986, Scott *et al.* 1986, Smith 1985, Stone 1985, Tomich 1986, Wagner *et al.* 1990).

Feral pigs pose an immediate threat to one or more populations of 15 of the taxa in this final rule. All known populations of the following taxa are threatened by feral pigs: *Alsinidendron viscosum*, *Delissea rivularis*, *Hibiscadelphus woodii*, *Hibiscus waimeae* ssp. *hannerae*, *Labordia tinifolia* var. *wahiawaensis*, *Phyllostegia knudsenii*, *Phyllostegia wawrana*, and *Schiedea stellarioides*. Populations of other taxa threatened by feral pigs are: the Alakai Wilderness and Keanapuka populations of *Alsinidendron lychnoides*; the Makaleha Mountains population of *Cyanea recta*; the Makaleha Mountains and Wahiawa Mountains populations of *Cyanea remyi*; the Wahiawa Mountains population of *Myrsine linearifolia*; the Kalalau Valley population of *Pritchardia napaliensis*; three of the six populations of *Schiedea membranacea* at Kalalau Valley, Nualolo, and Waialae Valley; and the Wahiawa Mountains population of *Viola kauaensis* var. *wahiawaensis*. Pigs also constitute a potential threat to the only known population of *Schiedea helleri* off Mohihi Stream, the Pohakuao and Kalalau cliffs populations of *Myrsine linearifolia*, and the Wainiha Valley populations of *Cyanea recta* and *Cyrtandra cyaneoides*. Habitat degradation reported to occur in areas near these populations, if not controlled, may become a problem for these populations (HHP 1990a, 1992, 1994b7, 1994i1, 1994i3; HPCC 1990a, 1991a2, 1991d, 1991f1, 1991f3, 1991f4, 1992a, 1993a1, 1993c1, 1993e, 1993j, 1993k1, 1993k2; Lorence and Flynn 1991, 1993b; Wood and Perlman 1993a; M. Bruegmann, *in litt.* 1994; T. Flynn, J. Lau, D. Lorence, S. Perlman, and K. Wood, pers. comms. 1994).

The goat (*Capra hircus*), a species originally native to the Middle East and India, was successfully introduced to the Hawaiian Islands in 1792. Currently populations exist on Kauai and four other islands. On Kauai, feral goats have been present in drier, more rugged areas since the 1820s and they still occur in Waimea Canyon and along the Na Pali

Coast, as well as in the drier perimeter of Alakai Swamp and even in its wetter areas during periods with low rainfall. Goats are managed in Hawaii as a game animal, but many herds populate inaccessible areas where hunting has little effect on their numbers (HHP 1990c). Goat hunting is allowed year-round or during certain months, depending on the area (DLNR n.d.-a, n.d.-b, n.d.-c, 1990). Goats browse on introduced grasses and native plants, especially in drier and more open ecosystems. Feral goats eat native vegetation, trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Clarke and Cuddihy 1980, Cuddihy and Stone 1990, Culliney 1988, Scott *et al.* 1986, Tomich 1986, van Riper and van Riper 1982).

Although many of the plants in this final rule survive on steep cliffs inaccessible to goats, the original range of these plants was probably much larger. These species are now vulnerable to the long-term, indirect effects of goats, such as large-scale erosion (Corn *et al.* 1979). The habitats of many of the 19 plants were damaged in the past by goats, and these effects are still apparent in the form of alien vegetation and erosion. One or more populations of ten of the taxa in this final rule are currently threatened by direct damage from feral goats, such as trampling of plants and seedlings and erosion of substrate (Clarke and Cuddihy 1980, Culliney 1988, Scott *et al.* 1986, van Riper and van Riper 1982).

The only known populations of *Hibiscadelphus woodii*, *Phyllostegia knudsenii*, and *Schiedea stellarioides* are threatened by goats. Populations of other taxa threatened by goats include: the Waialae and Nawaimaka Valley populations of *Alsinidendron viscosum*, the Makaleha Mountains populations of *Cyanea recta* and *Cyanea remyi*, four of the five populations (Kalalau Valley, Koaie Stream, Mahanaloa Valley, and Pohakuao Valley) of *Kokia kauaiensis*, the Kalalau cliffs and Namolokama Summit plateau populations of *Myrsine linearifolia*, the largest population of *Pritchardia napaliensis* at Hoolulu Valley, and three of the six populations (Kalalau Valley, Mahanaloa-Kuia Valley, and Waialae Valley) of *Schiedea membranacea* (HHP 1994j5, 1994j6; HPCC 1990b3, 1990c2, 1991f5, 1991h, 1993a1, 1993a2, 1993f, 1993i; Lorence and Flynn 1993b; Wood and Perlman 1993a; J. Lau, D. Lorence, S. Perlman, K. Wood, pers. comms. 1994).

Individuals of mule deer (*Odocoileus hemionus*), native from western North

America to central Mexico, were brought to Kauai from Oregon in the 1960s for game hunting and have not been introduced to any other Hawaiian island. Mule deer were introduced, in part, to provide another animal for hunting, since the State had planned to reduce the number of goats on Kauai because they were so destructive to the landscape (Kramer 1971). About 400 animals are known in and near Waimea Canyon, with some invasion into Alakai Swamp in drier periods. Mule deer, legally hunted during only one month each year, trample native vegetation and cause erosion by creating trails and removing vegetation (Cuddihy and Stone 1990, DLNR 1985, Tomich 1986). They are a threat to the Mahanaloa-Kuia Valley and Nualolo populations of *Schiedea membranacea* and the Paaike and Kuia Valley populations of *Kokia kauaiensis* (M. Bruegmann, *in litt.* 1994; S. Perlman, pers. comm. 1994).

Substrate loss due to agriculture, grazing animals (especially goats), hikers, and vegetation change results in habitat degradation and loss. This particularly affects plant populations on cliffs or steep slopes, such as the Koaie Stream population of *Kokia kauaiensis* (HHP 1994j6).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants are potential threats to all of the taxa, but especially to *Hibiscadelphus woodii*, *Phyllostegia knudsenii*, and *Pritchardia viscosa*, each of which has only one or two populations and fewer than five individuals. Collection of whole plants or reproductive parts of any of these three species could adversely impact the gene pool and threaten the survival of the species. Some taxa, such as *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Cyanea recta*, *Labordia tinifolia* var. *wahiawaensis*, *Pritchardia viscosa*, and *Schiedea helleri* have populations close to trails or roads and are thus easily accessible to collectors and, therefore, are potentially threatened by overcollection (Flynn and Lorence 1992; HHP 1994b1, 1994d8, 1994h1, 1994n1; HPCC 1991e2, 1993g; T. Flynn, pers. comm. 1994). At least one of the three remaining *Pritchardia viscosa* individuals has been damaged by spiked boots used to scale those trees and collect seeds and/or reference material (Hodel, *in litt.* 1995; Mehrhoff, *in litt.* 1994).

Many of the plants in this final rule occur in recreational areas used for hiking, camping, and hunting. Tourism is a growing industry in Hawaii, and as

more people seek recreational activities, more human contact with rare native plants is likely. People can transport or introduce alien plants through seeds on their footwear, cause erosion, trample plants, and start fires (Corn *et al.* 1979). *Alsinidendron lychnoides* and *Labordia tinifolia* var. *wahiawaensis* have populations near trails and are considered to be immediately threatened by recreational use of the areas in which they occur (HHP 1994b1; HPCC 1991e2, 1992a).

C. Disease or predation. Browsing damage by goats has been verified for *Cyanea recta* and *Cyanea remyi* (Lorence and Flynn 1993b). Goats have directly destroyed individuals of *Schiedea stellarioides* (S. Perlman, pers. comm. 1994). The remaining species are not known to be unpalatable to goats or deer and, therefore, predation is a probable threat where those animals have been reported, potentially affecting eight additional taxa: *Alsinidendron viscosum*, *Hibiscadelphus woodii*, *Kokia kauaiensis*, *Myrsine linearifolia*, *Phyllostegia knudsenii*, *Pritchardia napaliensis*, *Schiedea membranacea*, and *Schiedea stellarioides* (HHP 1994j5, 1994j6; HPCC 1990b3, 1990c2, 1991f5, 1991h, 1993a1, 1993f, 1993i, 1993j; Wood and Perlman 1993a; J. Lau, D. Lorence, S. Perlman, K. Wood, pers. comms. 1994). The lack of seedlings of many of the taxa and the occurrence of individuals of several taxa only on inaccessible cliffs may indicate that browsing mammals, especially goats, have restricted the distribution of these plants (HPCC 1991c; Wood and Perlman 1993a; D. Lorence and K. Wood, pers. comms. 1994).

Of the four species of rodents that have been introduced to the Hawaiian Islands, the species with the greatest impact on the native flora and fauna is probably *Rattus rattus* (black or roof rat), that now occurs on all the main Hawaiian Islands around human habitations, cultivated fields, and forests. Black rats and to a lesser extent *Mus musculus* (house mouse), *Rattus exulans* (Polynesian rat), and *R. norvegicus* (Norway rat) eat the fruits of some native plants, especially those with large, fleshy fruits. Many native Hawaiian plants produce fruit over an extended period of time, thus producing a prolonged food supply for rodent populations. Black rats strip bark from some native plants, and eat the fleshy stems and fruits of plants in the bellflower and African violet families (Cuddihy and Stone 1990; Tomich 1986; J. Lau, pers. comm. 1994). Rat damage to the stems of species of *Cyanea* has been reported in the Makaleha Mountains, Waioli Valley, and at the

base of Mount Waialeale, and poses a threat to the populations of *Cyanea recta* and *Cyanea remyi* that occur there (HPCC 1991a1; Lorence and Flynn 1993a; L. Mehrhoff, *in litt.* 1994; S. Perlman, pers. comm. 1994). It is probable that rats eat the fruits of species such as *Cyrtandra cyaneoides* and *Delissea rivularis* (C. Russell, *in litt.* 1994). Rats threaten the only known population of *Pritchardia viscosa*, two of three populations of *Pritchardia napaliensis*, and one population of *Kokia kauaiensis* by predation of their flowers or fruit (HPCC 1990b1, 1990c2; S. Perlman and K. Wood, pers. comms. 1994).

Little is known about the predation of certain rare Hawaiian plants by slugs. Indiscriminate predation by slugs on plant parts of *Cyanea remyi* has been observed by field botanists (Mehrhoff, *in litt.* 1994; S. Perlman, pers. comm. 1994). The effect of slugs on the decline of this and related species is unclear, although slugs may pose a threat by feeding on the stems and fruit, thereby, reducing the vigor of the plants and limiting regeneration.

Japanese white-eye (*Zosterops japonicus*) was introduced to the island of Oahu from eastern Asia in 1930, and has since spread to all of the main Hawaiian Islands. It is currently the most abundant bird in Hawaii (Pratt *et al.* 1989). Japanese white-eye has been observed piercing the corollas of *Hibiscadelphus woodii*, presumably to rob nectar (Lorence and Wagner 1995).

D. The inadequacy of existing regulatory mechanisms. Hawaii's Endangered Species Act states—"Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter . . ." (Hawaii Revised Statutes (HRS), sect. 195D-4(a)). Therefore, Federal listing will automatically invoke listing under Hawaii State law, which prohibits taking of listed plants in the State and encourages conservation by State agencies (HRS, sect. 195D-4 and 5).

None of the 19 taxa in this final rule are listed by the State. Eight taxa have populations on privately owned land. *Labordia tinifolia* var. *wahiawaensis* and *Viola kauaiensis* var. *wahiawaensis* are found exclusively on private land. At least one population of each of the other 17 taxa occurs on State land. Fourteen taxa have one or more populations in State parks, NARs, or the Alakai Wilderness Preserve, which have rules and regulations for the protection of resources (DLNR 1981b; HRS, sects. 183D-4, 184-5, 195-5, and 195-8). The

opportunity for improved enforcement of these rules and regulations would result from Federal listing.

One or more populations of each of the 19 taxa is located on land classified within conservation districts and owned by the State of Hawaii or private companies or individuals. Regardless of the owner, lands in these districts, among other purposes, are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources (HRS, sect. 205-2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205-4). Before decisions about these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205-4, 205-17) as well as the maintenance of natural resources is required to be taken into account (HRS, sects. 205-2, 205-4). Before any proposed land use that will occur on State land, is funded in part or whole by county or State funds, or will occur within land classified as conservation district, an environmental assessment is required to determine whether or not the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy, and thus approval of land use, is required by law to safeguard " * * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344-3(1)) and includes guidelines to "protect endangered species of individual plants and animals * * *" (HRS, sect. 344-4(3)(A)). Federal listing, because it automatically invokes State listing, also implements these other State regulations protecting the plants.

State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D-5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D-5(c)). Funds for these

activities could be made available under section 6 of the Act (State Cooperative Agreements). The Hawaii DLNR is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D-5.1).

Twelve of the taxa in this final rule are threatened by seven plants considered by the State of Hawaii to be noxious weeds. The State has provisions and funding available for eradication and control of noxious weeds on State and private land in conservation districts and other areas (HRS, chapt. 152; Hawaii Department of Agriculture (DOA) 1981, 1991).

Despite the existence of various State laws and regulations that protect Hawaii's native plants, their enforcement is difficult due to limited funding and personnel. Listing of these 19 plant taxa therefore reinforces and supplements the protection available under the State Act and other laws. The Federal Endangered Species Act also provides additional protection to these 19 taxa. For example, for species listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other natural or manmade factors affecting its continued existence. The small numbers of populations and individuals of most of these taxa increase the potential for extinction from naturally occurring events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. Seven of the taxa, *Delissea rivularis*, *Hibiscadelphus woodii*, *Labordia tinifolia* var.

wahiawaensis, *Phyllostegia knudsenii*, *Pritchardia viscosa*, *Schiedea helleri*, and *Schiedea stellarioides*, are known only from a single population. Nine other taxa are known from only two to five populations (See Table 1). Twelve of the taxa are estimated to number no more than 100 known individuals (See Table 1). Three of these taxa, *Hibiscadelphus woodii*, *Phyllostegia knudsenii*, and *Pritchardia viscosa*, number fewer than 10 individuals.

One or more species of almost 30 introduced plants directly threaten all 19 of the taxa. The original native flora of Hawaii consisted of about 1,000 species, 89 percent of which were endemic. Of the total native and

naturalized Hawaiian flora of 1,817 species, 47 percent were introduced from other parts of the world and nearly 100 species have become pests (Smith 1985, Wagner *et al.* 1990). Naturalized, introduced species compete with native plants for space, light, water, and nutrients (Cuddihy and Stone 1990). Some of these species were brought to Hawaii by various groups of people, including the Polynesian immigrants, for food or cultural reasons. Plantation owners, alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral animals, supported the introduction of alien tree species for reforestation. Ranchers intentionally introduced pasture grasses and other species for agriculture, and sometimes inadvertently introduced weed seeds as well. Other plants were brought to Hawaii for their potential horticultural value (Cuddihy and Stone 1990, Scott *et al.* 1986, Wenkam 1969).

Two shrubs in the genus *Ageratina* have naturalized in the Hawaiian Islands and are classified as noxious weeds by the State (DOA 1981). *Ageratina adenophora* (Maui pamakani), naturalized in dry areas to wet forests on Kauai and also classified as a noxious weed by the Federal government (7 CFR 360), threatens the Kalalau Valley population of *Schiedea membranacea* (Wood and Perlman 1993a). *Ageratina riparia* (Hamakua pamakani), naturalized in disturbed, dry to mesic areas and wet forests on Kauai, is a threat to the same population of *Schiedea membranacea* (Wood and Perlman 1993a). *Blechnum occidentale* (blechnum fern), probably accidentally introduced from tropical America, has naturalized in mesic forests on most of the main Hawaiian Islands (Degener 1932; J. Lau, pers. comm. 1994). *Blechnum* fern poses a threat to the Waioli Valley population of *Cyanea recta* (Lorence and Flynn 1993a; T. Flynn, pers. comm. 1994).

Classified as a noxious weed by the State of Hawaii, *Clidemia hirta* (Koster's curse) is an aggressive shrub found in mesic to wet forests on at least five islands in Hawaii (Almeda 1990, DOA 1981). It is a threat to the Waioli Valley populations of *Cyanea recta* and the Limahuli Valley population of *Hibiscus waimeae* ssp. *hannerae* (HHP 1992, 1994i1; HPCC 1991d; Lorence and Flynn 1993a, 1993b; J. Lau and K. Wood, pers. comms. 1994). *Cordylone fruticosa* (ti) is a shrub brought to Hawaii by the Polynesian immigrants. Its original range is unknown, but in Hawaii it is now naturalized on all the main islands except Kahoolawe in *Pandanus tectorius* (hala) forest and

mesic valleys and forests, sometimes forming dense stands (Wagner *et al.* 1990; J. Lau, pers. comm. 1994). The Hoolulu Valley population of *Pritchardia napaliensis* may compete for space with ti (HHP 1994m1).

Crassocephalum crepidioides, an annual herb native to tropical Africa, is naturalized in dry areas to wet forest on Kauai and four other islands. This weed has been considered a pest in Hawaii since 1966, and is a threat to the Waioli Valley population of *Cyanea recta* (Haselwood and Motter 1983; Lorence and Flynn 1993a; K. Wood, pers. comm. 1994). *Deparia petersenii* is a perennial fern capable of forming a thick groundcover (J. Lau, pers. comm. 1994). The Makaleha Mountains populations of *Cyanea recta* and *Cyrtandra cyaneoides* compete for space with this fern (Lorence and Flynn 1993b). *Drymaria cordata* (pipili), a pantropical annual herb, is naturalized in shaded, moist sites on Kauai and four other islands (Wagner *et al.* 1990). Pipili threatens the Makaleha Mountains population of *Cyrtandra cyaneoides* and the only known population of *Phyllostegia knudsenii* (HPCC 1993j, Lorence and Flynn 1993b).

Erechtites valerianifolia (fireweed) is an annual herb native from Mexico to Brazil and Argentina. It is naturalized on all of the main Hawaiian Islands except Niihau and Kahoolawe, and is found in disturbed, relatively wet areas. This weed threatens the Makaleha Mountains and Waioli Valley populations of *Cyanea recta*, the Makaleha Mountains and Wahiawa Mountains populations of *Cyanea remyi*, and the Makaleha Mountains populations of *Cyrtandra cyaneoides* and *Phyllostegia wawrana* (HPCC 1993k2; Lorence and Flynn 1991, 1993a, 1993b; Wagner *et al.* 1990; K. Wood, pers. comm. 1994). Brought to Hawaii as a cultivated herbaceous plant, *Erigeron karvinskianus* (daisy fleabane) is naturalized in wetter areas of Kauai and three other islands (Wagner *et al.* 1990). An invasion of daisy fleabane on the Kalalau cliffs threatens *Schiedea membranacea*, *Myrsine linearifolia*, and the only population of *Hibiscadelphus woodii*. Daisy fleabane also threatens the Alealau population of *Pritchardia napaliensis* and the Honopu Valley population of *Phyllostegia wawrana* (HPCC 1990d1, 1991c, 1993f, 1993k1; Lorence and Wagner 1995; K. Wood, pers. comm. 1994).

Juncus planifolius is a perennial herb native to South America, New Zealand, and Australia and is naturalized in open, disturbed, moist areas in forest edges and bogs (Wagner *et al.* 1990). Found on Kauai and four other islands,

Juncus planifolius threatens the population of *Viola kauaensis* var. *wahiawaensis* in the Wahiawa Bog (Lorence and Flynn 1991; K. Wood, pers. comm. 1994). *Kalanchoe pinnata* (air plant) is an herb which occurs on all the main islands except Niihau and Kahoolawe, especially in dry to mesic areas (Wagner *et al.* 1990). The Paaiki Valley and Kuia populations of *Kokia kauaensis*, the only known population of *Phyllostegia knudsenii*, the Pohakuao population of *Myrsine linearifolia*, and the Alealau and Hoolulu Valley populations of *Pritchardia napaliensis* are threatened by competition with air plant (HPCC 1991g, 1993j; M. Brueggemann, *in litt.* 1994; K. Wood, pers. comm. 1994).

Lantana camara (lantana), brought to Hawaii as an ornamental plant, is an aggressive, thicket-forming shrub which can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Wagner *et al.* 1990). One or more populations of each of the following species are threatened by lantana: *Alsinidendron viscosum*, *Cyanea recta*, *Hibiscus waimeae* ssp. *hannerae*, *Kokia kauaensis*, *Myrsine linearifolia*, the only known population of *Phyllostegia knudsenii*, *Pritchardia napaliensis*, and *Schiedea membranacea* (HHP 1990a, 1994i3, 1994j1, 1994j3 to 1994j6, 1994m2; HPCC 1990a, 1990b1, 1990c2, 1991d, 1993a1, 1993j; Lorence and Flynn 1993b; S. Perlman and K. Wood, pers. comms. 1994). *Melastoma candidum* is a member of a genus in which all species have been classified as noxious weeds by the State of Hawaii (DOA 1992). This species is naturalized in mesic to wet areas on Kauai and Hawaii and threatens the Makaleha Mountains populations of *Cyanea recta*, *Cyanea remyi*, and *Phyllostegia wawrana* (Almeda 1990, HPCC 1993k2, Lorence and Flynn 1993b).

Passiflora mollissima (banana poka), a woody vine, poses a serious problem to mesic forests on Kauai and Hawaii by covering trees, reducing the amount of light that reaches trees as well as understory, and causing damage and death to trees by the weight of the vines. Animals, especially feral pigs, eat the fruit and distribute the seeds (Cuddihy and Stone 1990, Escobar 1990). Banana poka is classified as a noxious weed by the State (DOA 1992) and threatens the Nualolo population of *Schiedea membranacea* and the Honopu Valley population of *Phyllostegia wawrana* (HPCC 1993k1; K. Wood, pers. comm. 1994). *Passiflora ligularis* (sweet granadilla) was first collected in Hawaii in 1909, and has since spread to mesic and wet areas of Kauai, Oahu, Lanai,

and Hawaii (Escobar 1990). This taxon threatens *Kokia kauaensis* (M. Brueggemann, *in litt.* 1994).

Two small tree species, *Psidium cattleianum* (strawberry guava) and *Psidium guajava* (common guava), were brought to Hawaii and have become widely naturalized on all the main islands, forming dense stands in disturbed areas. Strawberry guava, found in mesic and wet forests, develops into stands in which few other plants grow, physically displacing natural vegetation and greatly affecting Hawaiian plants, many of which are narrowly endemic taxa. Pigs depend on strawberry guava for food and, in turn, disperse the plant's seeds through the forests (Smith 1985, Wagner *et al.* 1990). Strawberry guava is considered to be the greatest weed problem in Hawaiian rain forests and is known to pose a direct threat to all remaining plants of *Pritchardia viscosa*, the Wahiawa Mountains populations of *Cyanea remyi* and *Labordia tinifolia* var. *wahiawaensis*, the Paaiki population of *Kokia kauaensis*, the Wahiawa Drainage population of *Myrsine linearifolia*, and the Mahanaloa-Kuia population of *Schiedea membranacea* (HPCC 1991f3, 1991f4, 1992c; Lorence and Flynn 1991, 1993b; Smith 1985; M. Brueggemann, *in litt.* 1994; T. Flynn and S. Perlman, pers. comms. 1994). Common guava invades disturbed sites, forming dense thickets in dry, mesic, and wet forests (Smith 1985, Wagner *et al.* 1990). Common guava threatens the Hoolulu Valley population of *Pritchardia napaliensis* (HHP 1994m1, HPCC 1990c2). *Pterolepis glomerata*, an herb or subshrub locally naturalized in mesic to wet disturbed sites on Kauai, Oahu, and Hawaii, threatens the Wahiawa Bog population of *Viola kauaensis* var. *wahiawaensis* (Lorence and Flynn 1991; K. Wood, pers. comm. 1994).

Rubus argutus (prickly Florida blackberry), an aggressive alien species in disturbed mesic to wet forests and subalpine grasslands on Kauai and three other islands, is considered a noxious weed by the State of Hawaii (DOA 1981, Smith 1985, Wagner *et al.* 1990). Prickly Florida blackberry threatens the only known populations of *Schiedea helleri*, *Schiedea stellarioides*, and *Delissea rivularis*, the Alakai Wilderness and Keanapuka populations of *Alsinidendron lychnoides*, the Waialae-Nawaimaka population of *Alsinidendron viscosum*, the Koaie Stream and Pohakuao populations of *Myrsine linearifolia*, the Honopu Valley population of *Phyllostegia wawrana*, and the Nualolo population of *Schiedea membranacea* (HHP 1994b6; HPCC

1992a, 1993a1, 1993a2, 1993g, 1993i; 1993k1; J. Lau, S. Perlman, K. Wood, pers. comms. 1994). *Rubus rosifolius* (thimbleberry), native to Asia, is naturalized in disturbed mesic to wet forest on all of the main Hawaiian Islands. This shrub threatens the three largest populations of *Cyanea recta* in Wainiha Valley, Makaleha Mountains, and Waioli Valley; the Wahiawa Mountains and Waioli Valley populations of *Cyanea remyi*; the Makaleha Mountains population of *Cyrtandra cyaneoides*; the Limahuli Valley population of *Hibiscus waimeae* ssp. *hannerae*; the Mahanaloa-Kuia Valley junction population of *Kokia kauaensis*; the Limahuli-Hanakapiai Ridge population of *Myrsine linearifolia*; the Makaleha Mountains population of *Phyllostegia wawrana*; and the Mahanaloa-Kuia Valley population of *Schiedea membranacea* (HHP 1992, 1994i1, 1994j3; HPCC 1990d2, 1991d, 1991f2, 1992c, 1993c2, 1993k2; Lorence and Flynn 1991, 1993a, 1993b; S. Perlman and K. Wood, pers. comms. 1994).

Triumfetta semitriloba (Sacramento bur) is a subshrub now found on four Hawaiian Islands and considered to be a noxious weed by the State of Hawaii (DOA 1981, Wagner *et al.* 1990). Sacramento bur threatens the Koaie Stream population of *Kokia kauaensis* (HPCC 1990b3). *Youngia japonica* (Oriental hawksbeard) is an annual herb native to southeast Asia and now is a common weed in disturbed moist and shaded sites, as well as intact wet forests, on most of the main Hawaiian Islands (Wagner *et al.* 1990). The Waioli Valley population of *Cyanea recta* is threatened by this weed (Lorence and Flynn 1993a).

Several hundred species of grasses have been introduced to the Hawaiian Islands, many for animal forage. Of the approximately 100 grass species that have become naturalized, 3 species threaten 8 of the 19 d plant taxa. *Melinis minutiflora* (molasses grass), a perennial grass brought to Hawaii for cattle fodder, is now naturalized in dry to mesic, disturbed areas on most of the main Hawaiian Islands. The mats it forms smother other plants and fuel more intense fires than would normally affect an area (Cuddihy and Stone 1990, O'Connor 1990, Smith 1985). The largest populations of *Alsinidendron viscosum* and *Schiedea stellarioides*, in Waialae-Nawaimaka Valley, are threatened by molasses grass (HPCC 1993a1, 1993a2, 1993i). The perennial grass *Paspalum conjugatum* (Hilo grass), naturalized in moist to wet, disturbed areas on most Hawaiian Islands, produces a dense ground cover, even on

poor soil, and threatens the Makaleha Mountains population of *Cyanea recta*, *Cyanea remyi*, *Cyrtandra cyaneoides*, the only known population of *Phyllostegia knudsenii*, and the Powerline Road population of *Pritchardia viscosa* (HHP 1992; HPC 1993j; Lorence and Flynn 1993b; J. Lau and S. Perlman, pers. comms. 1994). *Sacciolepis indica* (Glenwood grass), an annual or perennial grass naturalized on five islands in Hawaii in open, wet areas, threatens the Waioli Valley and Makaleha Mountains populations of *Cyanea recta* (HHP 1992; Lorence and Flynn 1993a, 1993b; J. Lau and K. Wood, pers. comms. 1994).

Erosion, landslides, and rock slides due to natural weathering result in the death of individual plants as well as habitat destruction. This especially affects the continued existence of taxa or populations with limited numbers and/or narrow ranges, such as: the two largest populations of *Cyanea recta*; the Makaleha Mountains and upper Waioli Valley populations of *Cyrtandra cyaneoides*, each of which has only one individual; the only populations of *Delissea rivularis*, *Phyllostegia knudsenii*, and *Hibiscadelphus woodii*; and the largest population of *Schiedea membranacea* (HPC 1990d2, 1991c, 1993c1, 1993j; Lorence and Flynn 1993a, 1993b; Lorence and Wagner 1995; Mehrhoff, *in litt.* 1994; J. Lau and K. Wood, pers. comms. 1994). This process is often exacerbated by human disturbance and land use practices (See Factor A).

In September 1992, Hurricane 'Iniki struck the Hawaiian Islands and caused extensive damage, especially on the island of Kauai. Many forest trees were destroyed, opening the canopy and thus allowing the invasion of light-loving alien plants, which are a threat to the continued existence of many of the d taxa. Over three-fourths of all known *Labordia tinifolia* var. *wahiawaensis* plants were destroyed as a result of the hurricane-force winds and substrate subsidence caused by the hurricane (S. Perlman, pers. comm. 1994). One plant of *Alsinidendron lychnoides*, half of one population of *Hibiscus waimeae* ssp. *hannerae*, and half of the known individuals of *Pritchardia viscosa* were destroyed by the hurricane (M. Brueggemann, *in litt.* 1994; S. Perlman, pers. comm. 1994). Damage by future hurricanes could further decrease the already reduced numbers and reduced habitat of most of the 19 taxa in this final rule.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by

these species in determining to make this rule final. Based on this evaluation, this rulemaking will list 17 of these plant taxa as endangered (*Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Cyanea remyi*, *Cyrtandra cyaneoides*, *Delissea rivularis*, *Hibiscadelphus woodii*, *Hibiscus waimeae* ssp. *hannerae*, *Kokia kauaiensis*, *Labordia tinifolia* var. *wahiawaensis*, *Phyllostegia knudsenii*, *Phyllostegia wawrana*, *Pritchardia napaliensis*, *Pritchardia viscosa*, *Schiedea helleri*, *Schiedea membranacea*, *Schiedea stellarioides*, and *Viola kauaensis* var. *wahiawaensis*) and two taxa as threatened (*Cyanea recta* and *Myrsine linearifolia*). Sixteen of the taxa either number no more than about 100 individuals or are known from five or fewer populations. The 17 taxa listed as endangered are threatened by one or more of the following: habitat degradation and/or predation by feral pigs, feral goats, rats, and deer; competition from alien plants; substrate loss; human impacts; and lack of legal protection or difficulty in enforcing laws that are already in effect. Small population size and limited distribution make these species particularly vulnerable to extinction and/or reduced reproductive vigor from naturally occurring events. Because these 17 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Although populations of *Cyanea recta* and *Myrsine linearifolia* are threatened by predation (by rats and/or goats), habitat modification by pigs and goats, and competition with alien plant species, the wider distribution of populations through a relatively large area and greater numbers of individual plants reduce the likelihood that these species will become extinct in the near future. For these reasons, *Cyanea recta* and *Myrsine linearifolia* are not now in immediate danger of extinction throughout all or a significant portion of their ranges. However, both species are likely to become endangered in the foreseeable future if the threats affecting these species are not curbed. As a result, *Cyanea recta* and *Myrsine linearifolia* are designated threatened species.

Critical habitat is not being designated for the 19 taxa included in this rule, for reasons discussed in the "Critical Habitat" section below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological

features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

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 a species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. As discussed under Factor B of the summary of factors affecting the species section, these taxa are threatened by overcollection, due to low population size. The publication of precise maps and descriptions of critical habitat in the Federal Register and local newspapers as required in designation of critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of these taxa as endangered or threatened publicizes the rarity of the plants and, thus, can also make these plants attractive to curiosity seekers or collectors of rare plants.

All involved parties and the major landowners have been notified of the location and importance of protecting the habitat of these taxa. Protection of the habitats of these plants will be addressed through the recovery process and through the section 7 consultation process as necessary. At present, the Service is not aware of any Federal activity within the currently known habitats of these plants. The Service finds that designation of critical habitat for these 19 taxa is not prudent at this time. Such a designation would increase the degree of threat from vandalism, collecting, or other human activities and is unlikely to aid in the conservation of these taxa. In addition, designation of critical habitat would provide no benefits beyond those that these species would receive by virtue of their being

listed as endangered or threatened species.

Available Conservation Measures

Conservation measures provided to plant taxa listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for listed species. The requirements for Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. None of the 19 taxa occur on Federal lands and no known Federal activities occur within the present known habitat of these 19 plant taxa.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened plants. With respect to the 19 plant taxa in this rule, the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any listed plant species; transport such species in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; or to remove and reduce to possession any such species from areas under Federal jurisdiction. In addition, it is illegal to maliciously damage or destroy any endangered plant from areas under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any endangered species on any other area in knowing violation of any State law or

regulation or in the course of any violation of a State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to these taxa in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving listed plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would be sought or issued for most of the taxa, because they are not in cultivation or common in the wild.

It is the policy of the Service, published in the Federal Register on July 1, 1994, (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the species' range. Eighteen of the 19 taxa in this final rule are located on State lands. The Service is not aware of any otherwise legal activities being conducted by the public on State lands that will be affected by this listing and result in a violation of section 9. Six of the listed taxa (*Hibiscadelphus woodii*, *Hibiscus waimeae* ssp. *hanneriae*, *Kokia kauaiensis*, *Myrsine linearifolia*, *Pritchardia napaliensis*, and *Pritchardia viscosum*) may be of horticultural interest, though none are currently in commercial trade. Intrastate commerce (commerce within a State) is not prohibited under the Act. However, interstate and foreign commerce (sale or offering for sale across State or international boundaries), will require a Federal endangered species permit. (Endangered species may be advertised for sale provided the advertisement contains a statement that no sale may be consummated until a permit has been obtained from the Service.)

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Pacific Islands Ecoregion Manager (see ADDRESSES section). Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (telephone: 503/231-6241; facsimile: 503/231-6243).

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species act. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (Hawaii Revised Statutes (HRS), sect. 195D-4(a)). This Federal listing will automatically invoke listing under Hawaii State law. The State law prohibits taking of listed species on private and State lands and encourages conservation by State agencies (HRS, sect. 195D-4). However, the regulations are difficult to enforce because of limited personnel.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion Office (See ADDRESSES section).

Author

The authors of this final rule are Christa Russell and Marie M. Brueggemann, Pacific Islands Ecoregion Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service hereby amends 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. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS:							
<i>Alsiniidendron lychnoides</i> .	Kuawawaenuhu	U.S.A.(HI)	Caryophyllaceae—Pink	E	590	NA	NA
<i>Alsiniidendron viscosum</i> .	None	U.S.A.(HI)	Caryophyllaceae—Pink	E	590	NA	NA
<i>Cyanea recta</i>	Haha	U.S.A.(HI)	Campanulaceae—Bellflower	T	590	NA	NA
<i>Cyanea remyi</i>	Haha	U.S.A.(HI)	Campanulaceae—Bellflower	E	590	NA	NA
<i>Cyrtandra cyaneoides</i> .	Mapele	U.S.A.(HI)	Gesneriaceae—African violet	E	590	NA	NA
<i>Delissea rivularis</i>	'Oha	U.S.A.(HI)	Campanulaceae—Bellflower	E	590	NA	NA
<i>Hibiscadelphus woodii</i> .	Hau kuahiwi	U.S.A.(HI)	Malvaceae—Mallow	E	590	NA	NA
<i>Hibiscus waimeae</i> ssp. <i>hannerae</i> .	Koki'o ke'oke'o	U.S.A.(HI)	Malvaceae—Mallow	E	590	NA	NA
<i>Kokia kauaiensis</i>	Koki'o	U.S.A.(HI)	Malvaceae—Mallow	E	590	NA	NA
<i>Labordia tinifolia</i> var. <i>wahiawaensis</i> .	Kamakahala	U.S.A.(HI)	Loganiaceae—Logania	E	590	NA	NA
<i>Myrsine linearifolia</i> .	Kolea	U.S.A.(HI)	Myrsinaceae—Myrsine	T	590	NA	NA
<i>Phyllostegia knudsenii</i> .	None	U.S.A.(HI)	Lamiaceae—Mint	E	590	NA	NA
<i>Phyllostegia wawrana</i> .	None	U.S.A.(HI)	Lamiaceae—Mint	E	590	NA	NA
<i>Pritchardia napaliensis</i> .	Loulu	U.S.A.(HI)	Arecaceae—Palm	E	590	NA	NA
<i>Pritchardia viscosa</i> .	Loulu	U.S.A.(HI)	Arecaceae—Palm	E	590	NA	NA
<i>Schiedea helleri</i>	None	U.S.A.(HI)	Caryophyllaceae—Pink	E	590	NA	NA
<i>Schiedea membranacea</i> .	None	U.S.A.(HI)	Caryophyllaceae—Pink	E	590	NA	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Schiedea stellarioides</i> .	None	U.S.A.(HI)	Caryophyllaceae—Pink	E	590	NA	NA
<i>Viola kauaensis</i> var. <i>wahiawaensis</i> .	Nani wai'ale'ale	U.S.A.(HI)	Violaceae—Violet	E	590	NA	NA

Dated: September 24, 1996.
 John G. Rogers,
 Acting Director, Fish and Wildlife Service.
 [FR Doc. 96-25558 Filed 10-09-96; 8:45 am]
 BILLING CODE 4310-55-P

50 CFR Part 17

RIN 1018-AD50

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Twenty-five Plant Species From the Island of Oahu, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 25 plant taxa—*Chamaesyce herbstii* ('akoko), *Chamaesyce rockii* ('akoko), *Cyanea acuminata* (haha), *Cyanea humboldtiana* (haha), *Cyanea koolauensis* (haha), *Cyanea longiflora* (haha), *Cyanea st.-johnii* (haha), *Cyrtandra dentata* (ha'iwale), *Cyrtandra subumbellata* (ha'iwale), *Cyrtandra viridiflora* (ha'iwale), *Delissea subcordata* ('oha), *Eragrostis fosbergii* (No common name (NCN)), *Gardenia mannii* (nanu), *Labordia cyrtandrae* (kamakahala), *Lepidium arbuscula* ('anaunau), *Lobelia gaudichaudii* ssp. *koolauensis* (NCN), *Lobelia monostachya* (NCN), *Melicope saint-johnii* (alani), *Myrsine juddii* (kolea), *Phyllostegia hirsuta* (NCN), *Phyllostegia kaalaensis* (NCN), *Pritchardia kaalae* (loulu), *Schiedea kealiae* (NCN), *Trematolobelia singularis* (NCN), and *Viola oahuensis* (NCN). All 25 taxa are endemic to the island of Oahu, Hawaiian Islands. The 25 plant taxa and their habitats have been variously affected or are currently threatened by one or more of the following—competition, predation, or habitat degradation from alien species; human impacts; fire; and natural disasters. This

rule implements the Federal protection provisions provided by the Act for these plant taxa.

EFFECTIVE DATE: This rule takes effect November 12, 1996.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3108, P.O. Box 5088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Brooks Harper, Field Supervisor, Ecological Services (see **ADDRESSES** section) (telephone: 808/541-3441; facsimile 808/541-3470).

SUPPLEMENTARY INFORMATION:

Background

Chamaesyce herbstii, *Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea st.-johnii*, *Cyrtandra dentata*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Eragrostis fosbergii*, *Gardenia mannii*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Melicope saint-johnii*, *Myrsine juddii*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Pritchardia kaalae*, *Schiedea kealiae*, *Trematolobelia singularis*, and *Viola oahuensis* are endemic to the island of Oahu, Hawaiian Islands.

The island of Oahu is formed from the remnants of two large shield volcanoes, the younger Koolau volcano on the east and the older Waianae volcano to the west (Department of Geography 1983). Their original shield volcano shape has been lost as a result of extensive erosion, and today these volcanoes are called mountains or ranges, and consist of long, narrow ridges. The Koolau Mountains were built by eruptions that took place primarily along a northwest-trending rift zone (Macdonald *et al.* 1983) and formed a range now approximately 60 kilometers (km) (37 miles (mi)) long (Foote *et al.* 1972). Median annual rainfall for the Koolau Mountains varies from 130 to 640

centimeters (cm) (50 to 250 inches (in.)), most of which is received at higher elevations along the entire length of the windward (northeastern) side (Taliaferro 1959).

Nineteen of the plant taxa in this final rule occur in the Koolau Mountains—*Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea st.-johnii*, *Cyrtandra dentata*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Gardenia mannii*, *Labordia cyrtandrae*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Melicope saint-johnii*, *Myrsine juddii*, *Phyllostegia hirsuta*, *Trematolobelia singularis*, and *Viola oahuensis*. The vegetation communities of the Koolau Mountains, especially in the upper elevations to which many of the plant taxa in this final rule are restricted, are primarily lowland mesic and wet forests dominated by *Metrosideros polymorpha* ('ohi'a) and/or other tree or fern taxa. However, the vegetation now covering the Koolau Mountain Range is mostly alien. The majority of the remaining native vegetation is restricted to steep valley head walls and inaccessible summit ridges. The windswept ridges are very steep and are characterized by grasses, ferns, and low-growing, stunted shrubs (Gagne and Cuddihy 1990).

The Waianae Mountains were built by eruptions that took place primarily along three rift zones. The two principal rift zones run in a northwestward and south-southeastward direction from the summit and a lesser one runs to the northeast. The range is approximately 64 km (40 mi) long. The caldera lies between the north side of Makaha Valley and the head of Nanakuli Valley (MacDonald *et al.* 1983). The Waianae Mountains are in the rain shadow of the parallel Koolau Mountains and except for Mt. Kaala, the highest point on Oahu (1,225 meters (m)) 4,020 feet (ft)), receive much less rainfall (Wagner *et al.* 1990). The median annual rainfall for the Waianae Mountains varies from 51 to 190 cm (20 to 75 in) with only the small summit area of Mt. Kaala

receiving the highest amount. Relative to the Koolau Mountains, the Waianae Mountains have a greater range of elevations, moisture regimes, and habitat types. As a result, the most biologically diverse region on the island of Oahu is the Waianae Mountains.

Thirteen of the 25 plant taxa occur in the Waianae Mountains—*Chamaesyce herbstii*, *Cyanea longiflora*, *Cyrtandra dentata*, *Delissea subcordata*, *Eragrostis fosbergii*, *Gardenia mannii*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Melicope saint-johnii*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Pritchardia kaalae*, and *Schiedea kealiae*. These taxa, with the exception of *Lepidium arbuscula* and *Schiedea kealiae*, are found primarily in mesic forests dominated by 'ohi'a, *Acacia koa* (koa), *Diospyros sandwicensis* (lama), or a diverse mix of trees. *Lepidium arbuscula* is found primarily in mesic shrublands on ridges, steep slopes, and cliffs composed of a variety of native shrubs, herbs, and grasses. *Schiedea kealiae* is found on dry cliff communities with a variety of native trees and shrubs (Joel Lau, The Nature Conservancy of Hawaii (TNCH), pers. comm., 1994).

The known habitat of these 25 plant taxa is owned by the City and County of Honolulu, the State of Hawaii (including land classified as Department of Hawaiian Homelands, Natural Area Reserve (NAR) System, Forest Reserve, and land leased by the Federal Government (Department of Defense (DOD)) for military use), the Federal Government, and private parties. Plants on land owned or leased by the Federal government are located on portions of Dillingham, Kaena Point, Makua, and Schofield Barracks Military Reservations; Kawaihoa and Kahuku training areas; Lualualei Naval Reservation; and the Omega U.S. Coast Guard Station. Private lands include Honouliuli Preserve, leased from a major landowner by TNCH.

Discussion of the 25 Plant Taxa Included in This Final Rule

Chamaesyce herbstii was first described by Warren Wagner (1988) based on a specimen collected by Derral Herbst in 1969 in the Waianae Mountains of Oahu. Other published names which Wagner considers to be synonymous with *Chamaesyce herbstii* include *C. rockii* var. *grandifolia*, *Euphorbia clusiaefolia* var. *grandifolia*, and *E. forbesii* (Hillebrand 1888, Koutnik 1985, Wagner 1988).

Chamaesyce herbstii, a member of the spurge family (Euphorbiaceae), is a small tree ranging from 3 to 8 m (10 to 26 ft) tall. The thin, leathery leaves,

normally 8 to 19.5 cm (3.1 to 7.7 in.) long and 1.8 to 3.8 cm (0.7 to 1.5 in.) wide, are narrowly oblong or sometimes more lance-shaped or elliptic. The leaves are arranged in pairs on the same plane. The small, petalless flower clusters (cyathia or compact flowering stalks with small individual flowers, the whole simulating a single flower) occur in groups of 3 to 15 in branched, open flowering stalks. The individual flower stalks are 8 to 20 millimeters (mm) (0.3 to 0.8 in.) long. The hairy inflorescence bracts (specialized leaves) are broadly bell-shaped and contain five to six yellowish green glands. The green or sometimes reddish purple-tinged, angular capsules (dry fruit that open at maturity) scarcely protrude from the bracts. This species is distinguished from others in the genus by the length of the flowering stalk and the color of the angular fruits (Koutnik 1990).

Historically *Chamaesyce herbstii* was known from scattered populations in the northern and central Waianae Mountains on the island of Oahu (Hawaii Heritage Program (HHP) 1994c1 to 1994c5). Currently this species is known from four populations in the central and northern Waianae Mountains—South Ekahanui Gulch, Pahole (Kukuiula) Gulch, Kapuna Gulch, and West Makaleha-Central Makaleha. These populations are found on private land in TNCH's Honouliuli Preserve and State land, including Pahole NAR (HHP 1994c1 to 1994c5). The total number of plants is estimated to be fewer than 200. *Chamaesyce herbstii* typically grows in mesic koa-'ohi'a lowland forests, *Pisonia* sp. (papala kepau)-*Charpentiera* sp. (papala) lowland forests, or diverse mesic forests at elevations between 530 and 700 m (1,750 to 2,300 ft). Associated plant taxa include the federally endangered *Alectryon macrococcus* var. *macrococcus* (mahoe), as well as *Hibiscus arnottianus* var. *arnottianus* (koki'o ke'oke'o), *Melicope* sp. (alani), *Pouteria* sp. ('ala'a), and *Urera glabra* (opuhe) (HHP 1994c1 to 1994c5).

The primary threats to *Chamaesyce herbstii* are habitat degradation and/or destruction by feral pigs (*Sus scrofa*); competition with alien plant taxa such as *Grevillea robusta* (silk oak), *Passiflora suberosa* (huehue haole), *Psidium cattleianum* (strawberry guava), and *Schinus terebinthifolius* (Christmas berry); potential fire; and risk of extinction from naturally occurring events (such as hurricanes) and/or reduced reproductive vigor due to the small number of remaining populations (HHP 1994c1 to 1994c5; Christa Russell, TNCH, pers. comm. 1994).

Joseph F. Rock collected a plant in 1908 in the Koolau Mountains, Oahu, which was described a year later by Charles Noyes Forbes as *Euphorbia rockii*. Leon Croizat and Otto Degener (Degener and Croizat 1936) later transferred the species to *Chamaesyce*, resulting in the new combination *Chamaesyce rockii*, the name accepted in the current treatment of Hawaiian members of the genus (Koutnik 1990). The specific epithet honors Rock, an intrepid collector and scholar of the Hawaiian flora.

Chamaesyce rockii, a member of the spurge family, is usually a compact shrub or sometimes a small tree typically ranging from 0.5 to 2 m (1.6 to 6.6 ft) tall, but in protected sites it has been known to reach 4 m (13 ft) in height. The leathery leaves, generally 8 to 14 cm (3 to 5.5 in.) long and 2 to 3.5 cm (0.8 to 1.4 in.) wide, are narrowly oblong to oblong-elliptic or sometimes narrowly elliptic in shape. The leaves are arranged in two opposite rows along the stem, and have smooth leaf margins. The cyathia occur in groups of about 3 to 10 in branched, open to sometimes condensed flowering stalks that are usually 2 to 6 cm (0.8 to 2.4 in.) long. The bracts of the flowering stalks are broadly bell-shaped and contain five to six greenish yellow, green, or red glands. The fruit is a brilliant red (sometimes pink-tinged red), round, hairless capsule, 14 to 25 mm (0.6 to 1 in.) long. The fruit protrudes noticeably from the bracts. This species differs from others in the genus in that it has large, red, capsular fruit (Koutnik 1990).

Chamaesyce rockii was known historically from scattered populations along the Koolau Mountains on the island of Oahu (HHP 1994d1 to 1994d13). Eleven of the thirteen known populations of this species are extant and are found on private land and State land leased by DOD for the Kawaihoa Training Area, as well as on Federal land on Schofield Barracks Military Reservation (HHP 1994d1 to 1994d11). Currently the total number of plants is estimated to be between 200 and 400 plants. *Chamaesyce rockii* typically grows in wet 'ohi'a-*Dicranopteris linearis* (uluhe) forest and shrubland between 640 and 915 m (2,100 and 3,000 ft) in elevation. Associated plant taxa include *Dubautia laxa* (na'ena'e pua melemele), *Machaerina* sp. ('uki), *Psychotria fauriei* (kopiko), *Wikstroemia* sp. ('akia), and *Myrsine juddii* (kolea) (HHP 1994d4).

The primary threats to *Chamaesyce rockii* are habitat degradation and/or destruction by feral pigs, potential impacts from military activities, and competition with alien plant taxa, such

as strawberry guava and *Clidemia hirta* (Koster's curse) (HHP 1994d1 to 1994d5, 1994d7, 1994d8).

While a pharmaceutical botanist on the vessel *Uranie*, Charles Gaudichaud-Beaupre collected a new lobelioid on Oahu, which he later described and named *Delissea acuminata* (Hillebrand 1888). Wilhelm Hillebrand (1888) transferred this species to the genus *Cyanea*, resulting in the new combination *Cyanea acuminata*. This is the name accepted in the current treatment of Hawaiian members of the family (Lammers 1990). Other published names considered synonymous with *Cyanea acuminata* include *C.*

acuminata var. *calycina*, *C. acuminata* forma *latifolia*, *C. occultans*, *Delissea acuminata* var. *calycina*, *D. acuminata* forma *latifolia*, *D. acuminata* var. *latifolia*, *D. occultans*, and *Lobelia acuminata* (Degener and Degener 1982, Hosaka and Degener 1938, Lammers 1990, St. John 1981 and 1987b, Wawra 1873).

Cyanea acuminata, a member of the bellflower family (Campanulaceae), is an unbranched shrub 0.3 to 2 m (1 to 6.6 ft) tall. The leaves, 11 to 32 cm (4.3 to 12.6 in.) long and 3 to 9 cm (1.2 to 3.5 in.) wide, are inversely lance-shaped to narrowly egg-shaped or elliptic. The upper leaf surface is green, whereas the lower surface is whitish green. The slightly hardened leaf edges contain small, spreading, pointed teeth. The leaf stalks are 2 to 10 cm (0.8 to 4 in.) long. Six to 20 flowers are arranged on a flowering stalk 15 to 60 mm (0.6 to 2.4 in.) long. The calyx lobes, 2 to 5 mm (0.08 to 0.2 in.) long, are narrowly triangular. The corolla is white and sometimes tinged purplish, 30 to 35 mm (1.2 to 1.4 in.) long and 3 to 4 mm (0.1 to 0.2 in.) wide. The tubular portion of the flower is almost erect to slightly curved, while the lobes are one-fourth to one-third as long as the tube and spreading. The yellow to yellowish orange, round berries are approximately 5 mm (0.2 in.) long. This species is distinguished from others in this endemic Hawaiian genus by the color of the petals and fruit and length of the calyx lobes, flowering stalk, and leaf stalks (Lammers 1990).

Historically, *Cyanea acuminata* was known from 31 scattered populations in the Koolau Mountains of Oahu (HHP 1994e1 to 1994e32). Currently, fewer than 100 plants are known from 15 populations on privately owned land; City and County of Honolulu land; State land, including land leased by the DOD for the Kawaiiloa Training Area; and Federal land on Schofield Barracks Military Reservation and the Omega Coast Guard Station (HHP 1994e1 to

1994e12, 1994e20, 1994e24, 1994e25). This species typically grows on slopes, ridges, or stream banks from 305 to 915 m (1,000 to 3,000 ft) elevation. The plants are found in mesic to wet 'ohi'a-uluhe, koa-'ohi'a, or *Diospyros sandwicensis* (lama)-'ohi'a forest (HHP 1994e1 to 1994e9, 1994e11, 1994e12, 1994e24, 1994e25; Lammers 1990).

The major threats to *Cyanea acuminata* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; potential predation by rats; competition with the noxious alien plant Christmas berry, Koster's curse, and *Ageratina adenophora* (Maui pamakani); and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HHP 1994e1 to 1994e4, 1994e7, 1994e8, 1994e10 to 1994e12, 1994e20; J. Lau, C. Russell, and Joan Yoshioka, TNCH, pers. comms. 1994).

While a botanist on the vessel *La Bonite* on his third trip to Hawaii, Gaudichaud-Beaupre collected a new lobelioid on Oahu which he later described and named as *Rollandia humboldtiana* (Lammers 1990). Other published names considered synonymous with *Rollandia humboldtiana* include *Delissea racemosa*, *Rollandia humboldtiana* forma *albida*, *R. pedunculosa*, and *R. racemosa* (Hillebrand 1888, Lammers 1990, Mann 1867–1868, St. John 1940, Wawra 1873). Recently, Lammers, Thomas Givnish, and Kenneth Sytsma merged the endemic Hawaiian genera *Cyanea* and *Rollandia* under the former name and published the new combination *Cyanea humboldtiana* (Lammers *et al.* 1993). The specific epithet honors the German naturalist and explorer, Baron Alexander von Humboldt.

Cyanea humboldtiana, a member of the bellflower family, is an unbranched shrub with woody stems 1 to 2 m (3.2 to 6.6 ft) tall. The leaves are inversely egg-shaped to broadly elliptic, 18 to 45 cm (7 to 18 in.) long and 7 to 16 cm (2.8 to 6.3 in.) wide. The leaf edges are hardened and have shallow, ascending rounded teeth. Five to twelve flowers are arranged on a hairy, downward bending flowering stalk which is 8 to 25 cm (3 to 10 in.) long. The dark magenta or white petals are 6 to 7.5 cm (2.4 to 3 in.) long and hairy. The pale orangish yellow berries are elliptic to inversely egg-shaped. This species differs from others in this endemic Hawaiian genus by the downward bending flowering stalk and the length of the flowering stalk (Lammers 1990).

Cyanea humboldtiana was known historically from 17 populations from the central portion to the southern end of the Koolau Mountains of Oahu (HHP 1994f1 to 1994f17). Currently, between 100 and 220 plants are known from three populations—Konahuanui summit, Moanalua-Kaneohe summit, and Lulumahu Gulch. These populations occur on private land, State land, and Federal land on the Omega U.S. Coast Guard Station (HHP 1994f1, 1994f2, 1994f16). This species is usually found in wet 'ohi'a-uluhe shrubland from 550 to 960 m (1,800 to 3,150 ft) elevation. Associated native plant taxa include ferns, alani, 'uki, *Ilex anomala* (kawa'u), and *Scaevola mollis* (naupaka kuahiwi) (HHP 1994f1, 1994f16).

Habitat degradation and/or destruction by feral pigs, potential predation by rats, competition with the alien plant Koster's curse, and a risk of extinction from naturally occurring events and/or reduced reproductive vigor, due to the small number of remaining populations, are the major threats to *Cyanea humboldtiana*. The Konahuanui summit population also is threatened by trampling by hikers (HHP 1994f1, 1994f2; J. Lau, C. Russell, and J. Yoshioka, pers. comms. 1994).

Cyanea koolauensis was first described by Hillebrand (1888) as *Rollandia longiflora* var. *angustifolia*, based on a specimen he collected on Oahu. In 1918 Rock elevated the variety to full species status as *Rollandia angustifolia* (Rock 1918b). Lammers *et al.* (1993) published the new name *Cyanea koolauensis* to replace *Rollandia angustifolia* when they merged *Cyanea* and *Rollandia*, as the name *Cyanea angustifolia* had already been used.

Cyanea koolauensis, a member of the bellflower family, is an unbranched shrub with woody stems, 1 to 1.5 m (3.5 to 5 ft) tall. The leaves are linear to narrowly elliptic with a whitish underside, 16 to 36 cm (6.3 to 14.2 in.) long and 1.5 to 4 cm (0.6 to 1.6 in.) wide. The leaf edges are hardened with shallow, ascending rounded teeth. The leaf stalks are 1.5 to 4.5 cm (0.6 to 1.8 in.) long. The flowering stalks are three to six-flowered. The flowering stalk is 15 to 40 mm (0.6 to 1.6 in.) long. The hypanthium (basal portion of the flower) is 6 to 12 mm (0.2 to 0.5 in.) long. The calyx lobes are fused into a sheath 2 to 8 mm (0.08 to 0.3 in.) long. The dark magenta petals are 5 to 9 cm (2.0 to 3.5 in.) long. The fruit is a round berry. *Cyanea koolauensis* is distinguished from others in this endemic Hawaiian genus by the leaf shape and width, the whitish green lower leaf surface and, the lengths of the

leaf stalks, calyx lobes, and hypanthium (Lammers 1990).

Cyanea koolauensis was known historically from 27 scattered populations throughout the Koolau Mountains on Oahu (HHP 1994g1 to 1994g28). Currently, 14 populations totalling fewer than 50 plants are known from the Waimea-Malaekahana Ridge to Hawaii Loa Ridge in the Koolau Mountains. These populations occur on City and County of Honolulu land, private land, and State land, including land leased to the DOD for the Kahuku and Kawailoa Training Areas (HHP 1994g1 to 1994g12, 1994g18, 1994g19, 1994g22). *Cyanea koolauensis* usually is found on slopes and ridge crests in wet 'ohi'a-uluhe forest or shrubland at elevations from 520 to 810 m (1,700 to 2,660 ft). Associated plant taxa include alani, *Antidesma* sp. (hame), *Diplopterygium pinnatum*, *Psychotria* sp. (kopiko), and *Scaevola* sp. (naupaka) (HHP 1994g1 to 1994g12, 1994g18, 1994g19, 1994g22; Lammers 1990).

Cyanea koolauensis is threatened by habitat destruction by feral pigs, potential impacts from military activities, potential predation by rats, competition with the aggressive alien plants Koster's curse and strawberry guava, trampling by hikers, overcollection, and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HHP 1994g1 to 1994g5, 1994g7, 1994g22; Loyal Mehrhoff, U.S. Fish and Wildlife Service, J. Lau, C. Russell, and J. Yoshioka, pers. comms. 1994).

Cyanea longiflora was first collected by Hillebrand on Oahu and named in 1873, by Dr. Heinrich Wawra, as *Rollandia longiflora* (Hillebrand 1888). Other names considered synonymous with *Rollandia longiflora* are *R. lanceolata* var. *brevipes* and *R. sessilifolia* (Degener 1932, Lammers 1990, Wimmer 1953). Recently Lammers *et al.* (1993) published the new combination *Cyanea longiflora*. The specific epithet refers to the long flowers.

Cyanea longiflora, a member of the bellflower family, is an unbranched shrub with woody stems 1 to 3 m (3.5 to 10 ft) long. The leaves are elliptic or inversely lance-shaped, 30 to 55 cm (12 to 22 in.) long and 6 to 12 cm (2.4 to 4.7 in.) wide. Mature leaves have smooth or hardened leaf edges with shallow, ascending, rounded teeth. The flowering stalks are 5 to 10-flowered and 30 to 60 mm (1.2 to 2.4 in.) long. The calyx lobes are fused into an irregularly toothed sheath 2 to 4 mm (0.08 to 0.2 in.) long. The petals, 6 to 9 cm (2.4 to 3.5 in.) long, and the hairless

staminal column are dark magenta. The berries are almost pear-shaped. *Cyanea longiflora* differs from others in this endemic Hawaiian genus by the fused calyx lobes (Lammers 1990).

Cyanea longiflora was known historically from five populations in the Waianae Mountains and six populations in the Koolau Mountains of Oahu (HHP 1994h1, 1994h2 to 1994h14). Currently five populations of this species are known: Pahole Gulch, Makaha Valley, and Makaha-Waianae Ridge in the Waianae Mountains; and Kawainui Drainage and Opaepala Gulch in the Koolau Mountains (HHP 1994h1, 1994h3, 1994h11 to 1994h14). These 5 populations total between 220 and 300 plants. The populations are found on City and County of Honolulu land, private land leased by the DOD for the Kawailoa Training Area, and State-owned land, including Pahole NAR. *Cyanea longiflora* usually is found on steep slopes or ridge crests in mesic koa-'ohi'a forest in the Waianae Mountains or wet 'ohi'a-uluhe forest in the Koolau Mountains, usually between 620 and 780 m (2,030 and 2,560 ft) elevation. Associated plant taxa in koa-'ohi'a forest include hame, kopiko, uluhe, *Coprosma* sp. (pilo), and *Syzygium* sp. ('ohi'a ha). In wet 'ohi'a-uluhe forest, associated native taxa include 'akia, alani, *Cibotium* sp. (hapu'u), *Dubautia* sp. (na'ena'e), *Hedyotis* sp., and *Pittosporum* sp. (ho'awa) (HHP 1994h1, 1994h3, 1994h11, 1994h13, 1994h14; Lammers 1990).

The major threats to *Cyanea longiflora* are habitat degradation and/or destruction by feral pigs, potential impacts from military activities, potential predation by rats, competition with the alien plants strawberry guava and *Rubus argutus* (prickly Florida blackberry) in the Waianae Mountains and Koster's curse in the Koolau Mountains, potential fire, and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining, widely dispersed populations (HHP 1994h1, 1994h3, 1994h12 to 1994h14; J. Lau, C. Russell, and J. Yoshioka, pers. comms. 1994).

While hiking in the Koolau Mountains of Oahu, Edward Hosaka collected a new lobelioid, which he later described and named *Rollandia st.-johnii* (St. John and Hosaka 1935). *Rollandia st.-johnii* var. *obtusisepala* (Wimmer 1953) is not recognized in the most recent treatment of Hawaiian members of the family (Lammers 1990). Lammers *et al.* (1993) published the new name *Cyanea st.-johnii* when *Cyanea* and *Rollandia* were merged. The

specific epithet honors the late Harold St. John.

Cyanea st.-johnii, a member of the bellflower family, is an unbranched shrub with a woody stem 30 to 60 cm (12 to 24 in.) long. The leaves are lance-shaped to inversely lance-shaped, 6 to 13 cm (2.4 to 5.1 in.) long and 1.5 to 2 cm (0.6 to 0.8 in.) wide. The leaf edges are thickened, smoothly toothed, and curl under. The flowering stalk is 5 to 15 mm (0.2 to 0.6 in.) long, with 5 to 20 flowers. The hairless, white petals, 3 to 6 cm (1.2 to 2.4 in.) long, are suffused with pale violet in the inner surface. This species is distinguished from others in this endemic Hawaiian genus by the length of the leaves, the distinctly curled leaf margins, and the petal color (Lammers 1990).

Cyanea st.-johnii was known historically from 11 populations in the central and southern Koolau Mountains of Oahu (HHP 1994i1 to 1994i11). Currently, between 40 and 50 plants are known from 5 populations—Waimano Trail summit to Aiea Trail summit, the summit ridge crest between Manana and Kipapa trails, between the summit of Aiea and Halawa trails, Summit Trail south of Poamoho cabin, and Wailupe-Waimanalo summit ridge. These populations are found on City and County of Honolulu, private, and State lands (HHP 1994i1, 1994i7, 1994i9 to 1994i11). This species typically grows on wet, windswept slopes and ridges from 690 to 850 m (2,260 to 2,800 ft) elevation in 'ohi'a mixed shrubland or 'ohi'a-uluhe shrubland. Associated plant taxa include naupaka kuahiwi, 'uki, *Bidens* sp. (ko'oko'olau), and *Freycinetia arborea* ('ie'ie) (HHP 1994i1, 1994i7, 1994i9 to 1994i11).

Cyanea st.-johnii is threatened by habitat degradation and/or destruction by feral pigs, potential predation by rats, competition with the noxious alien plant Koster's curse, and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining populations and individuals. The plants between the summit of Aiea and Halawa Trail also are threatened by trampling by hikers (HHP 1994i7, 1994i9, 1994i10; J. Lau, C. Russell, and J. Yoshioka, pers. comms. 1994).

In 1945 St. John collected a plant specimen on Oahu that he and W.B. Storey named *Cyrtandra dentata* (St. John and Storey 1950). In the same paper, St. John and Storey also described *Cyrtandra frederickii*, now considered synonymous with *Cyrtandra dentata* (Wagner *et al.* 1990). The specific epithet refers to the toothed margin of the leaf blades.

Cyrtandra dentata, a member of the African violet family (Gesneriaceae), is a sparingly branched shrub ranging from 1.5 to 5 m (5 to 16 ft) tall. Papery in texture, the leaves are broadly elliptic to almost circular or broadly egg-shaped to egg-shaped, 9 to 33 cm (3.5 to 13 in.) long, and 3 to 17 cm (1.2 to 6.7 in.) wide. Three to nine white flowers are arranged on an inverse umbrella-shaped flower cluster which arises from the leaf axil. The main flower stalk is 25 to 50 mm (1 to 2 in.) long and the individual flower stalks are 15 to 33 mm (0.6 to 1.3 in.) long. The leaf-like bracts are 12 to 30 mm (0.5 to 1.2 in.) long. The tubular portion of the flower is 12 to 25 mm (0.5 to 1 in.) long and 4 to 9 mm (0.2 to 0.4 in.) in diameter. The upper flower lobes are 2 to 6 mm (0.08 to 0.2 in.) long and 3 to 7 mm (0.1 to 0.3 in.) wide, while the lower lobes are 3 to 17 mm (0.1 to 0.7 in.) long and 4 to 9 mm (0.2 to 0.4 in.) wide. The round white berries are 1 to 2.6 cm (0.4 to 1 in.) long. This species is distinguished from others in the genus by the number and arrangement of the flowers, the length of the bracts and flower stalks, and the shape of the leaves (Wagner *et al.* 1990).

Cyrtandra dentata was historically known from six populations in the Waianae Mountains and three populations in the Koolau Mountains of Oahu (HHP 1994j1 to 1994j9). Currently, this species is found only in the Waianae Mountains in Pahole Gulch and Kapuna Valley on State land (within Pahole NAR) and in Ekahanui Gulch on State and private land (within TNCH's Honouliuli Preserve) (HHP 1994j2, 1994j6, 1994j7). The 3 known populations total fewer than 50 individuals. *Cyrtandra dentata* typically grows in gulches, slopes, or ravines in mesic forest with 'ohi'a, 'ohi'a ha, and *Aleurites moluccana* (kukui) at elevations from 580 to 720 m (1,900 to 2,360 ft) (HHP 1994j2, 1994j6, 1994j7; St. John 1966; Wagner *et al.* 1990).

Competition with the alien plants Koster's curse and strawberry guava, potential predation by rats, potential fire, and a risk of extinction from naturally occurring events (such as landslides/hurricanes/flooding) and/or reduced reproductive vigor, due to the small number of extant populations and individuals, are the major threats to *Cyrtandra dentata* (HHP 1994j6; J. Lau, C. Russell, and J. Yoshioka, pers. comms. 1994).

Hillebrand (1888) collected a specimen on Oahu that he named *Cyrtandra gracilis* var. *subumbellata*. St. John and Storey (1950) elevated the variety to full species status. The authors of the current treatment of the family concur with this designation

(Wagner *et al.* 1990). St. John's (1966) variety *intonsa* is not currently recognized (Wagner *et al.* 1990). The specific epithet refers to the umbrella-like flowering stalk.

Cyrtandra subumbellata, a member of the African violet family, is a shrub 2 to 3 m (6.6 to 10 ft) tall. Papery in texture, the leaves are almost circular to egg-shaped, 12 to 39 cm (4.7 to 15.4 in.) long, and 3 to 19 cm (1.2 to 7.5 in.) wide. The upper leaf surface is wrinkled, whereas the lower surface has conspicuously raised net-like veins and is moderately covered with white glands. Five to 15 white flowers are densely arranged on an inverse umbrella-shaped flowering stalk which arises from the leaf axil. The main flower stalk is 2 to 8 mm (0.08 to 0.3 in.) long. The style is approximately 10 mm (0.4 in.) long. The round, white berries are 1 to 1.5 cm (0.4 to 0.6 in.) long. This species is distinguished from others in the genus by the number and arrangement of the flowers, the lengths of the style and main flower stalks, and the texture of the leaves (Wagner *et al.* 1990).

Historically, *Cyrtandra subumbellata* was known from six scattered populations in the central Koolau Mountains on the island of Oahu (HHP 1994k1 to 1994k6). This species is now known from three populations in the central Koolau Mountains—Schofield-Waikane Trail and Puu Ohulehela on private and State land and Kaukonahua drainage on Federal land within Schofield Barracks Military Reservation (HHP 1994k2, 1994k5, 1994k6). The total number of plants currently is estimated to be fewer than 50. This species typically grows on moist, forested slopes or gulch bottoms dominated by 'ohi'a or a mixture of 'ohi'a and uluhe, between 460 and 670 m (1,500 and 2,200 ft) elevation. Associated plant taxa include 'uki, *Adiantum raddiantum*, *Boehmeria grandis* ('akolea), *Broussaisia arguta* (kanawao), and *Thelypteris* sp. (HHP 1994k2, 1994k5, 1994k6; St. John 1966; Wagner *et al.* 1990).

The primary threats to *Cyrtandra subumbellata* are competition with the noxious alien plant Koster's curse, potential impacts from military activities, potential predation by rats, potential fire, and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of extant populations and individuals (HHP 1994k6; J. Lau, C. Russell, and J. Yoshioka, pers. comms. 1994).

In 1950, St. John and Storey first described *Cyrtandra viridiflora* based on a specimen collected by Joseph Rock in

1911. Other published names now considered synonyms of this species are *Cyrtandra crassifolia* and *C. pickeringii* var. *crassifolia* (Hillebrand 1888, Rock 1918a, St. John 1966, Wagner *et al.* 1990). The specific epithet refers to the conspicuous green flowers.

Cyrtandra viridiflora, a member of the African violet family, is a small shrub 0.5 to 2 m (1.6 to 6.6 ft) tall. The thick, fleshy, heart-shaped leaves are 6 to 15 cm (2.4 to 6 in.) long, 3.5 to 7.5 cm (1.4 to 3 in.) wide, and have toothed margins. Both the upper and lower surfaces have long, velvety, pale hairs. One to five green flowers are arranged on an inverse umbrella-shaped flowering stalk. The pale green calyx is 12 to 15 mm (0.5 to 0.6 in.) long. The round, white berries are 1.3 cm (0.5 in.) or longer. This species is distinguished from others in the genus by the leaves, which are thick, fleshy, heart-shaped, and densely hairy on both surfaces (Wagner *et al.* 1990).

Historically, *Cyrtandra viridiflora* was known from seven scattered populations in the Koolau Mountains on the island of Oahu (HHP 1994L1 to 1994L7). This species is now known only from four populations in the northern Koolau Mountains—Kawainui-Laie summit divide, Kawainui-Kaipapau summit divide, Maakua-Kaipapau Ridge, and the Peahinaia Trail. Fewer than 10 plants are known from these 4 populations on State land and private land leased by the DOD for Kawaihoa Training Area (HHP 1994L4 to 1994L7). *Cyrtandra viridiflora* is usually found on wind-blown ridge tops in cloud-covered wet forest or shrubland at elevations of 690 to 850 m (2,260 to 2,800 ft). Associated plant taxa include kanawao, 'ohi'a, 'ohi'a ha, 'uki, and uluhe (HHP 1994L4 to 1994L7, Wagner *et al.* 1990).

The major threats to *Cyrtandra viridiflora* are habitat degradation or destruction by feral pigs, potential impacts from military activities, potential predation by rats, competition with the alien plants Koster's curse and strawberry guava, and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining populations and individuals (HHP 1994L4 to 1994L6; J. Lau, C. Russell, and J. Yoshioka, pers. comms. 1994).

Delissea subcordata was first collected on Oahu by Gaudichaud-Beaupre over 150 years ago. He later described and named it for its heart-shaped leaf base (Hillebrand 1888). Lammers considers all subsequently named varieties to be synonymous with *Delissea subcordata*, including *D. subcordata* var. *kauaiensis*, *D. subcordata* var. *obtusifolia*, *D.*

subcordata var. *waiialaensis*, *D. subcordata* var. *waikaneensis*, and *Lobelia subcordata* (Lammers 1990, St. John 1977, Wawra 1873).

Delissea subcordata, a member of the bellflower family, is a branched or unbranched shrub 1 to 3 m (3.5 to 10 ft) tall. The leaves are egg-shaped or oval lance-shaped, with heart-shaped bases and blades 12 to 30 cm (4.7 to 12 in.) long and 6 to 17 cm (2.4 to 6.7 in.) wide. The leaf margins have shallow, rounded to sharply pointed teeth. Occasionally the leaf margin may be irregularly cut into narrow and unequal segments with one to six triangular lobes, 10 to 18 mm (0.4 to 0.7 in.) long, toward the leaf base. Six to 18 white or greenish white flowers are arranged on a flowering stalk 4 to 10 cm (1.6 to 4 in.) long. The calyx lobes are awl-shaped and 0.5 to 1 mm (0.02 to 0.04 in.) long. The curved corolla is 45 to 60 mm (1.8 to 2.4 in.) long and has a knob on the back side. The anthers are hairless. The fruit is an egg-shaped berry. This species is distinguished from others in this endemic Hawaiian genus by the shape and size of the leaves, the length of the calyx lobes and corolla, and the hairless condition of the anthers (Lammers 1990).

Historically, *Delissea subcordata* was known from 21 scattered populations in the Waianae Mountains and 8 populations in the Koolau Mountains of Oahu. A specimen collected by Mann and Brigham in the 1860's and labeled as from the island of Kauai is believed to have been mislabeled (HHP 1994m8). *Delissea subcordata* is now known only from the Waianae Mountains in nine populations distributed from Kawaiu Gulch in the Kealia land section in the northern Waianae Mountains to the north branch of North Palawai Gulch about 20 km (12 mi) to the south. This species is found on private land (TNCH's Honouliuli Preserve), Federal land (Schofield Barracks Military Reservation and Lualualei Naval Reservation), and State land (Pahole and Kaala NARs or leased to the Federal government (Makua Military Reservation)). The total number of plants in the 9 remaining populations is estimated to be between 70 and 80. *Delissea subcordata* typically grows on moderate to steep gulch slopes in mesic native or alien-dominated forests from 430 to 760 m (1,400 to 2,500 ft) elevation. Associated plant taxa include a variety of native trees such as 'ala'a, hame, kukui, 'ohi'a, papala kepau, *Diospyros hillebrandii* (lama), *Nestegis sandwicensis* (olopua), and kopiko (HHP 1994m1 to 1994m26; Takeuchi and Shimabukuro (s.n.) 1987; Takeuchi and Paquin (3422) 1987; Takeuchi

and Paquin (2734) 1986; Takeuchi (2410) 1985).

Delissea subcordata is threatened by habitat degradation and/or destruction by pigs and goats; potential impacts from military activities, including road construction and housing development; potential predation by rats; competition with the alien plants Christmas berry, Koster's curse, strawberry guava, and *Lantana camara* (lantana); potential fire; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals (HHP 1994m1, 1994m7; Takeuchi & Shimabukuro (s.n.) 1987; Takeuchi (2410) 1985; J. Lau, L. Mehrhoff, and J. Yoshioka, pers. comms. 1994).

In 1933, F. Raymond Fosberg collected a plant in the Waianae Mountains that Leo D. Whitney (1937) named *Eragrostis fosbergii*. This species is maintained in the most recent treatment of Hawaiian members of this genus (O'Connor 1990).

Eragrostis fosbergii is a perennial grass (family Poaceae), with stout, tufted culms (stems) 60 to 100 cm (24 to 40 in.) long, which usually arise from an abruptly bent woody base. The leathery leaf blades, 40 to 60 cm (16 to 24 in.) long and 5 to 10 mm (0.2 to 0.4 in.) wide, are flat but curl inward towards the apex. The small flowers occur in complex clusters that are somewhat open, pyramidal, and 20 to 40 cm (8 to 16 in.) long. The pale to dark green spikelets (ultimate flower clusters) generally contain three to five flowers, and are about 5 mm (0.2 in.) long. The slender glumes (small bracts at the base of the spikelet) have margins fringed with long hairs. The lemmas (inner bracts that subtend the flowers) have loosely overlapping margins, which are occasionally fringed with hairs. The fruit is a grain. This species is distinguished from others in the genus by its stiffly ascending flowering stalk and the long hairs on the margins of the glumes and occasionally on the margins of the lemmas (O'Connor 1990).

Historically, *Eragrostis fosbergii* was known only from the Waianae Mountains of Oahu, from the slopes of Mount Kaala and in Waianae Kai and its associated ridges (HHP 1994n1 to 1994n6). This species was thought to be extinct until rediscovered by Joel Lau of TNCH in 1991. Only six individuals are known to remain in Waianae Kai in four populations on land owned by the State and the City and County of Honolulu (HHP 1994n3 to 1994n6). *Eragrostis fosbergii* typically grows on ridge crests or moderate slopes in native or alien forests between 720 and 830 m (2,360 and 2,720 ft) elevation. Associated plant

taxa include Christmas berry, koa, 'ohi'a, *Psydrax odoratum* (alaha'e), *Dodonaea viscosa* ('a'ali'i), and *Eragrostis grandis* (kawelu) (HHP 1994n3 to 1994n6).

Major threats to *Eragrostis fosbergii* include degradation of habitat by feral pigs and goats; competition with alien plants such as Christmas berry, silk oak, and strawberry guava; and trampling by hikers. This species also is threatened by the risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining populations and individuals (HHP 1994n3 to 1994n6; C. Russell, pers. comm. 1994).

Gardenia mannii was first described by St. John and J.R. Kuykendall in 1949, based on a specimen they had collected a few years earlier in the Koolau Mountains, Oahu. In the same paper, St. John and Kuykendall also described *Gardenia mannii* var. *honoluluensis*, which is not currently recognized (Wagner *et al.* 1990). The specific epithet honors Horace Mann, Jr., an early collector of Hawaiian plants.

Gardenia mannii, a member of the coffee family (Rubiaceae), is a tree 5 to 15 m (16 to 50 ft) tall. The leaves are inversely lance-shaped or slightly more elliptic, 6 to 27 cm (2.4 to 10.6 in.) long, and 3.5 to 10 cm (1.4 to 4 in.) wide. The upper leaf surface is sticky. The fragrant flowers bloom in the late afternoon, and usually last for 2 days. They are solitary and occur at the branch tips. The cup-shaped calyx, 3 to 5 mm (0.1 to 0.2 in.) long, extends into four to six leathery, long, thin, terminal spurs (hollow appendages). These spurs are linear spatula-shaped, "S" shaped, or, rarely, sickle-shaped; 23 to 46 mm (0.9 to 1.8 in.) long; and 5 to 11 mm (0.2 to 0.4 in.) wide. The corolla is cream colored on the outside and white on the inside. The tubular portion of the flower is 17 to 27 mm (0.7 to 1.1 in.) long (when dry), and the seven to nine lobes are 16 to 22 mm (0.6 to 0.9 in.) long (when dry). The yellow to orange fruit is broadly elliptic. This species is distinguished from others in the genus by the shape and number of the calyx spurs (Wagner *et al.* 1990).

Historically *Gardenia mannii* was known from 7 widely scattered populations in the Waianae Mountains and 39 populations distributed along almost the entire length of the Koolau Mountains of Oahu (HHP 1994o1 to 1994o46). Currently 22 populations of *Gardenia mannii* are distributed along a 42 km (26 mi) length of the Koolau Mountains, from Kaunala Gulch and Kaunala-Waimea Ridge at the northernmost extent of its range to Palolo at the southernmost extent (HHP

1994o2, 1994o4, 1994o7, 1994o8, 1994o13, 1994o17, 1994o18, 1994o25, 1994o28 to 1994o30, 1994o33, 1994o34, 1994o37, 1994o39 to 1994o46). In the Waianae Mountains, this species is found in five extant populations over a 7 km (4 mi) distance from north Haleauau Valley to Kaluaa Gulch (HHP 1994o1, 1994o14, 1994o21, 1994o35, 1994o38). The 27 extant populations occur on private land, including TNCH's Honouliuli Preserve and land leased by DOD for Kawaihoa and Kahuku Training Areas; City and County of Honolulu land; State land; and Federal land on Schofield Barracks Military Reservation. The existing populations total between 70 and 100 plants, with 23 of the 27 populations each containing 5 or fewer plants. This species is usually found on moderate to moderately steep gulch slopes between 300 and 750 m (980 and 2,460 ft) in elevation. 'Ohi'a co-dominates in mesic or wet forests with a mixture of native plants such as 'ala'a, koa, and uluhe. Other associated plant taxa include alani, hame, kanawao, pilo, *Alyxia oliviformis* (maile), and kopiko (HHP 1994o1, 1994o3 to 1994o11, 1994o14, 1994o15, 1994o17, 1994o18, 1994o20 to 1994o22, 1994o25, 1994o26, 1994o28 to 1994o46).

Gardenia manni is threatened by habitat degradation and/or destruction by feral pigs; potential impacts from military activities; competition with alien plants such as Koster's curse, prickly Florida blackberry, and strawberry guava; potential fire; and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the widely dispersed, small number of remaining individuals. The Kapakahi Gulch population also is threatened by the black twig borer (*Xylosandrus compactus*) (HHP 1994o1, 1994o13, 1994o14, 1994o35, 1994o37 to 1994o44, 1994o46; L. Mehrhoff, pers. comm. 1994).

Labordia cyrtandrae was first collected by French naturalist and ethnologist Ezechiel Jules Remy on Oahu in 1855. In 1880, H.E. Baillon named Remy's collection *Geniostoma cyrtandrae* in reference to the resemblance of this plant to the pantropical genus *Cyrtandra* (St. John 1936). St. John (1936) transferred the species to the endemic Hawaiian genus *Labordia*. The authors of the current treatment of Hawaiian members of the family concur with this designation (Wagner *et al.* 1990). In 1932, O. Degener described *Labordia hypoleuca*, which Wagner *et al.* (1990) consider to be synonymous with *L. cyrtandrae* (Degener and Degener 1957).

Labordia cyrtandrae, a member of the logania family (Loganiaceae), is a shrub 0.7 to 2 m (2.3 to 6.6 ft) tall. The fleshy, cylindrical to weakly angled stems, which flatten when dry, are covered with short, coarse, stiff hairs. The thick leaves, 12 to 30 cm long (4.7 to 12 in.) and 4 to 14 cm (1.6 to 5.5 in.) wide, are inversely egg-shaped to broadly elliptic or rarely inversely lance-shaped. Eight to 80 or more flowers are arranged on a densely hairy flowering stalk with an erect stalk up to 10 mm (0.4 in.) long. The pale greenish yellow or pale yellow corolla is 20 to 35 mm (0.8 to 1.4 in.) long. The tubular portion of the flower is urn-shaped; the flower lobes are lance-shaped and 8 to 13 mm (0.3 to 0.5 in.) long. The elliptic, lance-shaped fruits are two-valved capsules 32 to 35 mm (1.3 to 1.4 in.) long. This species is distinguished from others in the genus by its fleshy, hairy, cylindrical stem which flattens upon drying, the shape and length of the floral bracts, and the length of the corolla tube and lobes (Wagner *et al.* 1990).

Historically, *Labordia cyrtandrae* was known from both the Waianae and Koolau Mountains of Oahu. In the Koolau Mountains, this species ranged from Kawaihoa Trail to Waialae Iki, extending almost the entire length of the mountain range (HHP 1994p1, 1994p3 to 1994p13). This species currently is known only from 10 individuals in 3 populations in Haleauau Gulch and North Mohiaka Gulch, Waianae Mountains (HHP 1994p2, 1994p14 to 1994p16). These three populations occur on Federal land in Schofield Barracks Military Reservation (HHP 1994p2, 1994p14 to 1994p16). *Labordia cyrtandrae* typically grows in shady gulches in mesic to wet forests dominated by 'ohi'a, *Diplopterygium pinnatum*, and/or koa between the elevations of 730 and 780 m (2,400 and 2,560 ft) (HHP 1994p2, 1994p14 to 1994p16; T. Motley, pers. comm. [1996?]). Associated plant taxa include 'ala'a, *Diplazium sandwichianum*, *Pipturus albidus* (mamaki), *Perrottetia* sp. (olomea), and kopiko (HHP 1994p2, 1994p14 to 1994p16).

Habitat degradation and/or destruction by feral pigs; potential impacts from military activities; competition with the alien plants Christmas berry, Koster's curse, prickly Florida blackberry, and strawberry guava; potential fire; and risk of extinction from naturally occurring events and/or reduced reproductive vigor, due to the small number of remaining individuals and populations, are the primary threats to *Labordia cyrtandrae* (HHP 1994p14 to 1994p16; 1994p16; C. Russell, pers. comm. 1994).

Over 100 years ago, Hillebrand collected a plant in the Waianae Mountains that he named *Lepidium arbuscula* for its tree-like habit (Hillebrand 1888). This species has been maintained in the most recent treatment of Hawaiian members of the genus (Wagner *et al.* 1990).

Lepidium arbuscula, a member of the mustard family (Brassicaceae), is a gnarled shrub 0.6 to 1.2 m (2 to 3.9 ft) tall. The leathery, hairless leaves, 2.6 to 6 cm (1 to 2.4 in.) long and 0.8 to 1.8 cm (0.3 to 0.7 in.) wide, are spatula-shaped to oblong-elliptic or elliptic, and have toothed margins. The unbranched flowering stalk contains one to three erect flowers. The white, pale yellow, or greenish petals are 2 to 2.5 mm (0.08 to 0.1 in.) long. The fruit is a capsule which is broadly egg-shaped to almost circular. This species is distinguished from others in the genus by its height (Wagner *et al.* 1990).

Historically, *Lepidium arbuscula* was known from 11 populations in the Waianae Mountains (HHP 1994q1 to 1994q11). It now remains at all but one of those populations on Federal (Lualualei Naval Reservation, Makua Military Reservation, and Schofield Barracks Military Reservation), State, and City and County of Honolulu land. Populations range from Kuaokala in the northern Waianae Mountains to Lualualei-Nanakuli Ridge in the southern Waianae Mountains (HHP 1994q2 to 1994q11). Fewer than 900 individuals of this species remain. *Lepidium arbuscula* generally grows on exposed ridge tops and cliff faces in mesic vegetation communities between 230 and 915 m (755 and 3,000 ft) elevation. This species is typically associated with native and non-native plant taxa such as 'a'ali'i, Christmas berry, kawelu, *Ageratina* spp. (pamakani), ko'oko'olau, *Carex meyenii*, and *Melinis minutiflora* (molasses grass) (HHP 1994q2 to 1994q8, 1994q10, 1994q11).

The primary threats to *Lepidium arbuscula* are habitat degradation and/or destruction by feral goats; potential impacts from military activities; competition with alien plants including Christmas berry, lantana, Maui pamakani, molasses grass, silk oak, strawberry guava, *Ageratina riparia* (Hamakua pamakani), and *Myrica faya* (firetree); and potential fire. The population at the head of Kapuhi Gulch also is threatened by its proximity to a road (HHP 1994q4, 1994q5, 1994q7 to 1994q11).

In 1937 Fosberg and Hosaka collected a specimen of *Lobelia gaudichaudii* ssp. *koolauensis* on Oahu, which they described the following year as a variety

of *Lobelia gaudichaudii* and named it for the Koolau Mountains (Fosberg and Hosaka 1938). Lammers (1988, 1990) has elevated the variety to a subspecies.

Lobelia gaudichaudii ssp. *koolauensis*, a member of the bellflower family, is an unbranched, woody shrub 0.3 to 1 m (1 to 3.5 ft) tall. The leaves are inversely lance-shaped to rectangular, 8 to 19 cm (3 to 7.5 in.) long, and 1.3 to 2.8 cm (0.5 to 1.1 in.) wide. The leaf edges are thickened or curled under, fringed with hairs toward the base, and sharp-pointed at the tip. The flowering stalk is two to six-branched and 40 to 70 cm (16 to 28 in.) long. The hairless bracts are lance-shaped to egg-shaped and 18 to 32 mm (0.7 to 1.3 in.) long. The calyx lobes are triangular, lance-shaped or egg-shaped, and 10 to 15 mm (0.4 to 0.6 in.) long. The corolla is greenish or yellowish white and 50 to 75 mm (2 to 3 in.) long. The tubular portion of the flower is curved, with spreading lobes. The fruit is an egg-shaped capsule. The subspecies *koolauensis* is distinguished by the greenish or yellowish white petals and the branched flowering stalks. The species is distinguished from others in the genus by the length of the stem, the length and color of the corolla, the leaf width, the length of the floral bracts, and the length of the calyx lobes (Lammers 1990).

Historically, *Lobelia gaudichaudii* ssp. *koolauensis* was known from only two populations in the central Koolau Mountains on Oahu (HHP 1994s1, 1994s2). Currently this subspecies is known from a single population on the Manana Ridge system in the central Koolau Mountains on privately owned land (HHP 1994s1). The total number of plants is estimated to be less than 250. *Lobelia gaudichaudii* ssp. *koolauensis* typically grows on moderate to steep slopes in 'ohi'a or 'ohi'a-uluhe lowland wet shrublands at elevations between 640 and 730 m (2,100 and 2,400 ft). Associated plant taxa include alani, ko'oko'lau, naupaka, 'uki, and kanawao (HHP 1994s1, 1994s2).

The primary threats to the single remaining population of *Lobelia gaudichaudii* ssp. *koolauensis* are habitat degradation and/or destruction by feral pigs, competition with the noxious alien plant Koster's curse, trampling by hikers, potential overcollection, landslides, and risk of extinction from naturally occurring events and/or reduced reproductive vigor of the one remaining population (HHP 1994s1; L. Mehrhoff and C. Russell, pers. comms. 1994).

In 1919 Rock described a new variety of *Lobelia hillebrandii* based on a specimen collected by Hillebrand in the

1800's. Rock (1919) named this variety *Lobelia hillebrandii* var. *monostachya*. Degener elevated this variety to the species level and transferred it to a new genus as *Neowimmeria monostachya* (Degener 1974). Lammers (1988) transferred the species back to the original genus as *Lobelia monostachya*.

Lobelia monostachya, a member of the bellflower family, is a prostrate woody shrub with stems 15 to 25 cm (6 to 10 in.) long. The leaves are stalkless, linear, hairless, 7 to 15 cm (2.8 to 6 in.) long, and 0.4 to 0.7 cm (0.2 to 0.3 in.) wide. The flowering stalk is unbranched. The corolla is pale magenta, 15 to 18 mm (0.6 to 0.7 in.) long, and approximately 5 mm (0.2 in.) wide. The lobes of the corolla overlap spirally. The species is distinguished from others in the genus by the narrow, linear leaves without stalks and the short pink flowers (Lammers 1990).

Historically, *Lobelia monostachya* was known only from the Koolau Mountains and had not been seen since its original discovery in the 1800's in Niu Valley and in the 1920's in Manoa Valley (HHP 1991a1, 1991a2). In 1994 Joel Lau discovered one individual in a previously unknown location in Wailupe Valley on State-owned land. Since then a total of eight plants has been found. This species occurs on steep, sparsely vegetated cliffs in mesic shrubland at an elevation of about 290 m (950 ft). Associated plant taxa include *Artemisia* sp. (ahinahina), *Carex meyenii*, *Psilotum nudum* (moa), and *Eragrostis* sp. (kawelu) (HHP 1994ff).

The major threats to *Lobelia monostachya* are predation by rats; competition with the alien plants Christmas berry, Hamakua pamakani, *Kalanchoe pinnata* (air plant), and molasses grass; and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the low number of individuals in the only known population (HHP 1994ff).

E.P. Hume first described *Melicope saint-johnii* as *Pelea saint-johnii* based on a specimen he collected with E. Christophersen and G. Wilder at Mauna Kapu on Oahu (St. John 1944). Thomas Hartley and the late Benjamin Stone (1989) transferred Hawaiian *Pelea* species to the Pacific genus *Melicope*. The new combination, *Melicope saint-johnii*, was published in the same paper (Hartley and Stone 1989). Other published names that refer to this taxon are *Evodia elliptica* var. *elongata*, *Pelea elliptica* var. *elongata*, *P. elongata*, and *P. saint-johnii* var. *elongata* (Hillebrand 1888, St. John 1944, Stone 1966, Stone et al. 1990).

Melicope saint-johnii, a member of the rue family (Rutaceae), is a slender tree

3 to 6 m (10 to 20 ft) tall. The leaves are opposite or occasionally occur in threes on young lateral branches. The leaves, 6 to 16 cm (2.4 to 6.3 in.) long and 3 to 8.5 cm (1.2 to 3.3 in.) wide, are narrowly to broadly elliptic, sometimes elliptic egg-shaped or rarely lance-shaped. Three to 11 flowers are arranged on an flowering stalk 9 to 22 mm (0.4 to 0.9 in.) long. The flowers are usually functionally unisexual, with staminate (male) and pistillate (female) flowers. The staminate flowers have broadly egg-shaped sepals which are hairless to sparsely covered with hair. The triangular petals, 6 to 8 mm (0.2 to 0.3 in.) long, are densely covered with hair on the exterior. The pistillate flowers are similar in hairiness to staminate flowers, but are slightly smaller in size. The dry fruit, 7 to 12 mm (0.3 to 0.5 in.) long, splits at maturity. The exocarp (outermost layer of the fruit wall) is hairless, whereas the endocarp (innermost layer) is hairy. This species is distinguished from others in the genus by the combination of the hairless exocarp, the hairy endocarp, the densely hairy petals, and the sparsely hairy to smooth sepals (Stone et al. 1990).

Historically, *Melicope saint-johnii* was known from both the Waianae and Koolau Mountains—Makaha to Mauna Kapu in the Waianae Mountains and Papali Gulch in Hauula, Manoa-Aihualama, Wailupe, and Niu Valley in the Koolau Mountains (HHP 1994t1 to 1994t15, 1994ee; Takeuchi 1992). Today eight populations of this species are found on Federal (Lualualei Naval Reservation), State, and private land from the region between Puu Kua and Puu Kanehoa to Mauna Kapu in the southern Waianae Mountains. Fewer than 150 individuals of this species currently are known (HHP 1994t1 to 1994t4, 1994t7, 1994t14, 1994t15, 1994ee; Takeuchi 1992; Takeuchi and Paquin (s.n.) 1985; J. Lau, pers. comm. 1994). This species typically grows on mesic forested ridges from 500 to 853 m (1,640 to 2,800 ft) elevation. Associated native plant taxa include mamaki, 'ohi'a, *Coprosma longifolia* (pilo), *Hedyotis schlechtendahlana* (kopa), *Labordia kaalae* (kamakahala), and *Psychotria hathewayi* (kopiko) (HHP 1994t1 to 1994t4, 1994t7, 1994t14, 1994t15, 1994ee; Takeuchi 1992; Takeuchi and Paquin (s.n.) 1985).

The primary threats to *Melicope saint-johnii* are habitat degradation and/or destruction by feral goats and pigs; potential predation by the black twig borer; potential fire; and competition with alien plants such as Christmas berry, firetree, Hamakua pamakani, huehue haole, lantana, Maui pamakani, and silk oak (HHP 1994t3, 1994t4,

1994t13, 1994t14, 1994ee; J. Lau, pers. comm. 1994).

Myrsine juddii was first described by Hosaka in 1940, based on a specimen he collected with Fosberg in the Koolau Mountains. In an action not supported by other taxonomists, Otto and Isa Degener (1971, 1975) transferred this species from *Myrsine* to the genus *Rapanea*. Hosaka's concept of *Myrsine* is currently followed (Wagner *et al.* 1990). The specific epithet honors Albert Judd, who had a keen interest in conservation of the native Hawaiian flora.

Myrsine juddii, a member of the myrsine family (Myrsinaceae), is a many branched shrub ranging from 1 to 2 m (3.5 to 6.6 ft) tall. The leathery leaves, 4 to 12 cm (1.6 to 4.7 in.) long and 1.5 to 3.2 cm (0.6 to 1.3 in.) wide, are narrowly inverse lance-shaped or more elliptic. The upper leaf surface is hairless, whereas the lower surface is sparsely to moderately covered with short, coarse, stiff, whitish or brownish hairs toward the base and along the midrib. The leaf base is broadly wedge-shaped to heart-shaped, and the margins are smooth and curl under. The flowers are unisexual and the plants are dioecious (male and female flowers are on separate plants). Flowers occur in groups of four to eight in tight clusters surrounded by small bracts. The yellowish green petals are narrowly inverse lance-shaped, 2.8 to 3.2 mm (0.1 in.) long. The fleshy, round fruit contains a single seed. This species is distinguished from others in the genus by the hairiness of the lower leaf surface and the shape of the leaf base (Wagner *et al.* 1990). In addition, the hairy leaves distinguish this species from all other species of *Myrsine* on Oahu (Environmental Impact Study Corporation 1977).

Myrsine juddii has been reported from only three populations in the central Koolau Mountains—the North Kaukonahua-Kahana Summit divide; Peahinaia Trail; and Puu Kainapuaa to Poamoho Trail. These populations are found on private and State land leased by DOD for Kawaioloa Training Area (HHP 1994u1 to 1994u3). The total number is between 500 and 3,000 individuals, with all but 5 to 10 of these in a single, poorly defined population (HHP 1994u2). *Myrsine juddii* typically grows in wet forests dominated by 'ohi'a or a mixture of 'ohi'a and uluhe at elevations between 580 and 860 m (1,900 and 2,820 ft) (HHP 1994u1 to 1994u3). Associated plant taxa include 'uki, *Cheiodendron trigynum* ('olapa), *Melicope clusiifolia* (kolokolo mokihana), *Psychotria mariniana* (kopiko), *Syzygium sandwicensis* ('ohi'a

ha), and *Chamaesyce rockii* (HHP 1994u2).

The primary threats to *Myrsine juddii* are habitat degradation and/or destruction by feral pigs, potential impacts from military activities, competition with alien plants such as Koster's curse and strawberry guava, and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of extant populations (HHP 1994u2, 1994u3; C. Russell, pers. comm. 1994).

In 1825, James Macrae, botanist on H.M.S. *Blonde*, collected a plant on Oahu that George Bentham described and named *Phyllostegia hirsuta* (Wagner *et al.* 1990). This species has been maintained in the current treatment of the Hawaiian members of the genus (Wagner *et al.* 1990).

Phyllostegia hirsuta, a member of the mint family (Lamiaceae), is an erect subshrub or vine with stems densely covered with coarse or stiff hairs. The wrinkled leaves are egg-shaped, generally 17 to 30 cm (6.7 to 12 in.) long, and 7.3 to 18 cm (2.9 to 7 in.) wide. Both leaf surfaces are moderately covered with long, flat hairs. The upper surface is inconspicuously dotted with glands, while the lower surface is more densely glandulose. The egg-shaped floral bracts are 3 to 6 mm (0.1 to 0.2 in.) long. The flowers have two lips—the upper one is approximately 3 mm (0.1 in.) long and the lower one is 5 to 7 mm (0.2 to 0.3 in.) long. The tubular portion of the flower is slightly curved. The corolla is white and usually purple-tinged on the upper lip. The fruit is a nutlet about 3 mm (0.1 in.) long. This species is distinguished from others in the genus by the texture, hairiness, and size of the leaves and the length of the upper bracts (Wagner *et al.* 1990).

Historically, *Phyllostegia hirsuta* was known from widespread populations in the Waianae and Koolau Mountains on Oahu. In the Waianae Mountains, this species ranged from the head of Kukuuiula (Pahole) Gulch to North Palawai Gulch (HHP 1994v1 to 1994v3, 1994v6, 1994v16, 1994v18 to 1994v20, 1994v22, 1994v31, 1994v33 to 1994v36). In the Koolau Mountains, this species ranged from Pupukea-Kahuku Trail to Palolo, almost the entire length of the Koolau Mountains (HHP 1994v4, 1994v5, 1994v7 to 1994v15, 1994v17, 1994v21, 1994v23 to 1994v30, 1994v32). The distribution of this species in the Waianae Mountains is now restricted to ten populations in the southern part of the historical range—from the ridge between Makaha and Waianae Kai to the south fork of North Palawai Gulch (HHP 1994v2, 1994v3,

1994v6, 1994v19, 1994v20, 1994v31, 1994v33 to 1994v36). The current distribution in the Koolau Mountains is six populations scattered over a 10 km (6 mi) length of the summit—from Kawaiui Gulch in Kawaioloa Training Area to South Kaukonahua drainage (HHP 1994v26 to 1994v30, 1994v32). About 150 to 200 individuals remain in the 16 populations. These populations occur on Federal land in Lualualei Naval Reservation and Schofield Barracks Military Reservation; State land, including Mount Kaala NAR; and private lands, including TNCH's Honouliuli Preserve and land leased by DOD for Kawaioloa Training Area. *Phyllostegia hirsuta* is usually found on steep, shaded slopes in mesic to wet forests dominated by 'ohi'a or a mixture of 'ohi'a and uluhe between 600 and 1,100 m (1,970 and 3,610 ft) elevation. Associated plant taxa include 'ala'a, kanawao, mamaki, pilo, *Hedyotis terminalis* (manono), *Myrsine lessertiana* (kolea lau nui), and native and alien ferns (HHP 1994v2, 1994v3, 1994v6, 1994v19, 1994v20, 1994v26 to 1994v36).

The primary threats to *Phyllostegia hirsuta* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; and competition with Christmas berry, huehue haole, Koster's curse, lantana, prickly Florida blackberry, and strawberry guava (HHP 1994v2, 1994v3, 1994v19, 1994v27, 1994v29 to 1994v31, 1994v34 to 1994v36).

Based upon a specimen collected in 1977 by John Obata, Gerald Carr, and Daniel Palmer on Oahu, St. John (1987a) described *Phyllostegia kaalaensis*, naming it for Mt. Kaala where it was first collected. Publishing deadlines did not allow the authors of the current treatment of the family to review the more than 70 new species of *Phyllostegia* published by St. John in 1987 (Wagner *et al.* 1990). Warren Wagner, however, concurs that *Phyllostegia kaalaensis* is a valid, taxonomically distinct species (Warren Wagner, Smithsonian Institution, pers. comm. 1994).

Phyllostegia kaalaensis, a member of the mint family (Lamiaceae), is an herb. The egg-shaped leaves are 5 to 13 cm (2 to 5 in.) long. Usually six flowers are arranged along a flowering stalk. The calyx is glabrous and 5 mm (0.2 in.) long. The hairless corolla tube is 11 mm (0.4 in.) long and the lower lip is 7 mm (0.3 in.) long (St. John 1987a). The species is distinguished from others of the genus by the spreading, pointed teeth on the leaf edges and by the hairs along the margins of the calyx and bracts (Wagner *et al.* 1990).

Phyllostegia kaalaensis has been known from only five scattered populations in the Waianae Mountains of Oahu (HHP 1994w1 to 1994w6). Fewer than 50 plants are known from 5 populations in Waianae Kai, Pahole Gulch, Ekahanui Gulch, and Palikea Gulch. These populations occur on State land, including Pahole and Mt. Kaala NARs and private land, including TNCH's Honouliuli Preserve (HHP 1994w1 to 1994w6). This species is found in mesic mixed (native/alien) forest or papala kepa'u-*Sapindus oahuensis* (aalu) forest from 490 to 760 m (1,610 to 2,500 ft) in elevation. Associated plant taxa include huehue haole, 'ie'ie, opuhe, *Claoxylon sandwicense* (po'ola), and *Hibiscus* sp. (koki'o) (HHP 1994w2 to 1994w4, 1994w6).

Habitat degradation and/or destruction by feral pigs; potential fire; competition with the alien plants Christmas berry, huehue haole, Koster's curse, and strawberry guava; and risk of extinction from naturally occurring events and/or reduced reproductive vigor, due to the small number of populations and individuals, are the major threats to *Phyllostegia kaalaensis* (HHP 1994w3 to 1994w5; C. Russell, pers. comm. 1994).

More than 75 years ago, Rock collected a specimen from a palm on Mt. Kaala that he later named *Pritchardia kaalae* (Beccari and Rock 1921). Edward Caum (1930) later described *Pritchardia kaalae* var. *minima*, which is not recognized in the current treatment of Hawaiian members of the family (Read and Hodel 1990).

Pritchardia kaalae, a member of the palm family (Arecaceae), is a single-stemmed palm up to 5 m (16 ft) tall. The waxy, hairless leaves are thin and papery or thick and leathery. Sometimes small points, dots, or linear, rusty scales are scattered on the lower leaf surface. The flowering stalks are composed of one or more branches. The round fruits are approximately 2 cm (0.8 in.) in diameter. *Pritchardia kaalae* is distinguished from other members of the genus by the hairless or scaly leaves (Read and Hodel 1990).

Historically, *Pritchardia kaalae* was known from scattered populations in the central and north-central Waianae Mountains of Oahu (Beccari and Rock 1921, HHP 1994aa1 to 1994aa5). Currently 5 populations are known between the Waianae Kai-Haleauau summit divide and the Makua-Keaau Ridge, totalling about 130 individuals. These populations are located on State land, including Mt. Kaala NAR and land leased to DOD for Makua Military Reservation, and on Federal land on

Schofield Barracks Military Reservation (HHP 1994aa1 to 1994aa5). *Pritchardia kaalae* is typically found on steep slopes and gulches in mesic forest or shrubland between elevations of 460 and 945 m (1,500 and 3,100 ft). Associated plant taxa include 'a'ali'i, kolea, ko'oko'olau, mamaki, na'ena'e, 'ohi'a, *Eragrostis* sp. (kawelu), and *Tetraplasandra* sp. ('ohe) (HHP 1994aa1, 1994aa2, 1994aa4, 1994aa5; Read and Hodel 1990).

Habitat degradation by feral pigs and goats; fruit predation by rats; potential impacts from military activities; the alien plants Christmas berry, Maui pamakani, and prickly Florida blackberry; potential fire; and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of populations are major threats to *Pritchardia kaalae* (HHP 1994aa1, 1994aa4, 1994aa5; C. Russell, pers. comm. 1994).

In 1936, Hosaka collected a specimen of *Schiedea kealiae* on Oahu that he named for Kealia where it was collected (Caum and Hosaka 1936). *Schiedea gregoriana* is considered synonymous with *S. kealiae* by the authors of the current treatment of the family (Degener 1936, Sherff 1945, Wagner *et al.* 1990).

Schiedea kealiae, a member of the pink family (Caryophyllaceae), is a subshrub with weakly ascending to sprawling stems 0.2 to 0.5 m (0.7 to 1.6 ft) long that form loose clumps. The lower stems are smooth while the upper stems and flowering stalk bear glands. The opposite leaves, 3 to 10 cm (1.2 to 4 in.) long and 0.3 to 1.5 cm (0.1 to 0.6 in.) wide, are lance-shaped to elliptic lance-shaped and conspicuously three-veined with a prominent midrib. The flowering stalk is 3 to 11 cm (1.2 to 4.3 in.) long, with numerous unisexual flowers in crowded clusters. The green sepals of the male flowers are approximately 2.5 mm (0.1 in.) long. The sepals of the female flowers, 1.5 to 2.2 mm (0.06 to 0.09 in.) are slightly shorter. The nectaries, about 0.5 to 1 mm (0.02 to 0.04 in.) long, are inconspicuous. The capsular fruit is 2 to 2.5 mm (0.08 to 0.1 in.) long. The species is distinguished from others of this endemic Hawaiian genus by the length of the sepals and nectaries and the flowering stalk exclusively with stalkless glands (Wagner *et al.* 1990).

Historically, *Schiedea kealiae* was known from the northern Waianae Mountains and one collection from the Palikea area, near the southern end of the same mountain range (HHP 1994bb1 to 1994bb6). Currently 3 populations totalling between 300 and 500 plants are located on the cliffs above Dillingham Airfield and Camp Erdman and at Kaena

Point at the northern end of the Waianae Mountains. These populations occur on private land; State land, including land leased by DOD (Kaena Military Reservation); and Federal land on Dillingham Military Reservation (HHP 1994bb1, 1994bb2, 1994bb4, 1994bb6; J. Lau, pers. comm. 1994). *Schiedea kealiae* is usually found on steep slopes and cliff faces at elevations from 60 to 305 m (200 to 1,000 ft), in dry remnant *Erythrina sandwicensis* (wiliwili) or aulu forest. Associated plant taxa include alahe'e, ko'oko'olau, *Leucaena leucocephala* (koa haole), *Myoporum sandwicense* (naio), and *Sida fallax* ('ilima) (HHP 1994bb1, 1994bb2, 1994bb4, 1994bb6; Wagner *et al.* 1990).

The major threats to *Schiedea kealiae* are competition with alien plants (Christmas berry and koa haole) and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing populations. The Kaena Point population is additionally threatened by naturally occurring rock slides and fire (HHP 1994bb1, 1994bb2, 1994bb4, 1994bb6; C. Russell, pers. comm. 1994).

St. John (1982) described *Trematolobelia singularis* based on a specimen collected by John Obata in 1974. This species has been maintained in the most recent treatment of this endemic Hawaiian genus (Lammers 1990). The specific epithet refers to the solitary flowering stalk.

Trematolobelia singularis, a member of the bellflower family, is an unbranched shrub with stems 0.6 to 1.5 m (2 to 5 ft) long. The long and narrow leaves are 10 to 18 cm (4 to 7 in.) long and 1 to 1.8 cm (0.4 to 0.7 in.) wide. The unbranched, erect flowering stalk is 20 to 42 cm (8 to 16.5 in.) long. The violet petals are about 5 cm (0.2 in.) long and collectively form a three-lobed tube. The largest lobe is curved downward and the other two are bent backward, giving the appearance of two lips. The capsules are almost round and contain numerous small, wind-dispersed seeds. This species differs from others of this endemic Hawaiian genus by the unbranched, erect flowering stalk (Lammers 1990).

Trematolobelia singularis has been reported only from the southern Koolau Mountains (HHP 1994cc1 to 1994cc4). Approximately 165 plants are known from three populations—Moanalua-Tripler Ridge summit to Puu Keahiakahoe, Konahuanui, and Puu Lanipo. These populations are found on private, City and County of Honolulu, State, and Federal land (Omega Coast Guard Station) (HHP 1994cc1 to 1994cc4, Lammers 1990). This species usually grows on steep, windswept cliff

faces or slopes in 'ohi'a-uluhe lowland wet shrubland from 700 to 960 m (2,300 to 3,150 ft) elevation. Associated plant taxa include 'akia, hapu'u, kanawao, and na'ena'e pua melemele (HHP 1994cc1 to 1994cc3, Lammers 1990, Obata 1988, St. John 1982).

Habitat degradation by feral pigs, potential predation by rats, competition with the aggressive alien plant Koster's curse, and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of extant populations are serious threats to *Trematolobelia singularis* (HHP 1994cc1, 1994cc2, 1994cc4; J. Lau, C. Russell, and J. Yoshioka, pers. comms. 1994).

Forbes described *Viola oahuensis* in 1909, based on a specimen he collected with Rock in the Koolau Mountains. This species has been maintained in the most recent treatment of Hawaiian members of this genus (Wagner *et al.* 1990).

Viola oahuensis, a member of the violet family (Violaceae), is usually an erect, unbranched subshrub 6 to 40 cm (2.4 to 16 in.) tall. The papery-textured leaves are usually 3 to 12 cm (1.2 to 4.7 in.) long, 2.5 to 5.8 cm (1 to 2.3 in.) wide, and elliptic-egg-shaped to elliptic. The leaf stalks are typically 0.5 to 1 cm (0.2 to 0.4 in.) long. The narrowly triangular stipules are usually 10 to 15 mm (0.4 to 0.6 in.) long, 3.5 to 6 mm (0.1 to 0.2 in.) wide, and have fringed edges. One to two flowers are borne on stalks typically 25 to 60 mm (1 to 2.4 in.) long. The petals are pale yellow, the upper ones 8 to 13 mm (0.3 to 0.5 in.) long, the lateral ones 10 to 13.5 mm (0.4 to 0.5 in.) long, and the lower one 12 to 16 mm (0.5 to 0.6 in.) long. The capsules are 9 to 16 mm (0.4 to 0.6 in.) long. This species is distinguished from other Hawaiian members of the genus by the stipule characters, the length of the leaf stalks, and the length and papery texture of the leaves (Wagner *et al.* 1990).

Historically, *Viola oahuensis* was known from 17 populations in the Koolau Mountains of Oahu scattered over about a 37 km (23 mi) distance from Puu Kainapuaa to Palolo (HHP 1994dd1 to 1994dd16; L. Mehrhoff, pers. comm. 1994). The 8 extant populations, which total fewer than 180 individuals, are now found from the Kawainui-Kooloa summit divide to the Waimalu-Koolaupoko divide over a 20 km (12 mi) distance. These populations are found on DOD land; State land, including land leased by DOD for Kawaihoa Training Area; City and County of Honolulu land; and private land, including land leased by DOD for Kawaihoa Training Area (HHP 1994dd5,

1994dd9 to 1994dd13, 1994dd15, 1994dd16). Farther to the south, at the summit of Moanalua, a single plant, last seen alive in 1991, has since died (L. Mehrhoff, pers. comm. 1994). *Viola oahuensis* is generally found on exposed, windswept ridges of moderate to steep slope in wet 'ohi'a-uluhe shrublands from 700 to 850 m (2,300 to 2,800 ft) elevation. This species typically grows among wind-stunted na'ena'e pua melemele, 'uki, *Sadleria* sp. ('ama'u), 'ohi'a ha, and *Vaccinium* sp. ('ohelo) (HHP 1994dd5, 1994dd9 to 1994dd16).

The primary threats to *Viola oahuensis* are habitat degradation and/or destruction by feral pigs; potential impacts from military activities; competition with Koster's curse, strawberry guava, *Paspalum conjugatum* (Hilo grass), and *Sacciolepis indica* (Glenwood grass); and risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of populations (HHP 1994dd5, 1994dd9, 1994dd12, 1994dd13).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act (16 U.S.C. 1533), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered or threatened in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. Twelve of the 25 taxa in this rule were considered to be endangered in that document—*Cyanea humboldtiana* (as *Rollandia humboldtiana*), *Cyanea longiflora* (as *Rollandia sessilifolia*), *Cyanea st.-johnii* (as *Rollandia st.-johnii*), *Cyrtandra dentata* (also as *C. frederickii*), *Cyrtandra subumbellata* (as *C. subumbellata* var. *intonsa*), *Delissea subcordata* (as *D. subcordata* var. *subcordata* and var. *obtusifolia*), *Eragrostis fosbergii*, *Lobelia gaudichaudii* ssp. *koolauensis* (as *L. gaudichaudii* var. *koolauensis*), *Melicope saint-johnii* (as *Pelea saint-johnii* var. *elongata*), *Pritchardia kaalae* (as *P. kaalae* var. *kaalae* and var. *minima*), *Schiedea kealiae*, and *Viola oahuensis*. Two of the 25 taxa in this rule were considered to be threatened—*Lobelia monostachya* (as *L. hillebrandii* var. *monostachya*) and *Phyllostegia hirsuta* (as *P. hirsuta* var. *hirsuta* and var. *laxior*). On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) accepting the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intent 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 species. 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. All 12 taxa cited above as considered to be endangered in House Document No. 94-51 were included in the June 16, 1976 proposed rule.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909). In 1978, amendments to the Act required that all existing 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. All 12 of the taxa cited previously as included in the June 16, 1976, proposal were also included in the 1979 withdrawal. The Service published an updated notice 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). Sixteen of the taxa in this final rule (including synonymous taxa) have at one time or another been considered Category 1 or Category 2 candidates for Federal listing. Category 1 species were those species for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals but for which listing proposals have not yet been published because they are precluded by other listing activities. Category 2 species were those species for which listing as endangered or threatened was considered to be possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support proposed rules. On February 28, 1996, the Service published a Notice of Review in the Federal Register (61 FR 7596) that discontinued the designation of Category 2 species.

Cyanea humboldtiana (as *Rollandia humboldtiana*), *Cyanea longifolia* (as *Rollandia sessilifolia*), *Cyanea st.-johnii* (as *Rollandia st.-johnii*), *Cyrtandra*

dentata (also as *C. frederickii*), *Cyrtandra subumbellata* (as *C. subumbellata* var. *intonsa*), *Eragrostis fosbergii*, *Lobelia gaudichaudii* ssp. *koolauensis* (as *L. gaudichaudii* var. *koolauensis*), *Melicope saint-johnii* (as *Pelea saint-johnii*), and *Viola oahuensis* were considered Category 1 species in the 1980 and 1985 notices of review. One taxon, *Phyllostegia hirsuta*, was considered a Category 1 species in the 1980 notice and a Category 2 species in the 1985 notice. Three taxa, *Delissea subcordata* (as *D. subcordata* ssp. *subcordata* and ssp. *obtusifolia*), *Pritchardia kaalae* (as *P. kaalae* var. *kaalae* and var. *minima*), and *Schiedea kealiae*, were considered Category 3C taxa in the 1980 and 1985 notices. Category 3C species were those that have proven to be more abundant or widespread than previously believed and/or are not subject to any identifiable threat. *Lobelia monostachya* (as *Lobelia hillebrandii* var. *monostachya*) was considered a Category 1 species and *Lepidium arbuscula* (misspelled as *Lepidium arbusculum*) was considered a Category 1* species in the 1985 notice. Category 1* species are those species that are possibly extinct.

In the 1990 and 1993 notices, *Cyrtandra subumbellata*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Trematolobelia singularis*, and *Viola oahuensis* were considered Category 2 species. *Eragrostis fosbergii* was considered a Category 1* species in the 1990 notice, a category which was redefined as 2* in the 1993 notice. *Lobelia monostachya* was considered a Category 3A species in 1990. Category 3A species were those for which the Service has persuasive evidence of extinction. Five species, *Cyanea humboldtiana* (as *Rollandia humboldtiana*), *Cyanea st.-johnii* (as *Rollandia st.-johnii*), *Cyrtandra dentata*, *Melicope saint-johnii*, and *Phyllostegia hirsuta*, were considered more abundant than previously thought and moved to Category 3C in the 1990 notice. In the 1990 notice, *Rollandia sessilifolia* was considered a Category 3B species because it was merged with *Cyanea longiflora* (as *Rollandia longiflora*), a taxon not considered to warrant listing. Category 3B species were those that do not represent distinct taxa. *Lobelia gaudichaudii* var. *koolauensis* was elevated to *Lobelia gaudichaudii* ssp. *koolauensis* and considered a Category 3B species in the 1990 notice. *Cyrtandra viridiflora* and *Myrsine juddii* were considered Category 2 species in the 1993 notice. Since the 1993 notice, new information suggests that the above Category 2, Category 3A, and Category

3C species, as well as eight additional taxa (*Chamaesyce herbstii*, *Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea koolauensis*, *Cyanea longiflora*, *Gardenia mannii*, *Lobelia gaudichaudii* ssp. *koolauensis*, and *Phyllostegia kaalaensis*), are sufficiently restricted in numbers and distribution and imminently threatened and therefore warrant listing.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on all petitions that present substantial information indicating the petitioned action may be warranted within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the Service to consider the petition as having been resubmitted, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984 through 1993. Publication of the proposed rule constituted the final one-year finding for these taxa.

On October 2, 1995, the Service published in the Federal Register (60 FR 51398) a proposal to list 25 plant taxa from the island of Oahu as endangered. This proposal was based primarily on information supplied by the Hawaii Natural Heritage Program, National Tropical Botanical Garden, and observations of botanists and naturalists. Based on comments received in response to the proposal (see Comments and Recommendations, below), the Service now determines 25 taxa from the island of Oahu to be endangered. *Chamaesyce rockii* and *Myrsine juddii* have a Listing Priority of 5 under the current guidance; the other 23 taxa have a Listing Priority of 2.

Summary of Comments and Recommendations

In the October 2, 1995 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The public comment period ended on December 1, 1995. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was

published in the *Honolulu Advertiser* on October 20, 1995, which invited general public comment. Four letters of comment were received. Two letters acknowledged receipt of the proposed ruling and two letters supported the listing of these taxa from the island of Oahu but raised no specific issues. No requests for public hearings were received.

The Service also solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and biological and ecological information for these 25 species. No responses were received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Chamaesyce herbstii* W.L. Wagner ('akoko), *Chamaesyce rockii* (C. Forbes) Croizat & Degener ('akoko), *Cyanea acuminata* (Gaud.) Hillebr. (haha), *Cyanea humboldtiana* (Gaud.) Lammers, Givnish & Sytsma (haha), *Cyanea koolauensis* Lammers, Givnish & Sytsma (haha), *Cyanea longiflora* (Wawra) Lammers, Givnish & Sytsma (haha), *Cyanea st.-johnii* (Hosaka) Lammers, Givnish & Sytsma (haha), *Cyrtandra dentata* St. John & Storey (ha'iwale), *Cyrtandra subumbellata* (Hillebr.) St. John & Storey (ha'iwale), *Cyrtandra viridiflora* St. John & Storey (ha'iwale), *Delissea subcordata* Gaud. ('oha), *Eragrostis fosbergii* Whitney (No common name (NCN)), *Gardenia mannii* St. John & Kuykendall (nanu), *Labordia cyrtandrae* (Baill.) St. John (kamakahala), *Lepidium arbuscula* Hillebr. ('anaunau), *Lobelia gaudichaudii* ssp. *koolauensis* (Hosaka & Fosb.) Lammers (NCN), *Lobelia monostachya* (Rock) Lammers (NCN), *Melicope saint-johnii* (E. Hume) T. Hartley & B. Stone (alani), *Myrsine juddii* Hosaka (kolea), *Phyllostegia hirsuta* Benth. (NCN), *Phyllostegia kaalaensis* St. John (NCN), *Pritchardia kaalae* Rock (loulu), *Schiedea kealiae* Caum & Hosaka (NCN), *Trematolobelia singularis* St. John (NCN), and *Viola oahuensis* C. Forbes (NCN) should be classified as endangered species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their

application to the 25 plant taxa in this rule are as summarized in Table 1.

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

Native vegetation on Oahu has undergone extreme alteration because of past and present land management practices including ranching, deliberate alien animal and plant introductions, agricultural development, military use, and recreational use (Cuddihy and Stone 1990, Wagner *et al.* 1985). The

primary threats facing the 25 plant taxa in this final rule are ongoing and threatened destruction and adverse modification of habitat by feral animals and competition with alien plants (see Factor E).

Twenty-one of the 25 taxa are variously threatened by feral animals (Table 1). Animals such as pigs and goats were introduced by the early Hawaiians (pigs) or more recently by European settlers (goats) for food and/or commercial ranching activities. Over the

200 years following their introduction, their numbers increased and the adverse impacts of feral ungulates on native vegetation have become increasingly apparent. Beyond the direct effect of trampling and grazing native plants, feral ungulates have contributed significantly to the heavy erosion still taking place on most of the main Hawaiian Islands (Cuddihy and Stone 1990).

TABLE 1.—SUMMARY OF THREATS TO TWENTY-FIVE PLANTS FROM THE ISLAND OF OAHU, HAWAII

Species	Alien mammals			Alien plants	Substrate loss	Fire	Human impacts	Insects	Limited numbers
	Goats	Pigs	Rats						
<i>Chamaesyce herbstii</i>		X		X		P			X1
<i>Chamaesyce rockii</i>		X	P	X			P		
<i>Cyanea acuminata</i>		X	P	X			P		X3
<i>Cyanea humboldtiana</i>		X	P	X			X		X1
<i>Cyanea koolauensis</i>		X	P	X			X		X3
<i>Cyanea longiflora</i>		X	P	X		P	P		X1
<i>Cyanea st.-johnii</i>		X	P	X			X		X1,3
<i>Cyrtandra dentata</i>			P	X		P			X1,3
<i>Cyrtandra subumbellata</i>			P	X		P	P		X1,3
<i>Cyrtandra viridiflora</i>		X	P	X			P		X1,2
<i>Delissea subcordata</i>	X	X	P	X		P	X		X3
<i>Eragrostis fosbergii</i>	X	X		X			X		X1,2
<i>Gardenia mannii</i>		X		X		P	P	X	X3
<i>Labordia cyrtandrae</i>		X		X		P	P		X1,2
<i>Lepidium arbuscula</i>	X			X		P	X		
<i>Lobelia gaudichaudii</i> ssp. <i>koolauensis</i>		X	P	X	X		X		X1
<i>Lobelia monostachya</i>			X	X					X1,2
<i>Melicope saint-johnii</i>	X	X		X		P		P	
<i>Myrsine juddii</i>		X		X			P		X1
<i>Phyllostegia hirsuta</i>		X		X		P	P		
<i>Phyllostegia kaalaensis</i>		X		X		P			X1,3
<i>Pritchardia kaalae</i>	X	X	X	X		P	P		X1
<i>Schiedea kealiae</i>				X	X	P			X1
<i>Trematolobelia singularis</i>		X	P	X					X1
<i>Viola oahuensis</i>		X		X			P		

KEY:

- X = Immediate and significant threat.
- P = Potential threat.
- * = No more than 100 individuals and/or no more than 5 populations.
- 1 = No more than 5 populations.
- 2 = No more than 10 individuals.
- 3 = No more than 100 individuals.

Pigs, which were originally native to Europe, northern Africa, Asia Minor, and Asia, were introduced into Hawaii by the Polynesians. European pigs, introduced to Hawaii by Captain James Cook in 1778, escaped domestication and invaded primarily wet and mesic forests and grasslands of the islands of Kauai, Oahu, Molokai, Maui, and Hawaii. The pigs introduced by the Polynesians were apparently smaller and less destructive to native plants than the European pigs. In addition, it appears that Polynesian pigs were maintained in domestication and were not allowed to establish feral populations. While foraging, pigs root and trample the forest floor,

encouraging the establishment of alien plants in the newly disturbed soil. Pigs also disseminate alien plant seeds through their feces and on their bodies, accelerating the spread of alien plants through native forest (Cuddihy and Stone 1990, Stone 1985). Pigs are a major vector in the spread of *Psidium cattleianum* (strawberry guava) and *Schinus terebinthifolius* (Christmas berry), and enhance populations of *Rubus argutus* (prickly Florida blackberry), which threaten several of these taxa (Cuddihy and Stone 1990, Smith 1985, Stone 1985). Feral pigs also feed on the starchy interiors of tree ferns (*Cibotium* sp.) and other succulent-stemmed plants (see Factor C). Feral

pigs pose an immediate threat to one or more populations of 20 of the taxa in this final rule, including the only known population of *Lobelia gaudichaudii* ssp. *koolauensis* (see Table 1) (HHP 1994c2, 1994c3, 1994d1 to 1994d5, 1994d7, 1994d8, 1994d11, 1994e1 to 1994e4, 1994e7, 1994e10 to 1994e12, 1994f1, 1994f2, 1994g1 to 1994g4, 1994g22, 1994h1, 1994h12 to 1994h14, 1994i7, 1994i10, 1994L5, 1994L6, 1994m20, 1994m22, 1994n3, 1994n5, 1994o1, 1994o13, 1994o35, 1994o37, 1994o38, 1994o43, 1994o44, 1994o46, 1994p14, 1994p16, 1994s1, 1994t3, 1994t4, 1994t13, 1994u2, 1994u3, 1994v27, 1994v29, 1994v30, 1994v34 to 1994v36, 1994w3 to

1994w5, 1994aa4, 1994cc1, 1994dd5, 1994dd12, 1994dd13, 1994ee; J. Lau, pers. comm. 1994).

Goats, originally native to the Middle East and India, were successfully introduced to the Hawaiian Islands in 1792. Feral goats now occupy a wide variety of habitats from lowland dry forests to montane grasslands on Kauai, Oahu, Molokai, Maui, and Hawaii, where they consume native vegetation, which may include the taxa in this final rule (see Factor C), trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Stone 1985, van Riper and van Riper 1982). On Oahu, the goat population in the Waianae Mountains area is apparently increasing, becoming an even greater threat to the rare plants that grow there (J. Lau, pers. comm. 1994). One or more populations of five of the taxa in this final rule (including *Delissea subcordata*, *Eragrostis fosbergii*, one of the largest populations of *Lepidium arbuscula*, the largest population of *Melicope saint-johnii*, and more than half of the individuals of *Pritchardia kaalae*) are currently threatened by direct damage from feral goats, such as trampling of plants and seedlings and erosion of substrate (Culliney 1988; HHP 1994m20, 1994n5, 1994n6, 1994q5, 1994q8, 1994q9, 1994q11, 1994t14, 1994aa2, 1994aa4, 1994ee; Scott *et al.* 1986; van Riper and van Riper 1982).

Habitat disturbance caused by human activities may pose a threat to rare plant populations that grow on lands on which military training exercises and ground maneuvers are occasionally conducted. However, as most of the taxa in this final rule grow on moderate to steep slopes, ridges, and gulches, habitat disturbance is probably restricted to foot and helicopter traffic. Trampling by ground troops associated with training activities, and construction, maintenance, and utilization of helicopter landing and drop-off sites could affect populations of 14 of the plant taxa (*Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Gardenia mannii*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Myrsine juddii*, *Phyllostegia hirsuta*, *Pritchardia kaalae*, and *Viola oahuensis*) that occur on land leased or owned by the U.S. Army (HHP 1994d2, 1994d4, 1994d5, 1994e2 to 1994e5, 1994e7, 1994g1 to 1994g3, 1994g22, 1994h12 to 1994h14, 1994k6, 1994L4, 1994L6, 1994L7, 1994m7, 1994m9 to 1994m11, 1994o1, 1994o2, 1994o4, 1994o13, 1994o18, 1994o37 to 1994o40, 1994o43, 1994o44, 1994p2, 1994p14 to

1994p16, 1994q7 to 1994q9, 1994u1 to 1994u3, 1994v2, 1994v19, 1994v26, 1994v30, 1994v32, 1994v33, 1994aa2, 1994aa5, 1994dd5, 1994dd9, 1994dd10, 1994dd12, 1994dd15, 1994dd16; Wagner *et al.* 1985).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not a known factor, but unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could seriously impact all of the plant taxa in this final rule, but especially *Cyanea humboldtiana*, *Cyanea koolauensis*, *C. st.-johnii*, *Eragrostis fosbergii*, and *Lobelia gaudichaudii* ssp. *koolauensis*, which have populations close to trails or roads and are thus easily accessible to collectors, and therefore possibly threatened by overcollection, trampling, and/or road maintenance (HHP 1994f1, 1994f2, 1994g22, 1994i9, 1994n3 to 1994n6; L. Mehrhoff, pers. comm. 1994).

C. *Disease and predation.* Disease is not known to be a significant threat to any of the plant taxa in this final rule. However, a tiny beetle, the black twig borer (*Xylosandrus compactus*), is known to infest a wide variety of common plant taxa, including *Melicope* in the Koolau Mountains (Davis 1970). The black twig borer burrows into branches, introduces a pathogenic fungus as food for its larvae, and lays its eggs. Twigs, branches, and even entire plants can be killed from an infestation. In the Hawaiian Islands, the black twig borer has many hosts, disperses easily, and is probably present at most elevations up to 670 m (2,500 ft) (Howarth 1985). In the Koolau Mountains, the black twig borer is known to threaten the Kapakahi Gulch population of *Gardenia mannii*. The black twig borer occurs throughout the Waianae Mountains and may pose a threat to all *Melicope saint-johnii* plants that occur there (HHP 1994o41, 1994t1 to 1994t4, 1994t7, 1994t13, 1994t14; J. Lau, pers. comm. 1994).

Of the ungulates introduced to Oahu, pigs are currently the most significant modifiers of native forests (Cuddihy and Stone 1990, Stone 1985). Not only do they destroy native vegetation through their rooting activities and dispersal of alien plant seeds (see Factor A), but pigs also feed on plants, preferring the pithy interior of large tree ferns and fleshy-stemmed plants from the bellflower family (Stone 1985, Stone and Loope 1987). Although there is no conclusive evidence of predation on the eight members of the bellflower family included in this final rule, none of them are known to be unpalatable to pigs.

Pigs have definitely eaten federally endangered *Cyanea crispa* plants immediately adjacent to *Cyanea acuminata* plants. Predation is therefore a probable threat to *Cyanea acuminata*, *C. humboldtiana*, *C. koolauensis*, *C. longiflora*, *C. st.-johnii*, *Delissea subcordata*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, and *Trematolobelia singularis* in areas where pigs have been reported (J. Lau and J. Yoshioka, pers. comm. 1994).

Predation of Hawaii's native vegetation by goats and the extensive damage caused by them have been well documented (Tomich 1986, van Riper and van Riper 1982). Although there is no evidence of predation on *Delissea subcordata*, *Eragrostis fosbergii*, *Lepidium arbuscula*, *Melicope saint-johnii*, and *Pritchardia kaalae*, all of which occur in areas where goats have been reported, none of those plants are known to be unpalatable. Direct predation by goats is a possible threat to those five taxa (HHP 1994m20, 1994n5, 1994n6, 1994q5, 1994q8, 1994q11, 1994t14, 1994aa2, 1994aa4, 1994ee).

Two rat species, the black rat (*Rattus rattus*) and the Polynesian rat (*Rattus exulans*), and to a lesser extent other introduced rodents, eat large, fleshy fruits and strip the bark of some native plants, particularly fruits of the native palms (*Pritchardia*) and plants in the bellflower and African violet families that have fleshy stems and fruits (Cuddihy and Stone 1990; Tomich 1986; Wagner *et al.* 1985; J. Lau, pers. comm. 1994). Rat predation on fruits threatens the largest population of *Pritchardia kaalae*, as indicated by the lack of reproduction and seedlings (HHP 1994aa2). Rat damage has also been observed in the only known population of *Lobelia monostachya* (HHP 1994ff). It is possible that rats eat the fruits of 11 other plant taxa in this final rule, all of which produce fleshy fruits and stems, and grow in areas where rats occur—*Cyanea acuminata*, *C. humboldtiana*, *C. koolauensis*, *C. longiflora*, *C. st.-johnii*, *Cyrtandra dentata*, *C. subumbellata*, *C. viridiflora*, *Delissea subcordata*, *Lobelia gaudichaudii* ssp. *koolauensis*, and *Trematolobelia singularis* (J. Lau and Joan Yoshioka, pers. comms. 1994).

D. *The inadequacy of existing regulatory mechanisms.* Of the 25 plant taxa in this final rule, 20 have populations located on private land, 22 on State land, 10 on City and County of Honolulu land, and 18 on land under Federal jurisdiction. Of those under Federal jurisdiction, 14 taxa have populations that occur on land owned by the Federal government and 15 have populations on land leased to the Federal government by State, City and

County of Honolulu, and/or private parties. While 22 of the taxa occur in more than one of those 3 ownership categories, the other 3 taxa are restricted to a single category—*Lobelia gaudichaudii* ssp. *koolauensis* is found only on private land, *Lobelia monostachya* is found only on State land, and *Labordia cyrtandrae* is found only on Federal land.

Except for certain provisions applicable only to land designated as a NAR, there are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on private land. However, Federal listing automatically invokes listing under Hawaii State law. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the (Federal) Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (Hawaii Revised Statutes (HRS), sect. 195D-4(a)). The State law prohibits taking a listed species on private and State lands and encourages conservation by State government agencies. In addition, State regulations specifically prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel.

Seven of the 25 plant taxa in this rule have one or more populations in NARs, which have rules and regulations for the protection of resources (HRS, sect. 195-5). Almost all populations of the taxa in this final rule are located on land classified within conservation districts and owned by the State of Hawaii or private companies or individuals. Regardless of the owner, lands in these districts, among other purposes, are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Activities permitted in conservation districts must not be detrimental to a multiple use conservation concept and shall conserve threatened or endangered plants (HRS, sect. 205-2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by both Federal and State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205-4). Before decisions about these requests are made, the impact of the proposed reclassification on "preservation or

maintenance of important natural systems or habitat" (HRS, sects. 205-4, 205-17) as well as the maintenance of natural resources is required to be taken into account (HRS, sects. 205-2, 205-4). Before any proposed land use that will occur on State land, is funded in part or whole by county or State funds, or will occur within land classified as conservation district, an environmental assessment is required to determine whether or not the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy, and thus approval of land use, is required by law to safeguard " * * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344-3(1)) and includes guidelines to "protect endangered species of individual plants and animals * * *" (HRS, sect. 344-4(3)(A)). Federal listing, because it automatically invokes State listing, also implements these State regulations protecting the plants.

State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D-5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D-5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). The Hawaii Department of Land and Natural Resources is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D-5.1).

Twenty-one of the plant taxa in this final rule are threatened by four plants considered by the State of Hawaii to be noxious weeds—*Ageratina adenophora* (Maui pamakani), *Ageratina riparia* (Hamakua pamakani), *Clidemia hirta* (Koster's curse), and *Myrica faya* (firetree). The State has provisions and funding available for eradication and control of noxious weeds on State and private land in conservation districts and other areas (HRS, chapt. 152; Hawaii Department of Agriculture (DOA) 1981).

Listing of these 25 plant taxa therefore would reinforce and supplement the protection available under the State Act and other laws. The Federal Act also

would provide additional protection to these 25 plant taxa because it is a Federal violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* All of the 25 taxa in this final rule are threatened by competition with 1 or more alien plant species (see Table 1). The most significant of these appear to be *Clidemia hirta* (Koster's curse), *Psidium cattleianum* (strawberry guava), *Schinus terebinthifolius* (Christmas berry), *Ageratina adenophora* (Maui pamakani), *Ageratina riparia* (Hamakua pamakani), *Passiflora suberosa* (huehue haole), *Rubus argutus* (prickly Florida blackberry), *Lantana camara* (lantana), and *Grevillea robusta* (silk oak).

Koster's curse, a noxious shrub native to tropical America, is found in mesic to wet forests on at least six islands in Hawaii (Almeda 1990, DOA 1981, Smith 1992). Koster's curse was first reported on Oahu in 1941 and had spread through much of the Koolau Mountains by the early 1960's. Koster's curse spread to the Waianae Mountains around 1970 and is now widespread throughout the southern half of that mountain range. This noxious pest forms a dense understory, shading out other plants and hindering plant regeneration, and is considered the major alien plant threat in the Koolau Mountains (Cuddihy and Stone 1990). At present, Koster's curse threatens populations of 18 of the plant taxa—*Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea st.-johnii*, *Cyrtandra dentata*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Gardenia mannii*, *Labordia cyrtandrae*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Myrsine juddii*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Trematolobelia singularis*, and *Viola oahuensis* (HHP 1994d1 to 1994d5, 1994d7, 1994d8, 1994d11, 1994e1 to 1994e4, 1994e7, 1994e8, 1994e10 to 1994e12, 1994e20, 1994f1, 1994f2, 1994g1 to 1994g4, 1994g22, 1994h12 to 1994h14, 1994i7, 1994i9, 1994i10, 1994j6, 1994k6, 1994L4 to 1994L6, 1994m1, 1994o1, 1994o13, 1994o14, 1994o35, 1994o38 to 1994o40, 1994o42 to 1994o44, 1994o46, 1994p14, 1994s1, 1994u2, 1994u3, 1994v19, 1994v27, 1994v29, 1994v30, 1994w3, 1994cc2, 1994cc4, 1994dd9, 1994dd12, 1994dd13; Takeuchi & Shimabukuro (s.n.) 1987; Takeuchi (2410) 1985).

Strawberry guava, a tree native to tropical America, has become widely naturalized on all of the main islands, forming dense stands that exclude other plant species in disturbed areas (Cuddihy and Stone 1990). Strawberry guava grows primarily in mesic and wet habitats and is dispersed mainly by feral pigs and fruit-eating birds (Smith 1985, Wagner *et al.* 1990). Strawberry guava is considered to be one of the greatest alien plant threats to Hawaiian rain forests and threatens populations of 15 of the plant taxa in this final rule—*Chamaesyce herbstii*, *Chamaesyce rockii*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyrtandra dentata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Eragrostis fosbergii*, *Gardenia manni*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Myrsine juddii*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, and *Viola oahuensis* (HHP 1994c2, 1994c3, 1994d5, 1994g1, 1994g5, 1994h1, 1994h12 to 1994h14, 1994j6, 1994L4 to 1994L6, 1994m7, 1994n4, 1994o1, 1994o13, 1994o37, 1994o38, 1994o44, 1994o46, 1994p15, 1994p16, 1994q7, 1994q11, 1994u2, 1994u3, 1994v27, 1994v36, 1994w3, 1994dd9, 1994dd12; Smith 1985).

Christmas berry, introduced to Hawaii before 1911, is a fast-growing tree or shrub that invade mesic to wet lowland areas of the major Hawaiian Islands (Wagner *et al.* 1990). Christmas berry is distributed mainly by feral pigs and fruit-eating birds and forms dense thickets that shade out and displace other plants (Cuddihy and Stone 1990, Smith 1985, Stone 1985). It is a pervasive threat in the Koolau and Waianae Mountains and threatens one or more populations of *Chamaesyce herbstii*, *Cyanea acuminata*, *Delissea subcordata*, *Eragrostis fosbergii*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lobelia monostachya*, *Melicope saint-johnii*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Pritchardia kaalae*, and *Schiedea kealiae* (HHP 1994c1, 1994c2, 1994c4, 1994e11, 1994m1, 1994m7, 1994n4, 1994p16, 1994q4, 1994q5, 1994q7, 1994q9 to 1994q11, 1994t3, 1994t4, 1994t13, 1994t14, 1994v19, 1994v31, 1994v34, 1994v35, 1994w3, 1994w4, 1994aa2, 1994bb4, 1994bb6, 1994ff).

Maui pamakani and Hamakua pamakani, both native to tropical America, have naturalized in dry areas to wet forest on Oahu and four other islands (Wagner *et al.* 1990). These two noxious weeds form dense mats with other alien plants and prevent regeneration of native plants (Anderson *et al.* 1992). Five of the plant taxa in this final rule in both Oahu mountain ranges are threatened by competition with

Maui pamakani and/or Hamakua pamakani—*Cyanea acuminata*, *Lepidium arbuscula*, *Lobelia monostachya*, *Melicope saint-johnii*, and *Pritchardia kaalae* (HHP 1994e1, 1994q5, 1994q9 to 1994q11, 1994t14, 1994aa2, 1994ff).

Huehue haole, a vine native to tropical America, is found in dryland habitats and mesic forest on Oahu, Maui, and Hawaii, where it thrives in the subcanopy layers and smother shrubs, small trees, and the ground layer (Escobar 1990, Smith 1985, Wester 1992). Huehue haole threatens one or more populations of four of the plant taxa, all in the Waianae Mountains—*Chamaesyce herbstii*, *Melicope saint-johnii*, *Phyllostegia hirsuta*, and *Phyllostegia kaalaensis* (HHP 1994c1, 1994t3, 1994t4, 1994t13, 1994t14, 1994v31, 1994v34, 1994v35, 1994w3, 1994w4).

Prickly Florida blackberry was introduced to the Hawaiian Islands in the late 1800's from the continental U.S. (Haselwood and Motter 1983). The fruits are easily spread by birds to open areas such as disturbed mesic or wet forests, where the species forms dense, impenetrable thickets (Smith 1985). In the Waianae Mountains, populations of five of the plant taxa are threatened by this noxious weed—*Cyanea longiflora*, *Gardenia manni*, *Labordia cyrtandrae*, *Phyllostegia hirsuta*, and *Pritchardia kaalae* (HHP 1994h1, 1994o1, 1994p14, 1994p15, 1994v2, 1994v3, 1994aa5).

Lantana, native to the West Indies, is an aggressive, thicket-forming shrub that produces chemicals that inhibit the growth of other plant species. Lantana is now found on all of the main Hawaiian islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Cuddihy and Stone 1990, Smith 1985, Wagner *et al.* 1990). In the Waianae Mountains, lantana negatively affects populations of four of the plant taxa in this final rule—*Delissea subcordata*, *Lepidium arbuscula*, *Melicope saint-johnii*, and *Phyllostegia hirsuta* (HHP 1994q5, 1994q10, 1994t13, 1994v19, 1994v31; Takeuchi and Shimabukuro (s.n.) 1987).

Silk oak, native to Queensland and New South Wales, Australia, was planted extensively in Hawaii for timber and is now naturalized on most of the main islands (Smith 1985, Wagner *et al.* 1990). Silk oak negatively affects populations of four of the plant taxa that grow exclusively in the Waianae Mountains—*Chamaesyce herbstii*, *Eragrostis fosbergii*, *Lepidium arbuscula*, and *Melicope saint-johnii* (HHP 1994c1, 1994n4, 1994q10, 1994q11, 1994t14).

Kalanchoe pinnata (air plant) is an herb that occurs on all the main islands except Niihau and Kahoolawe, especially in dry to mesic areas (Wagner *et al.* 1990). Air plant poses a significant threat to the only population of *Lobelia monostachya* (HHP 1994ff).

Leucaena leucocephala (koa haole), a naturalized shrub which is sometimes the dominant species in low elevation, dry, disturbed areas on all of the main Hawaiian islands, is a major threat to *Schiedea kealiae* (Geesink *et al.* 1990; HHP 1994bb1, 1994bb4, 1994bb6).

Melinis minutiflora (molasses grass), a perennial grass brought to Hawaii for cattle fodder, is now naturalized in dry to mesic, disturbed areas on most of the main Hawaiian Islands. The mats it forms smother other plants and fuel more intense fires than would normally affect an area (Cuddihy and Stone 1990, O'Connor 1990, Smith 1985). Molasses grass threatens *Lepidium arbuscula* and the only known population of *Lobelia monostachya* (HHP 1994q4, 1994q5, 1994q11, 1994ff).

Myrica faya (firetree), native to the Azores, Madeira, and the Canary Islands, was introduced to Hawaii before 1900 for wine-making, firewood, or as an ornamental. Firetree was planted in forest reserves in the 1920's. By the mid-1980's, firetree had infested over 34,000 ha (84,000 ac) throughout the State, with the largest infestations on the island of Hawaii. It is now considered a noxious weed (Cuddihy and Stone 1990, DOA 1981). Firetree can form a dense stand with no ground cover beneath the canopy. This lack of ground cover may be due to dense shading or to chemicals released by firetree that prevent other species from growing. Firetree also fixes nitrogen and increases nitrogen levels in Hawaii's typically nitrogen-poor volcanic soils. This may encourage the invasion of alien plants that would not otherwise be able to grow as well as native species in Hawaii's low-nitrogen soils (Cuddihy and Stone 1990). Firetree threatens *Melicope saint-johnii* and one of the largest populations of *Lepidium arbuscula* (HHP 1994q11, 1994t14).

The perennial grass *Paspalum conjugatum* (Hilo grass) has become naturalized in moist to wet, disturbed areas on most Hawaiian Islands. It produces a dense ground cover, even on poor soil (Cuddihy and Stone 1990). *Sacciolepis indica* (Glenwood grass) is an annual or perennial grass naturalized on five islands in Hawaii in open, wet areas (Wagner *et al.* 1990). Hilo grass and Glenwood grass threaten the largest population of *Viola oahuensis* (HHP 1994dd13).

Fire does not pose an immediate threat to the 25 plant taxa in this final rule, although species that grow in dry and mesic shrubland and forest may be susceptible to fire (see Table 1). Because Hawaii's native plants have evolved with only infrequent naturally occurring episodes of fire (lava flows, infrequent lightning strikes), most species are not adapted to fire and are unable to recover well after recurring fires. Alien plants are often more fire-adapted than native taxa and will quickly exploit suitable habitat after a fire (Cuddihy and Stone 1990). Unintentionally ignited fires have resulted from ordnance training practices in Makua Military Reservation and Schofield Barracks Military Reservation and from other military training practices in Kawaiiloa and Kahuku Training Areas and pose a possible threat to the five species that occur on those military installations—*Cyrtandra subumbellata*, *Delissea subcordata*, *Gardenia mannii*, all known populations of *Labordia cyrtandrae*, and *Pritchardia kaalae* (Environment Impact Study Corp. 1977; HHP 1993, 1994a, 1994b, 1994k2, 1994k5, 1994k6, 1994m7, 1994m9 to 1994m11, 1994o1, 1994o2, 1994o4, 1994o13, 1994o18, 1994o37 to 1994o40, 1994o43, 1994o44, 1994p2, 1994p14 to 1994p16, 1994aa2, 1994aa5; Yoshioka *et al.* 1991). Accidentally or maliciously set fires in areas of habitation near the Lualualei Naval Reservation and the Makua Military Reservation could easily spread and pose a possible threat to more than half of the individuals of *Lepidium arbuscula* that occur on both reservations and one population of *Melicope saint-johnii* (HHP 1994q3, 1994q5, 1994q8, 1994q10, 1994q11, 1994t15; J. Lau, pers. comm. 1994). Fire is also a potential threat to *Chamaesyce herbstii*, *Cyanea longiflora*, *Cyrtandra dentata*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, and *Schiedea kealiae*, which occur in dry or mesic habitats with adequate conditions for the spread of fire, at least seasonally (HHP 1994c1 to 1994c5, 1994h1, 1994h3, 1994h11, 1994j2, 1994j6, 1994j7, 1994v6, 1994v34 to 1994v36, 1994w2 to 1994w4, 1994w6, 1994bb3).

Erosion, landslides, and rockslides due to natural weathering result in habitat destruction as well as the death of individual plants. This especially affects the continued existence of taxa or populations with limited numbers and/or narrow ranges on cliffs, such as the only known population of *Lobelia gaudichaudii* ssp. *koolauensis* and the Kaena Point population of *Schiedea kealiae* (HHP 1994bb3; L. Mehrhoff, pers. comm. 1994).

People are more likely to come into contact with species that have populations near trails or roads or in recreational areas. Alien plants may be introduced into such areas as seeds on footwear, or people may cause erosion, trample plants, or start fires (Cuddihy and Stone 1990). The following taxa have populations in recreational areas or close to roads or trails and are potentially threatened by human disturbance—*Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea st.-johnii*, *Delissea subcordata*, *Eragrostis fosbergii*, *Lepidium arbuscula*, and *Lobelia gaudichaudii* (HHP 1994f1, 1994g22, 1994i7, 1994i9, 1994i10, 1994n3 to 1994n6, 1994q4; L. Mehrhoff, pers. comm. 1994).

The small number of populations and individuals of most of these taxa increases the potential for extinction from naturally occurring events. The small gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only extant population. Two of the plant taxa, *Lobelia gaudichaudii* ssp. *koolauensis* and *Lobelia monostachya*, are known from a single population. An additional 15 of the taxa in this final rule have 5 or fewer populations. Twelve of the taxa are estimated to number no more than 100 individuals and 4 of those taxa (*Cyrtandra viridiflora*, *Eragrostis fosbergii*, *Labordia cyrtandrae*, and *Lobelia monostachya*) are estimated to number no more than 10 individuals (see Table 1).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to make this rule final. Based on this evaluation, this rulemaking will list these 25 species as endangered—*Chamaesyce herbstii*, *Chamaesyce rockii*, *Cyanea acuminata*, *Cyanea humboldtiana*, *Cyanea koolauensis*, *Cyanea longiflora*, *Cyanea st.-johnii*, *Cyrtandra dentata*, *Cyrtandra subumbellata*, *Cyrtandra viridiflora*, *Delissea subcordata*, *Eragrostis fosbergii*, *Gardenia mannii*, *Labordia cyrtandrae*, *Lepidium arbuscula*, *Lobelia gaudichaudii* ssp. *koolauensis*, *Lobelia monostachya*, *Melicope saint-johnii*, *Myrsine juddii*, *Phyllostegia hirsuta*, *Phyllostegia kaalaensis*, *Pritchardia kaalae*, *Schiedea kealiae*, *Trematolobelia singularis*, and *Viola oahuensis*. The 25 taxa are threatened by one or more of the following—habitat degradation and/or predation by pigs, goats, and rats; insect infestations; competition for space, light, water, and nutrients by alien plants; habitat loss

from fires; and human impacts from military training practices and from recreational activities. Twenty of the 25 taxa either number no more than 100 individuals or are known from no more than 5 populations. Small population size and limited distribution make these taxa particularly vulnerable to extinction from reduced reproductive vigor or from naturally occurring events. Because the 25 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical habitat is not being designated for the 25 taxa included in this rule for reasons discussed in the "Critical Habitat" section below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(I) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

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. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. As discussed under Factor B, these taxa could potentially be threatened by overcollection due to their low population size and interest generated by their endangered status. The publication of precise maps and descriptions of critical habitat in the Federal Register and local newspapers as required in designation of critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could

contribute to their decline. The listing of these taxa as endangered publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. For this reason, The Service finds that designation of critical habitat for these 25 taxa is not prudent at this time.

Furthermore, such a designation would not only increase The degree of threat from vandalism, collecting, or other human activities, it is unlikely to aid in the conservation of these taxa. Eighteen of the taxa occur on lands under Federal military jurisdiction. The additional protection by the designation of critical habitat to a species is granted through section 7 of the Act. Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. All of the 18 species which occur on military lands are confined to small geographic areas, and each population is composed of so few individuals that the determinations for jeopardy to the species and adverse modification of critical habitat would be similar. Therefore, designation of critical habitat for these species provides no benefits beyond those that these species would receive by virtue of their listing as endangered species.

Critical habitat designation, therefore, would increase the degree of threat from vandalism, collecting, or other human activities, and is not likely to aid in the conservation of these taxa. For these reasons, the Service finds that designation of critical habitat for these 25 taxa is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for listed species. The protection required of Federal agencies and the prohibitions

against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) requires Federal agencies to use their authorities to further the purposes of the Act by carrying out programs for listed species. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species. If a Federal action is likely to adversely affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

Eighteen of the taxa occur on land under Federal jurisdiction, including the following agencies—U.S. Army, U.S. Navy, and U.S. Coast Guard. Of those, 15 taxa are found on federally owned land and 14 taxa occur on land leased by the Federal government from the State, City and County of Honolulu, and private parties. Activities carried out by the U.S. Army include ordnance training practices, ground troop training activities, and construction, maintenance, and utilization of helicopter landing and drop-off sites. The Army is coordinating with TNCH to develop management plans for Schofield Barracks Military Reservation, Kawaihoa Training Area, and Kahuku Training Area to limit the impact of these activities on endangered species and their habitats.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the

prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few permits would ever be sought or issued because these 25 taxa are not common in cultivation or in the wild.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the species' range. Eighteen of the taxa occur on lands under Federal jurisdiction (U.S. Army, U.S. Navy, and U.S. Coast Guard). Of those, 15 taxa are found on federally owned land and 14 taxa occur on land leased by the Federal government from the State, City and County of Honolulu, and private parties. Collection, damage, or destruction of these taxa on Federal lands is prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of Hawaii State law or regulations or in violation of State criminal trespass law. One of the listed taxa (*Pritchardia kaalae*) may be of horticultural interest, though currently it is not in commercial trade. Intrastate commerce (commerce within a State) is not prohibited under the Act. However, interstate and foreign commerce (sale or offering for sale across State or international boundaries), would be prohibited, with limited exceptions. (Endangered species may be advertised for sale provided the advertisement contains a statement that no sale may be consummated until a permit has been obtained from the Service.)

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Pacific Islands Ecoregion Manager (see ADDRESSES section). Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (telephone: 503/231-6241; facsimile: 503/231-6243).

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species act. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (Hawaii Revised Statutes (HRS), sect. 195D-4(a)). This Federal listing will automatically invoke listing under Hawaii State law. The State law prohibits taking of listed species on private and State lands and encourages conservation by State agencies (HRS, sect. 195D-4).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments or Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations

adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion (see ADDRESSES section).

Author

The authors of this rule are Christa Russell and Marie M. Brueggmann, Pacific Islands Ecoregion Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended 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. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
<i>Chamaesyce herbstii</i>	'Akoko	U.S.A. (HI)	Euphorbiaceae—Spurge	E	591	NA	NA
<i>Chamaesyce rockii</i>	'Akoko	U.S.A. (HI)	Euphorbiaceae—Spurge	E	591	NA	NA
<i>Cyanea acuminata</i>	Haha	U.S.A. (HI)	Campanulaceae—Bell-flower.	E	591	NA	NA
<i>Cyanea humboldtiana</i>	Haha	U.S.A. (HI)	Campanulaceae—Bell-flower.	E	591	NA	NA
<i>Cyanea koolauensis</i>	Haha	U.S.A. (HI)	Campanulaceae—Bell-flower.	E	591	NA	NA
<i>Cyanea longiflora</i>	Haha	U.S.A. (HI)	Campanulaceae—Bell-flower.	E	591	NA	NA
<i>Cyanea st.-johnii</i>	Haha	U.S.A. (HI)	Campanulaceae—Bell-flower.	E	591	NA	NA
<i>Cyrtandra dentata</i>	Ha'iwale	U.S.A. (HI)	Gesneriaceae—African violet.	E	591	NA	NA
<i>Cyrtandra subumbellata</i>	Ha'iwale	U.S.A. (HI)	Gesneriaceae—African violet.	E	591	NA	NA

Species		Common name	Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name								
<i>Cyrtandra viridiflora</i>	Ha'iwale	U.S.A. (HI)	Gesneriaceae—African violet.	E	591	NA	NA	
<i>Delissea subcordata</i>	'Oha	U.S.A. (HI)	Campanulaceae—Bell-flower.	E	591	NA	NA	
<i>Eragrostis fosbergii</i>	None	U.S.A. (HI)	Poaceae—Grass	E	591	NA	NA	
<i>Gardenia mannii</i>	Nanu	U.S.A. (HI)	Rubiaceae—Coffee	E	591	NA	NA	
<i>Labordia cyrtandrae</i>	Kamakahala	U.S.A. (HI)	Loganiaceae—Logania	E	591	NA	NA	
<i>Lepidium arbuscula</i>	'Anaunau	U.S.A. (HI)	Brassicaceae—Mustard	E	591	NA	NA	
<i>Lobelia gaudichaudii</i>	None	U.S.A. (HI)	Campanulaceae—Bell-flower.	E	591	NA	NA	
<i>Lobelia monostachya</i>	None	U.S.A. (HI)	Campanulaceae—Bell-flower.	E	591	NA	NA	
<i>Melicope saint-johnii</i>	Alani	U.S.A. (HI)	Rutaceae—Rue	E	591	NA	NA	
<i>Myrsine juddii</i>	Kolea	U.S.A. (HI)	Myrsinaceae—Myrsine	E	591	NA	NA	
<i>Phyllostegia hirsuta</i>	None	U.S.A. (HI)	Lamiaceae—Mint	E	591	NA	NA	
<i>Phyllostegia kaalaensis</i>	None	U.S.A. (HI)	Lamiaceae—Mint	E	591	NA	NA	
<i>Pritchardia kaalae</i>	Loulu	U.S.A. (HI)	Arecaceae—Palm	E	591	NA	NA	
<i>Schiedea kealiae</i>	None	U.S.A. (HI)	Caryophyllaceae—Pink	E	591	NA	NA	
<i>Trematolobelia singularis</i>	None	U.S.A. (HI)	Campanulaceae—Bell-flower.	E	591	NA	NA	
<i>Viola oahuensis</i>	None	U.S.A. (HI)	Violaceae—Violet	E	591	NA	NA	

Dated: September 24, 1996.
 John G. Rogers,
 Acting Director, Fish and Wildlife Service.
 [FR Doc. 96-25557 Filed 10-9-96; 8:45 am]
 BILLING CODE 4310-55-P

50 CFR Part 17
RIN 1018-AD58
Endangered and Threatened Wildlife and Plants; Determination of Endangered or Threatened Status for Fourteen Plant Taxa From the Hawaiian Islands
AGENCY: Fish and Wildlife Service, Interior.
ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 13 plant taxa—*Achyranthes mutica* (No common name (NCN)), *Cenchrus agrimonioides* (kamanomano), *Cyanea grimesiana* ssp. *grimesiana* (haha), *Cyperus trachysanthos* (pu'uka'a), *Euphorbia haeleleana* (NCN), *Isodendron laurifolium* (aupaka), *Panicum niihauense* (lau 'ehu), *Phyllostegia*

parviflora (NCN), *Platanthera holochila* (NCN), *Sanicula purpurea* (NCN), *Schiedea hookeri* (NCN), *Schiedea kauaiensis* (NCN), and *Schiedea nuttallii* (NCN). The Service also determines threatened status for *Isodendron longifolium* (aupaka). The 14 taxa are endemic to the Hawaiian Islands and are now known from one or more of the following Hawaiian Islands—Niihau, Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. The 14 plant taxa and their habitats have been variously affected or are currently threatened by one or more of the following—competition, predation or habitat degradation from alien species, human impacts, fire, and natural disasters. This final rule implements the

Federal protection provisions provided by the Act.

EFFECTIVE DATE: This rule takes effect November 12, 1996.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3108, P.O. Box 5088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Brooks Harper, Field Supervisor, Ecological Services, Pacific Islands Ecoregion (see **ADDRESSES** section) (telephone: 808/541-3441; facsimile: 808/541-3470).

SUPPLEMENTARY INFORMATION:

Background

Achyranthes mutica, *Cenchrus agrimonoides*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyperus trachysanthos*, *Euphorbia haelealeana*, *Isodendron laurifolium*, *Isodendron longifolium*, *Panicum niihauense*, *Phyllostegia parviflora*, *Platanthera holochila*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea kauaiensis*, and *Schiedea nuttallii* are, or were, known from 10 Hawaiian Islands—Laysan, Midway, Kure, Niihau, Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. The current and historical distribution by island is presented in Table 1 for each of the 14 taxa.

TABLE 1. SUMMARY OF ISLAND DISTRIBUTION OF THE TAXA

Species	Hawaiian Island									
	Kure	Maui	Laysan	Niihau	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii
<i>Achyranthes mutica</i>					H					C
<i>Cenchrus agrimonoides</i>	H	H	H			C		H	C	H?
<i>Cyanea grimesiana</i> ssp. <i>grimesiana</i>						C	C	C	C	
<i>Cyperus trachysanthos</i>				C	C	C	H	H		
<i>Euphorbia haelealeana</i>					C	C				
<i>Isodendron laurifolium</i>					C	C				
<i>Isodendron longifolium</i>					C	C				
<i>Panicum niihauense</i>				H	C					
<i>Phyllostegia parviflora</i>						C			H	H
<i>Platanthera holochila</i>					C	H	C		C	
<i>Sanicula purpurea</i>						C			C	
<i>Schiedea hookeri</i>						C			H	
<i>Schiedea kauaiensis</i>					C					
<i>Schiedea nuttallii</i>					C	C				

Key:

- C—current; population last observed within the past 20 years.
- H—historical; population not seen for over 20 years.
- ?—questionable locality or inconsistent information in sources.

The Hawaiian archipelago includes eight large volcanic islands (Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii), as well as offshore islets, shoals, and atolls set on submerged volcanic remnants at the northwestern end of the chain (the Northwestern Hawaiian Islands, including Laysan, Midway, and Kure). The archipelago covers a land area of about 16,600 square kilometers (sq km) (6,400 sq miles (mi)), extending roughly between latitude 18°50' and 28°15' N and longitude 154°40' and 178°70' W, and ranging in elevation from sea level to 4,200 meters (m) (13,800 feet (ft)) (Department of Geography 1983). The regional geological setting is a mid-oceanic volcanic island archipelago set in a roughly northwest to southeast line, with younger islands to the southeast. The youngest island, Hawaii, is volcanically active. The older islands are increasingly eroded, so that the

basaltic portions of many of the north westernmost islands (such as Laysan, Midway, and Kure) are entirely submerged, and coralline atolls and shoals are often all that remain above sea level (Macdonald *et al.* 1986). The topography of the Hawaiian Islands is extremely diverse. On the youngest islands, Hawaii and Maui, gently sloping unweathered shield volcanoes with very poor soil development are juxtaposed with older, heavily weathered valleys with steep walls, well-developed streams, and gently sloped flood plains. The older islands to the northwest (Niihau, Kauai, Oahu, and Molokai) are generally more weathered. On a typical older island, sea cliffs and large amphitheater-headed valleys on the windward (northeast) side contrast with erosionally younger, dissected slopes on the leeward (southwest) side (Department of Geography 1983).

The climate of the Hawaiian Islands reflects the tropical setting buffered by the surrounding ocean (Department of Geography 1983). The prevailing winds are northeast trade winds with some seasonal fluctuation in strength. The islands also experience winter storm systems and occasional hurricanes. Annual rainfall varies greatly by location, with marked windward to leeward gradients over short distances. Minimum average annual rainfall is less than 250 millimeters (mm) (10 inches (in.)); the maximum average precipitation is well in excess of 11,000 mm (450 in.) per year. Precipitation is greatest during the months of October through April. A dry season is apparent in leeward settings, while windward settings generally receive trade wind-driven rainfall throughout the year (Department of Geography 1983).

The native-dominated vegetation of the Hawaiian Islands varies greatly

according to elevation, moisture regime, and substrate. Within the nearly 100 recognized native vegetation types are numerous island-specific or region-specific associations, comprising an extremely rich array of vegetation types over a very limited geographic area. Major vegetation formations include forests, woodlands, shrublands, grasslands, herblands, and pioneer associations on lava and cinder substrates (Gagné and Cuddihy 1990).

In Hawaii, lowland, montane, and subalpine forest types extend from sea level to above 3,000 m (9,800 ft) in elevation. Coastal and lowland forests are generally dry or mesic and may be open- or closed-canopied. The stature of lowland forests is generally under 10 m (30 ft). Ten of the taxa in this final rule (*Achyranthes mutica*, *Cenchrus agrimonoides* var. *agrimonioides*, *Cyanea grimesiana* ssp. *grimesiana*, *Euphorbia haeleleana*, *Isodendron laurifolium*, *I. longifolium*, *Panicum niuhauense*, *Schiedea hookeri*, *S. nuttallii*, and *S. kauaiensis*) have been reported from lowland dry or mesic forest habitat. *C. agrimonoides* var. *laysanensis* has been reported from dry coastal strand vegetation. Four taxa (*I. laurifolium*, *I. longifolium*, *Phyllostegia parviflora*, and *Sanicula purpurea*) have been reported from lowland wet forest habitat. One taxon, *Cyperus trachysanthos*, has been reported from wet sites on coastal cliffs or talus slopes. Montane wet forests, occupying elevations between 915 and 1,830 m (3,000 and 6,000 ft), occur on the windward slopes and summits of the islands of Kauai, Oahu, Molokai, Maui, and Hawaii. The forests may be open- to closed-canopied, and may exceed 20 m (65 ft) in height. Montane wet forests are usually dominated by several species of native trees and tree ferns. *Platanthera holochila*, has been reported from montane wet forest habitat. Montane bogs, found on Kauai, Molokai, Maui, and Hawaii, occur primarily on flat or gently sloping terrain with impervious substrates between 915 and 1,830 m (3,000 and 6,000 ft) in elevation. The vegetation of most of these bogs consists of an irregular, hummocky cushion of sedges, with *Metrosideros polymorpha* ('ohi'a) usually a codominant. Two taxa, *P. holochila* and *S. purpurea*, have been reported from montane bog habitats. Hawaiian shrublands are also found from coastal to alpine elevations. The majority of Hawaiian shrubland types are in dry and mesic settings, or on cliffs and slopes too steep to support trees. Only one of the taxa, *P. niuhauense*, has been reported from coastal dry shrubland habitat, on Kauai.

The land that supports these 14 plant taxa is owned by various private parties, the City and County of Honolulu, the State of Hawaii (including State parks, forest reserves, natural area reserves, and Hawaiian Home Lands), and the Federal government (Department of Defense (DOD)).

Discussion of the 14 Plant Taxa

Achyranthes mutica was first described by Asa Gray in 1867 based on a specimen collected on Kauai between 1851 and 1855 by Ezechiel Jules Remy, a French naturalist and ethnologist (St. John 1979, Wagner *et al.* 1990).

Achyranthes nelsonii (St. John 1979) is considered to be synonymous with *A. mutica* by the authors of the current treatment of Hawaiian members of the family (Wagner *et al.* 1990).

Achyranthes mutica, a member of the amaranth family (Amaranthaceae), is a many-branched shrub with stems ranging from 30 to 60 centimeters (cm) (12 to 24 in.) long. The opposite leaves, usually 3.2 to 4 cm (1.3 to 1.6 in.) long and 1.5 to 2 cm (0.6 to 0.8 in.) wide, are inversely egg-shaped to elliptic or inversely lance-shaped. The stalkless flowers are arranged in spikes (flowers directly attached to the main flower axis) that are 0.4 to 1.5 cm (0.2 to 0.6 in.) long. The apetalous (lacking petals) flowers are perfect (containing both female and male parts). The sepals are of unequal length, 3 to 4.2 mm (0.1 to 0.2 in.) long, and have sharply pointed tips. This species is distinguished from others in the genus by the shape and size of the sepals and by characteristics of the spike, which is short and congested (Wagner *et al.* 1990).

Historically *Achyranthes mutica* was known from three collections from opposite ends of the main archipelago, Kauai and Hawaii (Hawaii Heritage Program (HHP) 1994c1, 1994c2; Hawaii Plant Conservation Center (HPCC) 1992a). Currently this species is known only from the Keawewai Stream area in the Kohala Mountains of Hawaii on private land. Between 20 and 50 plants are growing at an elevation of about 920 m (3,030 ft) in an *Acacia koaia* (koa'i'a) lowland dry forest with *Dodonaea viscosa* ('a'ali'i), *Myoporum sandwicense* (naio), *Nestegis sandwicensis* (olopua), *Osteomeles anthyllidifolia* ('ulei), and *Sophora chrysophylla* (mamane) (HPCC 1992a).

The primary threats to the single remaining population of *Achyranthes mutica* are habitat degradation and/or destruction by ungulates such as cattle (*Bos taurus*) and feral goats (*Capra hircus*), competition with alien plant taxa, 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 in a single remaining population (HPCC 1992a; Christa Russell, The Nature Conservancy of Hawaii (TNCH), pers. comm. 1994).

Louis C.A. von Chamisso, a botanist on the Russian vessel *Rurik*, first collected *Cenchrus agrimonoides* on Oahu during a world exploring expedition between 1816 and 1817. Carl Bernhard von Trinius described the species several years later (Degener and Whitney 1937). Other published names considered synonymous with *C. agrimonoides* include *C. calyculatus* var. *uniflorus*, *C. laysanensis*, and *C. pedunculatus* (O'Connor 1990). Currently, two varieties are recognized—the nominate variety and variety *laysanensis*, which was described by F.B. Brown (1931).

Cenchrus agrimonoides, a member of the grass family (Poaceae), is a perennial grass with stems 0.3 to 2 m (1 to 6.7 ft) tall. The leaf blades, 20 to 40 cm (8 to 16 in.) long and 5 to 25 mm (0.2 to 1 in.) wide, are flat or folded and have a prominent midrib. The inflorescence (flower cluster) is a raceme (an unbranched, indeterminate inflorescence with flowers arranged along the axis) 5 to 10 cm (2 to 4 in.) long, bearing cylindrical to lance-shaped burs 8 to 18 mm (0.3 to 0.7 in.) long. The burs are densely hairy with an outer series of numerous, somewhat spreading bristles. Each bur partially envelops one spikelet (ultimate flower cluster). This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles. *C. a.* var. *agrimonioides* differs from var. *laysanensis* in generally having smaller burs, shorter stems, and narrower leaves (O'Connor 1990).

Historically *Cenchrus agrimonoides* var. *agrimonioides* was known from the following general areas—the Waianae Mountains of Oahu, Kaaukuu on Lanai, and the south slope of Haleakala and Ulupalakua on Maui. It may possibly have occurred on the island of Hawaii; undocumented observations of this taxon have been reported from unspecified locations on this island (HHP 1994d1 to 1994d14, Hillebrand 1888). Currently *C. a.* var. *agrimonioides* is known from Oahu and Maui. In the Waianae Mountains on Oahu, approximately 25 individuals are found in the following populations—Pahole Gulch in the State's Pahole Natural Area Reserve (NAR), Makaha-Waianae Kai Ridge on City and County of Honolulu land, Kahanahaiki Valley on State land leased by the DOD for the Makua

Military Reservation, east Makaleha on State land, and Puulii drainage on private land in TNCH's Honouliuli Preserve (HHP 1994d1, 1994d8, 1994d11, 1994d12, 1994d14). On Maui, a patch of *C. a.* var. *agrimonioides* plants, 0.9 sq m (10 sq ft) in size, is known from State land within Kanaio NAR (Robert Hobdy, Division of Forestry and Wildlife (DOFAW), pers. comm. 1994). The number of individuals statewide totals fewer than 100. *Cenchrus agrimonioides* var. *agrimonioides* is usually found on dry rocky ridges or slopes, or ridges in mesic 'ohi'a-koa forest between 560 and 820 m (1,830 and 2,700 ft) in elevation. Associated plant taxa include *Alyxia oliviformis* (maile), *Psydrax odoratum* (alahe'e), *Carex* sp., *Diospyros* sp. (lama), and *Eragrostis variabilis* (kawelu) (HHP 1994d8, 1994d11, 1994d12, 1994d14; R. Hobdy, pers. comm. 1994).

The other variety of this species, *Cenchrus agrimonioides* var. *laysanensis*, was known historically from the northwestern Hawaiian islands of Laysan, Kure, and Midway, all within the Northwestern Hawaiian Islands National Wildlife Refuge. This variety has not been seen since 1973. These islands are infrequently surveyed for plants, the last comprehensive survey being completed in the 1980s, so it is possible that the variety still exists and will be found with further survey efforts (Corn 1980; HHP 1991a1, 1991a2).

The major threats to *Cenchrus agrimonioides* var. *agrimonioides* are habitat degradation and/or destruction by feral pigs (*Sus scrofa*) (Oahu only), competition with alien plant taxa, and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals. The Pahole Gulch population on Oahu is potentially threatened by trampling and fire from military activities and the Maui population is potentially threatened by goats and cattle (HHP 1994d1, 1994d8, 1994d11, 1994d12, 1994d14; R. Hobdy and C. Russell, pers. comm. 1994). Listing of *Cenchrus agrimonioides* protects both varieties.

Cyanea grimesiana ssp. *grimesiana* was collected by Charles Gaudichaud-Beaupré in 1819 on Oahu while he was pharmaceutical botanist on the vessel *Uranie* (HHP 1989a, Rock 1919, Wagner *et al.* 1990). Gaudichaud later described this taxon and named it for the French Navy's head pharmacist (Thomas G. Lammers, Field Museum, pers. comm. 1994). Other published names considered synonymous with *Cyanea grimesiana* ssp. *grimesiana* include *C. grimesiana* var. *lydgatei*, *C. grimesiana*

var. *mauiensis*, *C. grimesiana* var. *munroi*, and *C. lobata* var. *hamakuae* (Lammers 1990). Currently, three subspecies are recognized—the extinct ssp. *cylindrocalyx* (Rock 1917); ssp. *grimesiana*; and the federally endangered ssp. *obatae* (St. John 1978a).

Cyanea grimesiana ssp. *grimesiana*, a member of the bellflower family (Campanulaceae), is a shrub 1 to 3.2 m (3.3 to 10.5 ft) tall. The leaves are pinnately divided, with 9 to 12 segments per side. The leaf blades are 27 to 58 cm (10.6 to 22.9 in.) long and 14 to 32 cm (5.5 to 12.6 in.) wide (across the segments). The inflorescence comprises 6 to 12 flowers. The calyx lobes, 10 to 44 mm (0.4 to 2 in.) long and 4 to 14 mm (0.2 to 0.55 in.) wide, are egg-shaped to lance-shaped and overlap at the base. The petals are purplish or greenish to yellowish white, often suffused or striped with magenta, and 55 to 80 mm (2 to 3 in.) long. The orange berries are 18 to 30 mm (0.7 to 1.2 in.) long. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1990).

Historically *Cyanea grimesiana* ssp. *grimesiana* was known from at least 40 populations located in the Waianae and Koolau mountains on Oahu, Wailau Valley and Puu Kahea on Molokai, central and northern Lanai, and scattered locations on Maui (HHP 1994e1 to 1994e39; Heidi Bornhorst, TNCH, and Steven Perlman, National Tropical Botanical Garden, *in litt.* 1992). Currently *C. g.* ssp. *grimesiana* is known from 14 populations on those 4 islands (HHP 1994e1, 1994e4, 1994e6 to 1994e8, 1994e14, 1994e15, 1994e26, 1994e27, 1994e34, 1994e36 to 1994e38; H. Bornhorst and S. Perlman, *in litt.* 1992). On Oahu, the following populations are known from the Waianae Mountains—one population from Mt. Kaala NAR and three populations from Pahole NAR on State land, one population each from North Haleauau Gulch on the federally owned Schofield Barracks Military Reservation and North Kaluaa Gulch on private land. Two populations are known from Oahu's Koolau Mountains on State and private land (HHP 1994e1, 1994e4, 1994e8, 1994e14, 1994e15, 1994e34, 1994e38; H. Bornhorst and S. Perlman, *in litt.* 1992). On Molokai, one population is known from Kukuinui Ridge on State land and the other is within the State's Olokui NAR (HHP 1994e7, 1994e36). On Lanai, two

populations are known from Kaiholena Gulch and an unnamed gulch south of Puhielelu Ridge, in the central portion of the island, both on private land (HHP 1994e27, 1994e37). On Maui, two populations are known from Iao Valley on private land. A population previously reported in lower Kipahulu Valley within Haleakala National Park has been determined to be *C. asplenifolia*, based on recently available flowering material (HHP 1994e6, 1994e26; Lloyd Loope, National Biological Service (NBS), *in litt.* 1995; Art Medeiros, NBS, pers. comm. 1995). The total current populations statewide consist of fewer than 50 individuals (HHP 1994e1, 1994e4, 1994e8, 1994e14, 1994e15, 1994e34, 1994e38; H. Bornhorst and S. Perlman, *in litt.* 1992). *C. g.* ssp. *grimesiana* is typically found in mesic forest often dominated by 'ohi'a or o'hi'a and koa, or on rocky or steep slopes of stream banks, and between 350 and 945 m (1,150 and 3,100 ft) elevation. Associated plant taxa include *Antidesma* sp. (hame), *Bohea* sp. ('ahakea), *Psychotria* sp. (kopiko), *Xylosma* sp. (maua), and various native and alien ferns (HHP 1994e1, 1994e7, 1994e8, 1994e14, 1994e34, 1994e37; H. Bornhorst and S. Perlman, *in litt.* 1992).

The major threats to *Cyanea grimesiana* ssp. *grimesiana* are habitat degradation and/or destruction caused by wild and feral ungulates (axis deer (*Axis axis*), goats, and pigs) and competition with various alien plants. Potential overcollection, trampling by hikers and/or military activities, and fire threaten the Palikea population on Oahu. The Oahu populations are also threatened by landslides (HHP 1994e1, 1994e7, 1994e34, 1994e37; H. Bornhorst and S. Perlman, *in litt.* 1992; Loyal Mehrhoff, U.S. Fish and Wildlife Service, pers. comm. 1995). Rats (*Rattus* spp.) are also a potential threat, since they are known to eat the fruits and girdle the stems of species in the bellflower family (Joel Lau, TNCH, pers. comm. 1994).

First collected by Chamisso between 1816 and 1817 in the "Sandwich Islands," *Cyperus trachysanthos* was described by William J. Hooker and G.A.W. Arnott in 1832 (Hillebrand 1888, Mill *et al.* 1988). This species has been maintained in the most recent treatment of Hawaiian members of the genus (Koyama 1990). The specific epithet refers to the rough or papery flowers.

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a perennial grass-like plant with a short rhizome (underground stem). The culms (aerial stems) are densely tufted, obtusely triangular, 20 to 45 cm (8 to 18 in.) tall, sticky, and leafy at the base.

The linear leaf blades are green, covered with a waxy coating, and somewhat leathery. The leaf sheath is yellowish brown and partitioned with nodes. The flower clusters are 5 to 9 cm (2 to 3.5 in.) long and 6 to 12 cm (2 to 5 in.) wide. Each flower head contains 10 to 30 pale yellowish brown spikelets, each of which contains 8 to 20 flowers. The glumes (small pair of bracts at the base of each spikelet) are broadly egg-shaped. The fruit is a dark brown, egg-shaped achene. 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 1990).

Historically *Cyperus trachysanthos* was known from Niihau, Kauai, scattered locations on Oahu, Mauna Loa on Molokai, and Kaena on Lanai (HHP 1994f1 to 1994f15, HPCC 1993a). Currently this species is known from 3 populations on Niihau, Kauai, and Oahu with an estimated total of less than 350 individuals (HHP 1994f1, 1994f5; HPCC 1993a). On privately owned Niihau, an unknown number of individuals is known from an area west of Mokouia Valley (HHP 1994f5). On Kauai, more than 300 individuals are known from State land in Nualolo Valley, while on Oahu an unspecified number of individuals is known from State land at Kaena Point (HHP 1994f1, HPCC 1993a). *C. trachysanthos* is usually found in wet sites (mud flats, wet clay soil, or wet cliff seeps) on coastal cliffs or talus slopes between 3 and 160 m (10 and 525 ft) elevation (HHP 1994f1, 1994f5; HPCC 1993a; Koyama 1990). On Kauai, associates include *Hibiscus tiliaceus* (hau), *Plantago lanceolata* (narrow-leaved plantain), and *Pteris vittata* (HPCC 1993a).

Cyperus trachysanthos is threatened by a risk of extinction from naturally occurring events due to the small number of populations, goats on Kauai (Kenneth Wood, National Tropical Botanical Garden, pers. comm. 1996) and competition with alien plant species on Oahu and Kauai (HHP 1994f1; J. Lau and C. Russell, pers. comms. 1994).

In 1970, Steven Montgomery and the late Wayne Gagné collected a specimen of an unidentified tree in Mahanaloa Valley on Kauai. The following year, Derral Herbst (1971) described it as *Euphorbia haeleleana*, naming it for another valley where the plant grows. This species has been maintained in the most recent treatment of Hawaiian members of the genus (Wagner *et al.* 1990).

Euphorbia haeleleana, a member of the spurge family (Euphorbiaceae), is a

dioecious (female and male flowers on separate plants) tree 3 to 14 m (10 to 46 ft) tall. The alternate leaves are papery in texture, elliptic, and usually 10 to 15 cm (4 to 6 in.) long and 4 to 6 cm (2 in.) wide. Male trees bear many small male flowers within a cyathium (a compact inflorescence with small individual flowers). The female trees have cyathia with a single female flower surrounded by numerous abortive male flowers. The capsules (dry fruit that open at maturity) are round. This 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.* 1990).

Euphorbia haeleleana is known historically and currently from 15 populations and between 450 and 625 individuals from northwestern Kauai and the Waianae Mountains of Oahu (HHP 1994g1 to 1994g14, HPCC 1993b). On Kauai, 11 populations are known from valley slopes and cliffs along Kauai's northwestern coast from Pohakuao to Haelele Valley and Hipalau Valley within Waimea Canyon. All of the Kauai populations occur on State land, including Kuia NAR and the Na Pali Coast State Park (HHP 1994g1 to 1994g4, 1994g7 to 1994g9, 1994g11, 1994g12, 1994g14; HPCC 1993b). On Oahu, four populations are known from the northern Waianae Mountains. Three of these populations occur on State land leased by the DOD for the Makua Military Reservation, and the fourth population occurs on privately owned land (HHP 1994g5, 1994g6, 1994g10, 1994g13). *Euphorbia haeleleana* is usually found in lowland mixed mesic or dry forest that is often dominated by 'ohi'a, 'ohi'a and koa, lama, or *Aleurites moluccana* (kukui). Typically found between 205 and 670 m (680 and 2,200 ft) elevation, a few populations have been found at elevations up to 870 m (2,860 ft). Associated plant taxa include 'a'ali'i, *Erythrina sandwicensis* (wiliwili), *Pleomele* sp. (hala pepe), *Reynoldsia sandwicensis* ('ohe), and *Sapindus oahuensis* (aulu) (HHP 1994g1 to 1994g14, HPCC 1993b).

Habitat degradation and/or destruction by wild and feral ungulates including black-tailed deer (*Odocoileus hemionus*), goats, and pigs; predation by rats; fire; potential military activities; and competition with alien plant taxa seriously threaten *Euphorbia haeleleana* (HHP 1994g1, 1994g3 to 1994g7, 1994g10, 1994g12 to 1994g14; HPCC 1993b).

Isodendrion laurifolium was first described by Gray in 1852 based on a collection made on Oahu by members of

the U.S. Exploring Expedition in 1840 (St. John 1952). Other published names considered synonymous with *I. laurifolium* are *I. forbesii*, *I. lydgatei*, *I. subsessilifolium*, and *I. waianaense* (Wagner *et al.* 1990). The specific epithet refers to the resemblance in the leaves to those of the laurel tree (*Laurus* sp.).

Isodendrion laurifolium, a member of the violet family (Violaceae), is a slender, straight shrub, generally 1 to 2 m (3 to 6 ft) tall, with few branches. The leaves, 4 to 16 cm (2 to 6 in.) long and 1.5 to 5 cm (0.6 to 2 in.) wide, are somewhat leathery, oblong-elliptic, narrowly elliptic lance-shaped, or rarely elliptic. The fragrant flowers are perfect and borne singly along the stems. The five petals, which are clawed and somewhat unequal, are purple with greenish white edges externally, and dusty purple on the inner face of the lobe. The fruit is a green, lance-shaped capsule. This species is distinguished from others in this endemic Hawaiian genus by the shape of its leaves (Wagner *et al.* 1990).

Historically *Isodendrion laurifolium* was known from scattered locations on Kauai and both the Waianae and Koolau mountains of Oahu (HHP 1994h1 to 1994h21). A total of 14 populations on 2 islands comprising approximately 190 to 210 individuals is currently known statewide. On Kauai, approximately 130 to 140 individuals are known from 8 populations in the following locations—Paaiki, Kawaiula, Haelele, Makaha, Poopooiki, and Kuia valleys, and the Koaie branch of Waimea Canyon. All Kauai populations occur on State-owned land, with several in Kuia NAR (HHP 1994h6, 1994h9 to 1994h13, 1994h15, 1994h21). On Oahu, approximately 60 to 70 individuals of this species are known from 6 populations—Makaha in the Waianae Mountains, on City and County of Honolulu land; East Makaleha Valley, Waianae Kai, Kaawa Gulch, and Kaumokunui Gulch in the Waianae Mountains, on State land, including Mt. Kaala NAR; and south Kaukonahua Gulch within the federally owned Schofield Barracks Military Reservation in the Koolau Mountains (HHP 1994h1, 1994h2, 1994h16, 1994h17, 1994h18, 1994h20). *Isodendrion laurifolium* is usually found between 490 and 820 m (1,620 and 2,700 ft) elevation in diverse mesic forest, or rarely wet forest, dominated by 'ohi'a' or koa-o'hi'a', or o'hi'a'-lama with hame, maua, *Hedyotis terminalis* (manono), *Pisonia* sp. (papala kepau), and *Pouteria* sp. ('a'ali'i) (HHP 1994h1, 1994h2, 1994h6, 1994h9 to 1994h13, 1994h15 to 1994h18, 1994h20).

The primary threats to *Isodendron laurifolium* are habitat degradation by ungulates (black-tailed deer, goats, and pigs), competition with alien plant taxa, and a potential threat from military activities (HHP 1994h2, 1994h6, 1994h9, 1994h11, 1994h15 to 1994h18, 1994h20, 1994h21).

Isodendron longifolium was first collected in 1840 in the "Kaala" [Waianae] Mountains of Oahu by members of the U.S. Exploring Expedition. Gray later named this species for its long leaves (St. John 1952). *Isodendron christensenii* and *I. maculatum* (St. John 1952, 1978b) are considered synonymous with *I. longifolium* (Wagner *et al.* 1990).

Isodendron longifolium, a member of the violet family, is a slender, straight shrub generally 0.6 to 2 m (2 to 7 ft) tall. The hairless, somewhat leathery leaves are lance-shaped, 10 to 30 cm (4 to 12 in.) long, and 3.4 to 6.5 cm (1 to 3 in.) wide. The fragrant flowers are perfect and are borne singly along the branches. The five petals are purple, clawed, and somewhat unequal. The purple capsular fruit is 10 mm (0.4 in.) long. This species is distinguished from others in this endemic Hawaiian genus by the shape of its leaves (Wagner *et al.* 1990).

Historically *Isodendron longifolium* was known from scattered locations on Kauai and the Waianae Mountains on Oahu (HHP 1994i1 to 1994i18; HPCC 1990a; Lorence and Flynn 1991, 1993). Currently *I. longifolium* is known from 18 populations on Kauai and Oahu. On Kauai, 15 populations totalling 500 to 800 individuals are scattered over ridges and valley slopes of northwestern Kauai. Eight populations occur on private land and seven are found on State land, which includes Hono O Na Pali NAR and the Na Pali Coast State Park (HHP 1994i3 to 1994i5, 1994i7 to 1994i13, 1994i15 to 1994i17; HPCC 1990a; Lorence and Flynn 1991, 1993). Three populations totalling 30 to 40 individuals are known from Oahu. Two populations are found within Mt. Kaala NAR on State-owned land in the Waianae Mountains, and the third population is found in Makaua Gulch on private land in the Koolau Mountains (HHP 1994i2, 1994i14, 1994i18). The total current populations throughout the State consist of fewer than 1,000 individuals, with most of the populations and individuals occurring on Kauai. *Isodendron longifolium* is found on steep slopes, gulches, and stream banks in mixed mesic or wet òhia forest, usually between 410 and 760 m (1,345 and 2,500 ft) elevation. Associated plant taxa include 'ahakea, hame, *Cyanea* sp. (haha), *Hedyotis* sp., *Perrottetia sandwicensis* (olomea), and

Pittosporum sp. (ho'awa) (HHP 1994i2 to 1994i8, 1994i10 to 1994i18; HPCC 1990a; Lorence and Flynn 1991, 1993).

The major threats to *Isodendron longifolium* are habitat degradation and/or destruction by feral goats and pigs and competition with various alien plant taxa. On Oahu, the Palikea Gulch population is potentially threatened by overcollection and fire (HHP 1994i2, 1994i13, 1994i15 to 1994i17; HPCC 1990a; Lorence and Flynn 1993).

In 1912, J.F. Stokes collected a grass on Niihau that St. John later named *Panicum niihauense* (St. John 1931). This species has been maintained in the most recent treatment of Hawaiian members of the genus (Davidse 1990).

Panicum niihauense, a member of the grass family, is a perennial bunchgrass with unbranched culms 50 to 125 cm (20 to 49 in.) long. The leaf blades are flat, 15 to 35 cm (6 to 14 in.) long and 0.7 to 1.9 cm (0.3 to 0.7 in.) wide. The panicles (loosely branched inflorescences) are 13 to 35 cm (5 to 14 in.) long. The panicle branches lie close to the main stem of the inflorescence (not spreading outward), and the spikelets are borne densely along the inflorescence branches. The spikelets, which contain two flowers, are 2.6 to 3.2 mm (0.1 in.) long. This species is distinguished from others in the genus by the shape of the inflorescence branches, which are erect and appressed, and the arrangement of the spikelets, which are densely clustered (Davidse 1990).

Panicum niihauense was known historically from Niihau and one location on Kauai (HHP 1994j1 to 1994j3). Currently this species is only known from State-owned land at Polihale State Park on Kauai. This single population of 23 individuals is found scattered in sand dunes in a coastal shrubland at between 9 and 15 m (30 and 50 ft) elevation. Associated plant taxa include 'a'ali'i, *Cassytha filiformis* (kaunàoa pehu), *Prosopis pallida* (kiawe), *Scaevola sericea* (naupaka), *Sida fallax* ('ilima), and *Vitex* sp. (kolokolo kahakai) (HHP 1993, 1994j3).

The primary threats to the single known population of *Panicum niihauense* are off-road vehicles, competition with alien plant taxa, and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of individuals in one remaining population (HHP 1993; HPCC 1992b; J. Lau and C. Russell, pers. comms. 1994).

Phyllostegia parviflora was first described by Gaudichaud-Beaupré as *Prasium parviflorum* based on a specimen collected on Oahu (Hillebrand 1888). Later, Bentham transferred the

species to *Phyllostegia* and this is the name accepted in the current treatment of Hawaiian members of the genus (Wagner *et al.* 1990). Currently two varieties are recognized—var. *parviflora* and var. *glabriuscula*, described by Gray in 1862 (Wagner *et al.* 1990). There is also a newly discovered variety that has not yet been formally named (Wagner *et al.* 1990). These recent collections of *P. parviflora* from the Waianae Mountains differ from the other varieties by several characters and represent a new variety previously considered to be *P. mollis* var. *lydgatei* (Wagner *et al.* 1990; Warren Wagner, Smithsonian Institution, *in litt.*, 1994; W. Wagner, pers. comm. 1994). Published names that Wagner *et al.* (1990) consider to be synonymous with *P. parviflora* var. *parviflora* include *P. leptostachys*, *P. parviflora* var. *canescens*, *P. parviflora* var. *gaudichaudii*, and *P. parviflora* var. *major* (Wagner *et al.* 1990).

Phyllostegia parviflora, a member of the mint family (Lamiaceae), is a perennial herb. The egg-shaped to broadly egg-shaped, wrinkled leaves are usually 19 to 33 cm (7.5 to 13 in.) long and 7.5 to 15.3 cm (3 to 6 in.) wide. The leaf stalks are typically 6 to 13.5 cm (2.4 to 5.3 in.) long. Usually six flowers are arranged along a flowering stalk. The corolla is white, sometimes tinged with purple, and about 9 to 13 mm (0.4 to 0.5 in.) long. The upper corolla lip is about 3 mm (0.1 in.) long while the lower lip is about 6 to 9 mm (0.2 to 0.4 in.) long. The fruits are nutlets. The species is distinguished from others of the genus by the leaf shape and length of the leaf stalk and lower corolla lip. *P. p.* var. *glabriuscula* has fewer glandular hairs in the inflorescence, less pubescent leaves, and usually unbranched inflorescences, as compared to *P. p.* var. *parviflora*. The newly discovered variety of *P. parviflora* has shorter leaf stalks, spreading hairs on the leaf stalks, and fewer gland-tipped hairs in the inflorescence (Wagner *et al.* 1990).

Historically *Phyllostegia parviflora* was known from three islands—Oahu, Hawaii, and Maui (HHP 1994x1 to 1994x3, 1994y1 to 1994y9, 1994z1, 1994z2; Sherff 1935; Wagner *et al.* 1990). This species is now known only from two populations on Oahu. *Phyllostegia parviflora* var. *glabriuscula* was only known from the island of Hawaii on private land and has not been observed since the 1800s (HHP 1994x1 to 1994x3). *Phyllostegia parviflora* var. *parviflora* was known from Oahu and Maui, but is now known from only four plants in North Kaukonahua Stream in the Koolau Mountains on Oahu, on State land leased by the DOD for the Kawailoa Training Area (HHP 1994y9).

The new variety of *P. parviflora* is known from only 19 plants in North Palawai Gulch within TNCH's Honouliuli Preserve (HHP 1994z1). *Phyllostegia parviflora* is typically found on moderate to steep slopes in diverse wet forest from 500 to 830 m (1,640 to 2,700 ft) elevation. Native taxa associated with *Phyllostegia parviflora* include 'ohi'a, *Broussaisia arguta* (kanawao), *Mysine* sp. (kolea), *Pipturus albidus* (mamaki), and *Cyrtandra* sp. (hāiwale) (HHP 1994y9, 1994z1; Wagner *et al.* 1990).

The major threats to *Phyllostegia parviflora* are habitat degradation and/or destruction by feral pigs, competition with several alien plant taxa, and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of remaining individuals and populations (HHP 1994y9, 1994z1; C. Russell, pers. comm. 1994).

Hillebrand (1888) described and named *Habenaria holochila* based on his collections and on material sent to him by J.M. Lydgate and V. Knudsen. Subsequently, F.W. Kraenzlin transferred the species to the genus *Platanthera*, resulting in the new combination *Platanthera holochila*; this name is accepted in the current treatment of Hawaiian members of the family (Kores 1979, Wagner *et al.* 1990). C.A. Luer (1975) published the combination *P. hyperborea* var. *viridiflora*, now considered synonymous with *P. holochila* (Wagner *et al.* 1990). The specific epithet refers to the undivided lip of the flower.

Platanthera holochila, a member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers and are 15 to 60 cm (6 to 24 in.) long. The pale-green leaves, generally 4 to 12 cm (2 to 5 in.) long and 1 to 3 cm (0.4 to 1 in.) wide, are lance to egg-shaped. The greenish-yellow flowers occur in open spikes. The back sepal is inversely egg-shaped and hooded and the lateral sepals are erect and elliptic. The lateral petals, 2 to 2.5 cm (1 in.) long, are irregularly egg-shaped and enclosed by the sepals. The lowest petal is strap-like, about 3 mm (0.1 in.) long, with a 3 to 5 mm (0.1 to 0.2 in.) long spur at the base. The fruit is an ellipsoid capsule with six ribs. This is the only species of this genus that occurs in the Hawaiian Islands (Wagner *et al.* 1990).

Historically *Platanthera holochila* was known from the Alakai Swamp and Kahoulamano area and the Wahiawa Mountains on Kauai, the Koolau Mountains on Oahu, scattered locations on Molokai, and various locations on Maui (HHP 1994k1 to 1994k17).

Currently *P. holochila* is known from five locations on Kauai, Molokai, and Maui. Before the devastation of Hurricane 'Iniki, on Kauai in September 1992, two populations were known from the Alakai Swamp within the Alakai Wilderness Preserve on State land (HHP 1994k4, 1994k8). One population, last seen in 1977, was not seen when the location was revisited in 1989. The other population comprised 100 plantlets representing 3 clones before Hurricane 'Iniki, but was reduced to only 10 immature plantlets representing 1 clone over a year after the hurricane (Perlman 1995). On Molokai, a single population of fewer than ten plants occurs on private land in TNCH's Kamakou Preserve (HHP 1994k3). On Maui, three populations are known—Hanaula, on State and private land, and TNCH's Waikamoi and Kapunakea Preserves (HHP 1994k9, 1994k12, 1994k17). The 5 current populations comprise fewer than 35 individuals—1 individual on Kauai; fewer than 10 on Molokai; and between 15 and 20 on Maui (HHP 1994k3, 1994k4, 1994k8, 1994k9, 1994k12, 1994k17). *Platanthera holochila* is found in 'ohi'a-*Dicranopteris linearis* (uluhe) montane wet forest or 'ohi'a mixed montane bog between 1,050 and 1,870 m (3,450 and 6,120 ft) elevation. Associated plant taxa include *Cibotium* sp. (hapu'u), *Coprosma ernodeoides* (kukaenene), *Oreobolus* sp., *Styphelia* sp. (pukiawe), and *Vaccinium* spp. ('ohelo) (HHP 1994k3, 1994k4, 1994k8, 1994k9, 1994k12, 1994k17).

The primary threats to *Platanthera holochila* are habitat degradation and/or destruction by ungulates such as cattle and feral pigs, competition with alien plant taxa, overcollection, and a risk of extinction from naturally occurring events due to the small number of remaining populations and individuals (HHP 1994k4, 1994k9, 1994k12, 1994k17; C. Russell, pers. comm. 1994).

While hiking the Schofield-Waikane Trail on Oahu, St. John collected a plant that he and Edward Hosaka described in 1935 as *Sanicula purpurea*. Other published names considered synonymous with this species include *S. lobata* and *S. sandwicensis* (Constance and Affolter 1990). The specific epithet refers to the purple petals.

Sanicula purpurea, a member of the parsley family (Apiaceae), is a stout perennial herb, 8 to 36 cm (3 to 14 in.) tall, arising from a massive stem. The basal leaves are numerous and leathery in texture. Two to 8 cm (0.8 to 3 in.) wide, the leaves are kidney-shaped or circular to egg-heart-shaped, with three to seven lobes. The small flowers are

purple or cream-colored with a purple tinge and occur in branched terminal clusters, each of which contains six to ten flowers. Each flower cluster contains one to three perfect flowers and five to seven staminate flowers. The nearly spherical fruits are covered with prickles. This species is distinguished from others in the genus by the number of flowers per cluster and by the color of the petals (Constance and Affolter 1990).

Historically *Sanicula purpurea* was known from six scattered locations along the Koolau Mountains of Oahu and from four locations on West Maui (HHP 1994L1 to 1994L10). This species is currently known from one population in Oahu's Koolau Mountains on the boundary of State land and the federally owned Schofield Barracks Military Reservation; another population, last seen on the summit between Aiea and Waimano in 1985, was not seen during a 1987 survey and may no longer be extant. On West Maui, three populations are currently known on State land, including West Maui NAR, and one population is known from private land (HHP 1994L1 to 1994L10). The number of plants of this species totals an estimated 130 to 210 individuals. This species typically grows in open 'ohi'a mixed montane bogs between 700 and 1,625 m (2,300 and 5,330 ft) elevation. Associated plant taxa include pukiawe, *Argyroxiphium grayanum* (greensword), *Lagenifera* sp., *Machaerina* sp. ('uki), and *Oreobolus furcatus* (HHP 1994L1, 1994L6 to 1994L9).

Habitat degradation by feral pigs and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing populations are the major threats to *Sanicula purpurea*. On Oahu, the Kaukonahua-Kahana Divide population is additionally threatened by competition with an alien grass, *Axonopus fissifolius* (narrow-leaved carpetgrass), and potentially by military activities (HHP 1994L1, 1994L9).

Schiedea hookeri was first described by Gray in 1854 based on a specimen collected on Oahu by Archibald Menzies of the U.S. Exploring Expedition (Wagner *et al.* 1990). Later, Earl Sherff described *S. hookeri* var. *acrisepala* and *S. hookeri* var. *intercedens*, which are now considered synonyms of *S. hookeri* (Sherff 1944, 1945; Wagner *et al.* 1990).

Schiedea hookeri, a member of the pink family (Caryophyllaceae), is a sprawling or clumped perennial herb. The stems, 0.3 to 0.5 m (1 to 1.6 ft) long, curve slightly upward or lie close to the ground and often produce matted clumps. The thin, opposite leaves, 3 to

8 cm (1.2 to 3.2 in.) long and 0.4 to 1.5 cm (0.2 to 0.6 in.) wide, are narrowly lance-shaped to narrowly elliptic. The apetalous, perfect flowers are borne in open branched inflorescences, which are hairy, somewhat sticky, and 5 to 22 cm (2 to 9 in.) long. The lance-shaped sepals are green to purple and 3 to 4.5 mm (1.2 to 1.8 in.) long. The fruit is a capsule about 3 mm (0.1 in.) long. This species is distinguished from others in this endemic Hawaiian genus by its open, hairy, and sometimes sticky inflorescence, and by the size of the capsules (Wagner *et al.* 1990).

Historically *Schiedea hookeri* was known from the Waianae Mountains of Oahu and Haleakala on Maui (HHP 1994m1 to 1994m17). Currently this species is known from 11 populations in Oahu's Waianae Mountains. Between 220 and 330 individuals are scattered on slopes and ridges from Kaluakauila Gulch to Lualualei Valley—1 population on private land in TNCH's Honouliuli Preserve; 3 populations on City and County of Honolulu land; 3 populations on State land, 1 of which is on land leased by the DOD for Makua Military Reservation; and 4 populations on Federal land (3 on Lualualei Naval Magazine and 1 on Schofield Barracks Military Reservation) (HHP 1994m1, 1994m5, 1994m8, 1994m9, 1994m11 to 1994m17). *Schiedea hookeri* is usually found in diverse mesic or dry lowland forest, often with 'ohi'a or lama dominant, between 365 and 790 m (1,200 and 2,600 ft) elevation. One population is reported at an elevation of 850 to 900 m (2,800 to 2,950 ft). Associated plant taxa include 'a'ali'i, *Artemisia australis* ('ahinahina), *Bidens* sp. (ko'oko'olau), *Carex meyenii*, and *Eragrostis grandis* (kawelu) (HHP 1994m5, 1994m6, 1994m9, 1994m11 to 1994m17).

The primary threats to *Schiedea hookeri* are habitat degradation and/or destruction by feral goats and pigs and competition with alien plant taxa. The Kaluakauila Gulch population is also potentially threatened by fire and military activities (HHP 1994m5, 1994m8, 1994m11 to 1994m13, 1994m15 to 1994m17).

Schiedea kauaiensis was first collected by Otto Degener and Amy Greenwell in 1952. Degener and Sherff considered this collection from Kauai to be a new variety of *S. nuttallii*, previously known only from Oahu, and named it *S. nuttallii* var. *pauciflora* (Sherff 1952). In 1988, St. John elevated this variety to species level, naming it *S. kauaiensis*. Wagner *et al.* (1990) recombined this species with *S. nuttallii*, without recognizing any varieties. The authorities on this

endemic Hawaiian genus, Stephen Weller, Ann Sakai, and Warren Wagner, now accept *S. kauaiensis* as a distinct species (Stephen Weller, University of California, Irvine, *in litt.* 1994). Weller, Sakai, and Wagner consider *S. wichmanii* St. John to be synonymous with *S. kauaiensis* (S. Weller, *in litt.* 1994).

Schiedea kauaiensis, a member of the pink family, is a generally hairless, erect subshrub, with stems normally 0.3 to 1.5 m (1 to 5 ft) long. The green, sometimes purple-tinged leaves are opposite, narrowly egg-shaped or lance-shaped to narrowly or broadly elliptic, up to 13 cm (5 in.) long, and 3.5 cm (1.4 in.) wide. The apetalous, perfect flowers are borne in open branched inflorescences, moderately covered with fine, short, curly, white hairs. The lance-shaped sepals, 2 to 3.8 mm (0.08 to 1.5 in.) long, are green or sometimes purple-tinged. The fruit is a capsule. The round to kidney-shaped seeds are about 2 mm (0.08 in.) long. This 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.* 1990; S. Weller, *in litt.* 1994).

Historically *Schiedea kauaiensis* was known from the northwestern side of Kauai, from Papa'a to Mahanaloa. It was thought to be extinct until the 2 currently known populations were found, which total about 15 plants. Both populations occur on State land—the Mahanaloa Valley population within Kuia NAR and the Kalalau Valley population within Na Pali Coast State Park. *Schiedea kauaiensis* typically grows in diverse mesic forest on steep slopes. Associated plant taxa include *Psychotria hexandra* (kopiko), *Exocarpus luteolus* (heau), lama, the federally threatened *Peucedanum sandwicense* (makou), and *Euphorbia haeleleana* ('akoko) (HHP 1994n18; HPCC 1992c2; S. Weller, *in litt.* 1994).

Threats to *Schiedea kauaiensis* include habitat degradation and/or destruction by feral pigs, goats, and deer; competition from several alien plant taxa; landslides; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the low number of individuals in only two known populations (HHP 1994n18, HPCC 1992c2).

In 1834, Thomas Nuttall collected a specimen of *Schiedea nuttallii* in the Koolau Mountains of Oahu. Ten years later, William Hooker described this species (Mill *et al.* 1988, Nagata 1980). Other published names considered

synonymous with *S. nuttallii* include *S. nuttallii* var. *lihuensis* and *S. oahuensis* (Wagner *et al.* 1990; S. Weller, *in litt.* 1994).

Schiedea nuttallii, a member of the pink family, is a generally hairless, erect subshrub, with stems normally 0.3 to 1.5 m (1 to 5 ft) long, and internodes usually 0.8 to 4 cm (0.3 to 1.6 in.) long. The green, sometimes purple-tinged leaves are opposite, narrowly egg-shaped or lance-shaped to narrowly or broadly elliptic, 5 to 10 cm (2 to 4 in.) long, and 1.5 to 2 cm (0.6 to 0.8 in.) wide. The apetalous, perfect flowers are borne in open branched inflorescences, normally 20 to 25 cm (8 to 10 in.) long. The lance-shaped sepals, 2 to 3.8 mm (0.08 to 1.5 in.) long, are green or sometimes purple-tinged. The fruit is a capsule. The round to kidney-shaped seeds are about 1 mm (0.04 in.) long. This 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, smaller leaves, smaller flowers, and smaller seeds (Wagner *et al.* 1990; S. Weller, *in litt.* 1994).

Historically *Schiedea nuttallii* was known from scattered locations on southeastern Kauai, Oahu, Molokai, and Maui (HHP 1994n1 to 1994n17; HPCC 1992c1; S. Weller, *in litt.* 1994). One population of *S. nuttallii* is found on Kauai east of Haupu Peak on private land (HHP 1994n10, HPCC 1992c1). Five populations are found on Oahu—Kahanahaiki Valley, on State land leased by the DOD for Makua Military Reservation; two populations within the State owned Pahole NAR; and Ekahanui Gulch, on private land in TNCH's Honouliuli Preserve (HHP 1994n2 to 1994n4, 1994n14, 1994n17). The statewide total of 6 populations harbors fewer than 75 individuals of this species, with between 10 and 50 individuals on Kauai and about 25 on Oahu (HHP 1994n2 to 1994n4, 1994n10, 1994n14, 1994n17; HPCC 1992c1; S. Weller, *in litt.* 1994). *Schiedea nuttallii* typically grows in diverse lowland mesic forest, often with 'ohi'a dominant, between 415 and 730 m (1,360 and 2,400 ft) elevation. The population on Kauai is found at 790 m (2,590 ft) elevation. Associated plant taxa include hame, kopiko, olomea, papala kepau, and *Hedyotis acuminata* (au) (HHP 1994n2 to 1994n4, 1994n10, 1994n14, 1994n17, 1994n18; HPCC 1992c1).

Habitat degradation and/or destruction by feral ungulates such as pigs and goats, competition with several alien plant taxa, landslides, potential fire, potential military activities, and a risk of extinction from naturally

occurring events and/or reduced reproductive vigor, due to the small number of populations and individuals, seriously threaten *Schiedea nuttallii* (HHP 1994n2, 1994n17; HPCC 1992c1; C. Russell, pers. comm. 1994).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those 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. Seven of the 14 taxa were considered to be endangered in that document and 2 were considered to be threatened. 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 giving notice of its intent to review the status of the plant taxa named therein. The Service published an updated notice 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). *Cyanea grimesiana* ssp. *grimesiana* (as *C. grimesiana* var. *mauiensis* and var. *munroi*), *Euphorbia haelealeana*, *Isodendron laurifolium*, *I. longifolium*, and *Platanthera holochila* were considered Category 1 species in the 1980 and 1985 notices of review. Category 1 species, now referred to as candidate species (61 FR 7597), are those for which the Service has on file substantial information on biological vulnerability and threats to support issuance of a proposed rule to list as threatened or endangered but for which listing proposals have not yet been published because they are precluded by other listing activities. Since the 1993 notice, new information suggests that the nine taxa not previously considered Category 1 species are sufficiently restricted in numbers and

distribution and imminently threatened and therefore warrant listing.

On October 2, 1995, the Service published in the Federal Register (60 FR 51417) a proposal to list 13 plant taxa from the Hawaiian Islands as endangered and one taxon, *Isodendron longifolium*, as threatened. This proposal was based primarily on information supplied by the Hawaii Heritage Program, the National Tropical Botanical Garden, and observations by botanists and naturalists. Based on comments received in response to the proposal (See Comments and Recommendations below) the Service now determines 13 taxa from the Hawaiian Islands to be endangered and 1 taxon to be threatened.

The processing of this final rule follows the Service's listing priority guidance published in the Federal Register on May 16, 1996 (61 FR 24722). The guidance clarifies the order in which the Service will process rulemakings following two related events: (1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104-6), and (2) the restoration of funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for prompt processing of final rules containing species facing threats of high magnitude. The 14 species in this rule face high magnitude threats.

Summary of Comments and Recommendations

In the October 2, 1995, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended on December 1, 1995. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted

and requested to comment. Newspaper notices inviting public comment were published in the Hawaii Tribune-Herald and the Kauai Times on October 18, 1995, the Garden Island on October 19, 1995, and the Honolulu Advertiser and the Maui News on October 20, 1995. Four letters of comment were received supporting the listing of these taxa from the Hawaiian Islands. One letter requested further information on the locations of these species and one letter provided additional information which has been incorporated into this final rule. No requests for public hearings were received.

Pursuant to the Service's policy on peer review (59 FR 34270), the expert opinions of three appropriate and independent specialists were also solicited regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for these 14 taxa. No responses from peer reviewers were received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Achyranthes mutica*, *Cenchrus agrimonioides*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyperus trachysanthos*, *Euphorbia haelealeana*, *Isodendron laurifolium*, *Panicum niuhauense*, *Phyllostegia parviflora*, *Platanthera holochila*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea kauaiensis*, and *Schiedea nuttallii* should be classified as endangered species and *Isodendron longifolium* should be classified as a threatened species. Procedures found at section 4 of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing the 14 taxa in this final rule are summarized in Table 2.

TABLE 2.—SUMMARY OF THREATS

Species	Alien mammals					Alien plants	Substrate loss	Fire	Human impact	Limited numbers
	Cattle	Deer	Goats	Pigs	Rats					
<i>Achyranthes mutica</i>	X	.....	X	.....	.....	X	.....	.....	.....	X1,3*
<i>Cenchrus agrimonioides</i>	P	.....	P	X	.....	X	X	P	P	X2,3
<i>Cyanea grimesiana</i> ssp. <i>grimesiana</i> .....	.....	X	X	X	P	X	X	P	P	X3
<i>Cyperus trachysanthos</i> .....	.....	.....	X	.....	.....	X	.....	.....	.....	X1
<i>Euphorbia haelealeana</i> .....	.....	X	X	X	X	X	.....	P	P	
<i>Isodendron laurifolium</i> .....	.....	X	X	X	.....	X	.....	.....	P	
<i>Isodendron longifolium</i> .....	.....	.....	X	X	.....	X	.....	P	P	
<i>Panicum niuhauense</i> .....	.....	.....	.....	.....	.....	X	.....	.....	X	X1,3

TABLE 2.—SUMMARY OF THREATS—Continued

Species	Alien mammals					Alien plants	Substrate loss	Fire	Human impact	Limited numbers
	Cattle	Deer	Goats	Pigs	Rats					
<i>Phyllostegia parviflora</i>	X	.....	X	.....	.....	.....	X1,3
<i>Platanthera holochila</i>	X	.....	.....	X	.....	X	.....	.....	X	X1,3
<i>Sanicula purpurea</i>	X	.....	X	.....	.....	P	X1
<i>Schiedea hookeri</i>	X	X	.....	X	.....	P	P	
<i>Schiedea kauaiensis</i>	X	X	X	.....	X	X	.....	.....	X1,3
<i>Schiedea nuttallii</i>	X	X	.....	X	X	P	P	X2,3

Key

- X—Immediate and significant threat.
- P—Potential threat.
- *—No more than 100 individuals and/or no more than 5 populations.
- 1—No more than 5 populations.
- 2—No more than 10 populations.
- 3—No more than 100 individuals.

These factors and their application to *Achyranthes mutica* A. Gray (No common name (NCN)), *Cenchrus agrimonoides* Trin. (kamanomano), *Cyanea grimesiana* Gaud. ssp. *grimesiana* (haha), *Cyperus trachysanthos* Hook. & Arnott (pu'uka'a), *Euphorbia haelealeana* Herbst (NCN), *Isodendron laurifolium* A. Gray (aupaka), *Isodendron longifolium* A. Gray (aupaka), *Panicum niihauense* St. John (lau 'ehu), *Phyllostegia parviflora* (Gaud.) Benth. (NCN), *Platanthera holochila* (Hillebr.) Kraenzl. (NCN), *Sanicula purpurea* St. John & Hosaka (NCN), *Schiedea hookeri* A. Gray (NCN), *Schiedea kauaiensis* St. John (NCN), and *Schiedea nuttallii* Hook. (NCN) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices including ranching, deliberate alien animal and plant introductions, and agricultural development (Cuddihy and Stone 1990, Wagner *et al.* 1985). The Northwestern Hawaiian Islands have undergone similar alteration, but to a lesser degree. The primary threats facing the 14 plant taxa included in this rule are destruction and modification of habitat by feral animals and competition with alien plants (see Factor E).

Thirteen of the 14 taxa in this rule are threatened by feral animals. Animals such as pigs, goats, axis deer, black-tailed deer, and cattle were introduced either by the early Hawaiians (pigs) or more recently by European settlers (all ungulate species) for food and/or commercial ranching activities. Over the 200 years following their introduction, their numbers increased and the adverse impacts of feral ungulates on native vegetation have become increasingly

apparent. Beyond the direct effect of trampling and grazing on native plants, feral ungulates have contributed significantly to the heavy erosion taking place on most of the main Hawaiian islands (Cuddihy and Stone 1990).

Pigs, originally native to Europe, Africa, and Asia, were introduced to Hawaii by the Polynesian ancestors of Hawaiians, and later by western immigrants. The pigs escaped domestication and invaded primarily wet and mesic forests of Kauai, Oahu, Molokai, Maui, and Hawaii. Pigs pose an immediate threat to one or more populations of 11 of the taxa in wet and mesic habitats. While foraging, pigs root and trample the forest floor, encouraging the establishment of alien plants in the newly disturbed soil. Pigs also disseminate alien plant seeds through their feces and on their bodies, accelerating the spread of alien plants through native forests (Cuddihy and Stone 1990, Stone 1985). Pigs are vectors of *Psidium cattleianum* (strawberry guava) and *Schinus terebinthifolius* (Christmas berry), which threaten several of the taxa in this final rule (Cuddihy and Stone 1990, Smith 1985, Stone 1985). Pigs have also invaded open bogs where they uproot native plants and create conditions that allow alien plant species to invade (Gagné and Cuddihy 1990). *Sanicula purpurea* and the Alakai Swamp population of *Platanthera holochila* are currently threatened by pigs in bogs (HHP 1994k4, 1994k8, 1994L9). On Kauai, one population of *Isodendron laurifolium* and two populations of *I. longifolium* have sustained loss of individual plants and/or habitat as a result of feral pig activities (HHP 1994h21, 1994i13, 1994i15; Lorence and Flynn 1993). The following plant taxa on Oahu are threatened by pigs—three populations of *Cenchrus agrimonoides*, two of *Cyanea grimesiana* ssp.

grimesiana, two of *Euphorbia haelealeana*, three of *I. laurifolium*, one of *I. longifolium*, the two remaining populations of *Phyllostegia parviflora*, one population of *Sanicula purpurea*, three of *Schiedea hookeri*, both populations of *Schiedea kauaiensis*, and one of *Schiedea nuttallii* (HHP 1994d8, 1994d11, 1994d12, 1994e1, 1994e34, 1994g10, 1994g13, 1994h16, 1994h18, 1994h20, 1994i2, 1994L1, 1994m5, 1994m12, 1994m13, 1994n2, 1994n18, 1994y1, 1994z1; HPCC 1992c2). On Maui, feral pigs are a threat to the Waikamoi and Kapunakea Preserves populations of *Platanthera holochila*, and the Eke Crater population of *Sanicula purpurea* (HHP 1994k12, 1994k17, 1994l9).

Goats, native to the Middle East and India, were first successfully introduced to the Hawaiian Islands in 1792. Feral goats now occupy a wide variety of habitats from lowland dry forests to montane grasslands on Kauai, Oahu, Molokai, Maui, and Hawaii, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Scott *et al.* 1986, Stone 1985, van Riper and van Riper 1982). One or more populations of nine of the taxa are currently threatened by direct damage from feral goats. On Kauai, goats are contributing to the decline of one population each of *Cyperus trachysanthos*, *Isodendron laurifolium* and *I. longifolium* and four populations of *Euphorbia haelealeana*. Goats threaten the two known populations of *Schiedea kauaiensis* and the one population of *S. nuttallii* on Kauai (HHP 1989b, 1994g1, 1994g4, 1994g12, 1994g14, 1994h21, 1994i5; HPCC 1992c2). On Oahu, encroaching urbanization and hunting pressure tend to concentrate the goat populations in the dry upper slopes of the Waianae Mountains, where one population of

Euphorbia haeleeleana, three populations of *I. laurifolium*, and two populations of *S. hookeri* exist (HHP 1994g13, 1994h16, 1994h18, 1994h20, 1994m13, 1994m15). The goat population in the Waianae area is apparently increasing in State game management areas and extending into adjacent areas, becoming an even greater threat to the rare plants that grow there. On Kukuinui Ridge, Molokai, goats threaten one of that island's two known populations of *Cyanea grimesiana* ssp. *grimesiana* (HHP 1994e7). On Maui, goats pose a potential threat to that island's only known population of *Cenchrus agrimonioides* (R. Hobdy, pers. comm. 1994). On Hawaii, the only known population of *Achyranthes mutica* is presently threatened by goats (HPCC 1992a).

In 1920, a group of 12 axis deer was introduced to the island of Lanai; about 60 years later, the population was estimated at 2,800 (Tomich 1986). The axis deer population is presently actively managed for recreational hunting by the State Department of Land and Natural Resources (DLNR). Axis deer degrade habitat by trampling and overgrazing vegetation, which removes ground cover and exposes the soil to erosion (J. Lau, pers. comm. 1994). Extensive red erosional scars caused by decades of deer activity are evident on Lanai. Activity of axis deer threatens one of the two populations of *Cyanea grimesiana* ssp. *grimesiana* on Lanai (HHP 1994e37).

Black-tailed deer were first introduced to Kauai in 1961 for the purpose of sport hunting and today probably number well over 500 animals. The deer are presently confined to the western side of the island, where they feed on a variety of native and alien plants (van Riper and van Riper 1982). Black-tailed deer threaten two populations of *Euphorbia haeleeleana*, including almost half of the known individuals on Kauai, and half of the known populations of *Isodendron laurifolium* on Kauai. Black-tailed deer also threaten other rare plants within Kuia NAR, potentially threatening one population of *Schiedea kauaiensis* (HHP 1994g1, 1994g7, 1994h6, 1994h9, 1994h11, 1994n18).

Large-scale ranching of cattle in the Hawaiian Islands began in the middle of the 19th century on the islands of Kauai, Oahu, Maui, and Hawaii. Large ranches, tens of thousands of acres in size, developed on East Maui and Hawaii (Cuddihy and Stone 1990) where most of the State's large ranches still exist today. Degradation of native forests used for ranching activities became evident soon after full-scale ranching began. The

negative impact of cattle on Hawaii's ecosystems is similar to that described for goats and deer (Cuddihy and Stone 1990, Stone 1985). On Maui, cattle ranching is the primary agricultural activity on the west and southwest slopes of East Maui and in lowland regions of West Maui. On West Maui, the Hanaula population of *Platanthera holochila* is threatened by grazing cattle (HHP 1994k9). Cattle pose a potential threat to that island's only known population of *Cenchrus agrimonioides* (R. Hobdy, pers. comm. 1994). The only known population of *Achyranthes mutica*, in the Keawewai Stream area on the island of Hawaii, is also threatened by cattle ranching activities (HPCC 1992a).

On Oahu, habitat disturbance caused by human activities may pose a threat to rare plant populations that grow on lands on which military training exercises and ground maneuvers are occasionally conducted. However, because most of the taxa grow on moderate to steep slopes, ridges, and gulches, habitat disturbance is probably restricted to foot and helicopter traffic. Trampling by ground troops associated with training activities, and construction, maintenance, and utilization of helicopter landing and drop-off sites could affect populations of seven of the taxa (*Cenchrus agrimonioides*, *Cyanea grimesiana* ssp. *grimesiana*, *Euphorbia haeleeleana*, *Isodendron laurifolium*, *Sanicula purpurea*, *Schiedea hookeri*, and *Schiedea nuttallii*) that occur on land leased or owned by the Army (HHP 1994d11, 1994e34, 1994g5, 1994g6, 1994g10, 1994h17, 1994L1, 1994m8, 1994m12, 1994n14; Wagner *et al.* 1985).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Increased interest in collecting for scientific or horticultural purposes or visits by individuals interested in seeing rare plants could result from publicity following the publication of this final rule. This interest potentially threatens all of the taxa, but would seriously impact the ten taxa whose low numbers and/or few populations make them especially vulnerable to disturbance (*Achyranthes mutica*, *Cenchrus agrimonioides*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyperus trachysanthos*, *Panicum niihauense*, *Phyllostegia parviflora*, *Platanthera holochila*, *Sanicula purpurea*, *Schiedea kauaiensis*, and *Schiedea nuttallii*). Such disturbances could also promote erosion and greater ingress of alien plant species. Some taxa, such as *Cenchrus agrimonioides*, *Cyanea grimesiana* ssp. *grimesiana*, *Isodendron longifolium*, *Panicum*

niihauense, and *Platanthera holochila*, have well-known populations, or populations close to trails or roads, that are possibly threatened by trampling or by overcollection (HHP 1994d1, 1994e1, 1994i2, 1994k9). One individual of *P. holochila* died in the late 1980s after a portion of the plant was collected for scientific purposes (Marie Brueggemann, U.S. Fish and Wildlife Service, *in litt.* 1995).

C. *Disease and predation.* Disease is not known to be a significant threat to any of the taxa. Evidence of predation on *Isodendron laurifolium* by deer is documented on Kauai (HHP 1994h6, 1994h11). While there is no evidence of predation on the other 13 taxa, none of them are known to be unpalatable to cattle, deer, or goats. Predation is therefore a possible threat to taxa growing at sites where those animals have been reported (*Achyranthes mutica*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyperus trachysanthos*, *Euphorbia haeleeleana*, *Isodendron laurifolium*, *I. longifolium*, *Platanthera holochila*, *Schiedea hookeri*, and *S. kauaiensis*) (see Factor A). Feral pigs not only destroy native vegetation through their rooting activities and dispersal of alien plant seeds, but they also feed on plants, preferring the pithy interior of large tree ferns and fleshy-stemmed plants from the bellflower family (Stone 1985, Stone and Loope 1987). Although there is no conclusive evidence of predation on *Cyanea grimesiana* ssp. *grimesiana*, a member of the bellflower family, it is not known to be unpalatable to pigs. Predation is therefore a possible threat to this taxon in areas where pigs have been reported (HHP 1994e1, 1994e34).

Two rat species, the black rat (*Rattus rattus*) and the Polynesian rat (*R. exulans*), and to a lesser extent other introduced rodents, eat large, fleshy fruits and strip the bark of some native plants, including plants in the bellflower family (Cuddihy and Stone 1990, Tomich 1986, Wagner *et al.* 1985; J. Lau, pers. comm. 1994). The largest population of *Euphorbia haeleeleana* on Oahu is seriously threatened by rat predation (HHP 1994g5). It is possible that rats eat the fruits of *Cyanea grimesiana* ssp. *grimesiana*, which produces fleshy fruit and stems and grows in areas where rats occur (J. Lau, pers. comm. 1994).

D. *The inadequacy of existing regulatory mechanisms.* Of the 14 taxa in this final rule, 10 have populations located on private land, 12 on State land, 3 on City and County of Honolulu land, and 9 on land under Federal jurisdiction. Of those under Federal jurisdiction, four taxa have populations

that occur on land owned by the Federal government and six on land leased to the Federal government by the State. While 12 of the taxa occur in more than 1 of those 4 ownership categories, *Achyranthes mutica* is known only on private land and *Panicum niuhauense* is found only on State land.

Eight of the taxa have one or more populations in State NARs, where rules and regulations for the protection of resources apply (Hawaii Revised Statutes (HRS), sect. 195-5). The majority of the populations of the 14 taxa are located on land classified within conservation districts and owned by the State of Hawaii or private companies or individuals. Regardless of the owner, lands in these districts are regarded as necessary for the protection of endemic biological resources, and maintenance or enhancement of the conservation of natural resources. Activities permitted in conservation districts are chosen by considering how best to make multiple use of the land (HRS, sect. 205-2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by both Federal and State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205-4). Before decisions about these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205-4, 205-17) as well as the maintenance of natural resources is required to be taken into account (HRS, sects. 205-2, 205-4). Before any proposed land use that will occur on State land, is funded in part or whole by county or State funds, or will occur within land classified as a conservation district, an environmental assessment is required to determine whether the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy, and thus approval of land use, is required by law to safeguard " * * * the State's unique natural environmental characteristics * * * " (HRS, sect. 344-3(1)). The Hawaii DLNR is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D-5.1). Six of the taxa in this final rule are threatened by four plants considered by the State of Hawaii to be

noxious weeds. The State has provisions and funding available for eradication and control of noxious weeds on State and private land in conservation districts and other areas (HRS, chapt. 152; Hawaii Department of Agriculture (DOA) 1981, 1991).

Despite the existence of State laws and regulations that protect Hawaii's native plants, their enforcement is difficult due to limited funding and personnel. Federal listing of these 14 plant taxa would reinforce and supplement the protection available under the State Act and other laws.

Listing under the Federal Act would trigger many additional State law protections. Hawaii's endangered species act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * * " (HRS, sect. 195D-4(a)).

Therefore, Federal listing automatically invokes listing under Hawaii State law. State law prohibits cutting, collecting, uprooting, destroying, injuring, or possessing any listed species of plant on State or private land, or attempting to engage in any such conduct. The State law encourages conservation of such species by State agencies and triggers other State regulations to protect the species (HRS, sect. 195AD-4 and 5). State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D-5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D-5(c)). Funds for these activities could be made available under section 6 of the Act (State Cooperative Agreements).

E. *Other natural or manmade factors affecting its continued existence.* All 14 of the taxa in this final rule are threatened by competition with one or more alien plant taxa (see Table 2). The most significant of these are *Lantana camara* (lantana), *Psidium cattleianum* (strawberry guava), *Schinus terebinthifolius* (Christmas berry), *Rubus rosifolius* (thimbleberry), *Clidemia hirta* (Koster's curse), *Grevillea robusta* (silk oak), *Melinis minutiflora* (molasses grass), *Paspalum conjugatum* (Hilo grass), *Psidium guajava* (common guava), *Ageratina adenophora* (Maui pamakani), and *Ageratina riparia*

(Hamakua pamakani). A number of other alien plant taxa also pose significant threats to populations of the plants in this final rule.

Lantana camara (lantana), native to the West Indies, is an aggressive, thicket-forming shrub that produces chemicals that inhibit the growth of other plant species. Lantana can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Cuddihy and Stone 1990, Smith 1985, Wagner *et al.* 1990). On Kauai, lantana poses a threat to two populations of *Euphorbia haeleleana* and one population of *Isodendron laurifolium* within Kuia NAR, three other populations of *E. haeleleana*, three other populations of *I. laurifolium*, and one population of *I. longifolium*. In the Waianae Mountains of Oahu, one population each of *Cenchrus agrimonioides* and *Cyanea grimesiana* ssp. *grimesiana* and three populations of *Schiedea hookeri* are immediately threatened by this shrub (HHP 1994d8, 1994e34, 1994g1, 1994g3, 1994g7, 1994g14, 1994h9, 1994h11, 1994h15, 1994h21, 1994m13, 1994m15, 1994m17; HPCC 1993b; Lorence and Flynn 1993).

Psidium cattleianum (strawberry guava), an invasive shrub or small tree native to tropical America, has become widely naturalized on all of the main Hawaiian islands, forming dense stands that exclude other plant species in disturbed areas (Cuddihy and Stone 1990). This alien plant grows primarily in mesic and wet habitats and is dispersed mainly by feral pigs and fruit-eating birds (Smith 1985, Wagner *et al.* 1990). Strawberry guava is considered to be one of the greatest alien plant threats to Hawaiian rain forests and is known to pose a direct threat to at least one population each of *Euphorbia haeleleana* and *Isodendron laurifolium* and four populations of *I. longifolium* on the island of Kauai (HHP 1994g7, 1994h11, 1994i15, 1994i16; Lorence and Flynn 1991, 1993). Strawberry guava is a major invader of forests in the Waianae and Koolau Mountains of Oahu, where it often forms single-species stands. It poses an immediate threat to two populations each of *Cenchrus agrimonioides* and *I. laurifolium* and one population each of *Cyanea grimesiana* ssp. *grimesiana*, *Euphorbia haeleleana*, *I. laurifolium*, *I. longifolium*, and *Schiedea hookeri* (HHP 1994d8, 1994d12, 1994e34, 1994g13, 1994h18, 1994h20, 1994i2, 1994m12). On Lanai, this invasive alien plant threatens one of that island's populations of *Cyanea grimesiana* ssp. *grimesiana* (HHP 1994e37).

Schinus terebinthifolius (Christmas berry), introduced to Hawaii before 1911, is a fast-growing tree or shrub invading most mesic to wet lowland areas of the major Hawaiian Islands (Wagner *et al.* 1990). Christmas berry is distributed mainly by feral pigs and fruit-eating birds and forms dense thickets that shade out and displace other plants (Cuddihy and Stone 1990, Smith 1985, Stone 1985). It is a major component of the mesic forests of the Waianae and Koolau Mountains of Oahu. Two-thirds of the *Cenchrus agrimonioides* populations, one-third of the *Isodendron laurifolium* populations, 1 of 2 known populations of *Phyllostegia parviflora*, and 6 of 11 populations of *Schiedea hookeri* are negatively affected by this invasive plant (HHP 1994d8, 1994d11, 1994d12, 1994d14, 1994h2, 1994h16, 1994h18, 1994h20, 1994m5, 1994m11, 1994m15 to 1994m17; 1994y1).

Rubus rosifolius (thimbleberry), native to Asia, is naturalized in disturbed mesic to wet forest on all of the main Hawaiian Islands (Cuddihy and Stone 1990). On Kauai, this shrub poses a threat to the largest population of *Euphorbia haeleleana*, two populations of *Isodendron laurifolium*, five populations of *I. longifolium*, and one population of *Schiedea kauaiensis* (HHP 1994g1, 1994h9, 1994h11, 1994i13, 1994i15 to 1994i17; HPCC 1992c2; Lorence and Flynn 1993). One of the two populations of *Cyanea grimesiana* ssp. *grimesiana* on Lanai is threatened by thimbleberry (HHP 1994e37).

Clidemia hirta (Koster's curse), a noxious shrub native to tropical America, is found in mesic to wet forests on at least six islands in Hawaii (Almeda 1990, Hawaii Department of Agriculture 1981, Smith 1992). Koster's curse was first reported on Oahu in 1941 and had spread through much of the Koolau Mountains by the early 1960s. Koster's curse spread to the Waianae Mountains around 1970 and is now widespread throughout the southern half of that mountain range. This noxious plant forms a dense understory, shading out other plants and hindering plant regeneration (Cuddihy and Stone 1990). In the Waianae Mountains of Oahu, Koster's curse poses a serious threat to two populations of *Cyanea grimesiana* ssp. *grimesiana*, one population of *Isodendron longifolium*, the largest population of *Phyllostegia parviflora*, and one of the largest populations of *Schiedea hookeri*. Koster's curse also threatens one population of *I. laurifolium* in Oahu's Koolau Mountains. This prolific alien plant has

recently spread to five other islands, and immediately threatens two populations of *I. longifolium* in Waioli Valley on Kauai, and one of the two populations of *Cyanea grimesiana* ssp. *grimesiana* on Molokai (HHP 1994e7, 1994e34, 1994h17, 1994i2, 1994i17, 1994m11, 1994z1; Lorence and Flynn 1993; H. Bornhorst and S. Perlman, *in litt.* 1992).

Grevillea robusta (silk oak), native to Queensland and New South Wales, Australia, was extensively planted in Hawaii for timber and is now naturalized on most of the main Hawaiian Islands (Smith 1985, Wagner *et al.* 1990). On Kauai, this alien tree threatens *Euphorbia haeleleana* in Hipalau Valley. In the Waianae Mountains of Oahu, silk oak negatively affects one population each of *Cenchrus agrimonioides*, *E. haeleleana*, *Isodendron laurifolium*, *Schiedea hookeri*, and *S. nuttallii* (HHP 1994d8, 1994g14, 1994h16, 1994m13, 1994n2).

First introduced to the Hawaiian Islands as cattle fodder, *Melinis minutiflora* (molasses grass) was later planted for erosion control (Cuddihy and Stone 1990). This alien grass quickly spread to dry and mesic forests previously disturbed by ungulates. Molasses grass produces a dense mat capable of smothering plants, essentially preventing seedling growth and native plant reproduction (Cuddihy and Stone 1990, Smith 1985). Because it burns readily and often grows at the border of forests, molasses grass tends to carry fire into areas with woody native plants (Cuddihy and Stone 1990, Smith 1985). It is able to spread prolifically after a fire and effectively out-compete less fire-adapted native plant species, ultimately creating a stand of alien grass where forest once stood. In the Waianae Mountains on Oahu, molasses grass is a serious threat to one population each of *Cenchrus agrimonioides* and *Euphorbia haeleleana* and two populations of *Schiedea hookeri* (HHP 1994d11, 1994g10, 1994m8, 1994m11).

Paspalum conjugatum (Hilo grass) is naturalized in moist to wet disturbed areas on all of the main Hawaiian Islands except Niihau and Kahoolawe, and produces a dense ground cover. On Kauai, this perennial grass threatens the Wahiawa Mountains and Waioli Valley populations of *Isodendron longifolium* (HHP 1994i15, 1994i17; Lorence and Flynn 1991, 1993). In the Waianae Mountains of Oahu, Hilo grass threatens one population of *Cenchrus agrimonioides* and the largest population of *Schiedea hookeri* (HHP 1994d11, 1994m13; Lorence and Flynn 1993).

Psidium guajava (common guava), a shrub or small tree native to the New World tropics, is naturalized on all of the main islands, except perhaps Niihau and Kahoolawe (Wagner *et al.* 1990). Common guava is a serious weed that invades disturbed sites, forming dense thickets in dry as well as mesic and wet forests (Smith 1985, Wagner *et al.* 1990). On Kauai, common guava poses a threat to a population of *Isodendron longifolium* in Waioli Valley (Lorence and Flynn 1993). In the Waianae Mountains of Oahu, this alien plant threatens the largest populations of *Schiedea hookeri* and *S. nuttallii*, while on the island of Hawaii, common guava threatens the only known population of *Achyranthes mutica* (HHP 1994m13, 1994n2; HPCC 1992a).

Ageratina adenophora (Maui pamakani) and *A. riparia* (Hamakua pamakani), both native to tropical America, have naturalized in dry areas to wet forest on Oahu, Molokai, Lanai, Maui, and Hawaii (Wagner *et al.* 1990). These two noxious weeds form dense mats with other alien plants and prevent regeneration of native plants (Anderson *et al.* 1992). In the Waianae Mountains of Oahu, two populations of *Schiedea hookeri* are threatened by both Maui pamakani and Hamakua pamakani, and the largest population of *Phyllostegia parviflora* is threatened by Maui pamakani (HHP 1994m16, 1994m17, 1994y1). On Hawaii, the only known population of *Achyranthes mutica* is threatened by Hamakua pamakani (HPCC 1992a).

Rubus argutus (prickly Florida blackberry) was introduced to the Hawaiian Islands in the late 1800s from the continental U.S. (Haselwood and Motter 1983). The fruits are easily spread by birds to open areas such as disturbed mesic or wet forests, where the species forms dense, impenetrable thickets (Smith 1985). The largest population of *Cenchrus agrimonioides* on Oahu is threatened by prickly Florida blackberry, as well as other alien plant taxa (HHP 1994d8). *Leucaena leucocephala* (koa haole) is a naturalized shrub which is sometimes the dominant species in low elevation, dry, disturbed areas on all of the main Hawaiian islands (Geesink *et al.* 1990). On Kauai, the only known population of *Panicum niihauense* is threatened by several alien plants, including koa haole (HHP 1994j3, HPCC 1992b). Oahu's only known population of *Cyperus trachyanthos* is threatened by alien grasses and possibly by koa haole (HHP 1994f1; J. Lau, pers. comm. 1994). The largest population of *C. trachyanthos*, in the Nualolo Valley on Kauai, is threatened by established alien species

Plantago lanceolata and *Pteris vittata* (Kenneth Wood, pers. comm. 1996). *Plantago lanceolata*, native to Europe and north-central Asia, was first collected on Kauai in 1895 and is now naturalized and locally common in the Hawaiian Islands (Wagner *et al.* 1990). *Prosopis pallida* (kiawe) was introduced to Honolulu from a single seed grown on the Catholic Mission Grounds in 1828. In the early part of this century, pods were collected and sold to ranchers for cattle ration. The seeds pass through the digestive system of cattle and spread rapidly throughout the drier habitats of the Hawaiian islands (Geesink *et al.* 1990). The only known population of *Panicum niihauense* is threatened by kiawe (HHP 1994j3, HPCC 1992b).

Pennisetum clandestinum (Kikuyu grass), an aggressive, perennial grass introduced to Hawaii as a pasture grass, withstands trampling and grazing and is naturalized on four Hawaiian Islands in dry to mesic forest. It produces thick mats which choke out other plants and prevent their seedlings from establishing and has been declared a noxious weed by the U.S. Department of Agriculture (7 CFR 360) (O'Connor 1990, Smith 1985). Kikuyu grass is a threat to the only known population of *Achyranthes mutica* (HPCC 1992a). The introduced fern *Blechnum occidentale* was noted by Dr. Clifford Smith of the University of Hawaii as a potential pest in 1985 (Cuddihy and Stone 1990, Smith 1985). Found in mesic forests, *B. occidentale* is a threat to one population of *Schiedea kauaiensis* (HHP 1994n18). *Conyza bonariensis* (hairy horseweed) is nearly cosmopolitan in distribution, although it is perhaps native to South America. It was naturalized in Hawaii prior to 1871 and is a common weed in various urban and non-urban areas throughout Hawaii, generally in dry habitats. It threatens the only known population of *Achyranthes mutica* (HPCC 1992a, Wagner *et al.* 1990). *Opuntia ficus-indica* (panini) was introduced to Hawaii prior to 1809 from Mexico and has become naturalized in dry, disturbed habitats on Kauai, Oahu, Maui, Kahoolawe, and Hawaii. Panini threatens the only known population of *A. mutica* (HPCC 1992a, Wagner *et al.* 1990). *Axonopus fissifolius* (narrow-leaved carpet grass) is native to subtropical North America and the New World tropics. Introduced to Hawaii in 1912, narrow-leaved carpet grass has become common in wet pastures, disturbed wet forest, and bogs on Kauai, Oahu, Lanai, Maui, and Hawaii. Narrow-leaved carpet grass is a threat to one population of *Sanicula purpurea* on

Oahu (HHP 1994l1, O'Connor 1990). *Kalanchoe pinnata* (air plant) is an herb which occurs on all the main islands except Niihau and Kahoolawe, especially in dry to mesic areas (Wagner *et al.* 1990). Air plant threatens one population of *Schiedea kauaiensis* (HPCC 1992c2).

Fire poses a potential threat to populations of six of the taxa—*Cenchrus agrimonoides*, *Cyanea grimesiana* ssp. *grimesiana*, *Euphorbia haeleleana*, *Isodendron longifolium*, *Schiedea hookeri*, and *S. nuttallii* (HHP 1994e1, 1994e34, 1994g5, 1994g6, 1994g10, 1994i2, 1994m8, 1994m12, 1994m15 to 1994m17). Because Hawaii's native plants have evolved with only infrequent, naturally occurring episodes of fire (lava flows, infrequent lightning strikes), most species are not adapted to fire and are unable to recover well after recurring fires. Alien plants are often more fire-adapted than native taxa and quickly exploit suitable habitat after a fire (Cuddihy and Stone 1990). On Oahu, unintentionally ignited fires have resulted from military training exercises in Makua Military Reservation and Schofield Barracks Military Reservation and pose a possible threat to populations of *C. agrimonoides*, *E. haeleleana*, and *S. nuttallii* that grow in dry and mesic forest on those installations (Environment Impact Study Corp. 1977; HHP 1994a, 1994b, 1994d11, 1994g5, 1994g6, 1994g10, 1994n14; Yoshioka *et al.* 1991). Accidentally or maliciously set fires in residential areas near the Lualualei Naval Magazine and the Makua Military Reservation could easily spread and pose a possible threat to one of the four populations of *C. agrimonoides*, most of the island's individuals of *E. haeleleana*, one population of *I. longifolium*, several populations of *S. hookeri*, and one population of *S. nuttallii* (HHP 1994d11, 1994g5, 1994g6, 1994g10, 1994i2, 1994m8, 1994m15 to 1994m17, 1994n14).

Erosion, landslides, and rockslides due to natural weathering result in the death of individual plants as well as habitat destruction. This especially affects the continued existence of taxa or populations found on cliffs and steep slopes that have limited numbers and/or narrow ranges such as the Oahu populations of *Cyanea grimesiana* ssp. *grimesiana*; the Pahole-Makua Ridge population of *Schiedea nuttallii* on Oahu; and the Kalalau Valley population of *S. kauaiensis* on Kauai (HHP 1994n2; HPCC 1992c2; L. Mehrhoff, pers. comm. 1995).

The small number of populations and individuals of many of these taxa increases the potential for extinction

from naturally occurring events. A single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only extant population. Two of the plant taxa, *Achyranthes mutica* and *Panicum niihauense*, are each known from a single population. Five additional taxa have 5 or fewer populations (*Cyperus trachysanthos*, *Phyllostegia parviflora*, *Platanthera holochila*, *Sanicula purpurea*, and *Schiedea kauaiensis*), and 8 of the taxa are estimated to number no more than 100 individuals (*A. mutica*, *Cenchrus agrimonoides*, *Cyanea grimesiana* ssp. *grimesiana*, *P. niihauense*, *Phyllostegia parviflora*, *Platanthera holochila*, *S. kauaiensis*, and *S. nuttallii*). All of the taxa either number fewer than 20 populations or total fewer than 1,000 individuals (see Table 2). The small gene pool maintained by these taxa may depress reproductive vigor through inbreeding and decreased variability. Variability in genetic makeup of a population provides resilience to that population by decreasing the chances that an entire cohort is negatively impacted by a selective episode. Some individuals may prove more resistant or hardy than others and survive the event, allowing the population to persist. Small populations with low variability stand less chance of survival.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to issue this final rule. Based on this evaluation, the preferred action is to list 13 of these plant taxa as endangered (*Achyranthes mutica*, *Cenchrus agrimonoides*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyperus trachysanthos*, *Euphorbia haeleleana*, *Isodendron laurifolium*, *Panicum niihauense*, *Phyllostegia parviflora*, *Platanthera holochila*, *Sanicula purpurea*, *Schiedea hookeri*, *Schiedea kauaiensis*, and *Schiedea nuttallii*) and *Isodendron longifolium* as threatened. The 13 taxa to be listed as endangered are threatened by one or more of the following—habitat degradation and/or predation by pigs, goats, deer, cattle, and rats; competition for space, light, water, and nutrients from alien plants; habitat loss from fires; human impacts from military training practices and recreational activities; and substrate loss. Seven of the taxa have 5 or fewer populations, and 8 of the taxa are estimated to number no more than 100 individuals. Small population size and limited distribution make these taxa particularly vulnerable to extinction

from reduced reproductive vigor or from naturally occurring events. Because these 13 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. Therefore, the determination of endangered status for these 13 taxa is warranted.

Although populations of *Isodendron longifolium* are threatened by habitat degradation and/or destruction by goats and pigs and competition with six alien plant species, the larger distribution of populations and total numbers of plants reduce the likelihood that this species will become extinct in the near future. For these reasons, *I. longifolium* is not now in immediate danger of extinction throughout all or a significant portion of its range. However, *I. longifolium* is likely to become endangered in the foreseeable future if the threats affecting it are not reduced. As a result, *I. longifolium* meets the definition of threatened species as defined in the Act.

Critical habitat is not being designated for the 14 taxa included in this rule for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

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 a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the 14 taxa in this rule.

Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat

to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed under Factor B, these taxa are threatened by overcollection, due to low numbers or population size. The publication of precise maps and descriptions of critical habitat in the Federal Register and local newspapers as required in a proposal for critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline. The listing of these taxa publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants.

The additional protection provided by the designation of critical habitat to a species would be granted through section 7 of the Act. Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. The 14 species in this rule are confined to small geographic areas, and each population is composed of so few individuals that the determinations for jeopardy to the species and adverse modification of critical habitat would be similar. Therefore, designation of critical habitat provides no benefits beyond those that these species would receive by virtue of their listing as endangered species, and would likely increase the risk of threat from collecting or other human activities. Critical habitat protections apply only to Federal actions, and provide little added protection for populations occurring on State or private land. All involved parties and the major landowners have been notified of the location and importance of protecting the habitat of these taxa. Additional protection of the habitat of these taxa will be addressed through the recovery process and through the section 7 consultation process. For this reason Service concludes that designation of critical habitat for these 14 taxa is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities.

Recognition through listing can encourage and result in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, 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 a listed 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 must enter into formal consultation with the Service.

Nine of the endangered taxa occur on land under Federal jurisdiction, including the U.S. Army and U.S. Navy. Of those, four taxa are found on federally owned land and six taxa occur on land leased by the Federal government from the State. Activities carried out by the U.S. Army include ordnance training practices, ground troop training activities, and construction, maintenance, and utilization of helicopter landing and drop-off sites. The Army is coordinating with TNCH to develop management plans for Schofield Barracks Military Reservation, Kawailoa Training Area, and Makua Military Reservation to limit the impact of these activities on endangered species and their habitats. The Navy is in the process of developing a management plan for Lualualei Naval Magazine.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened plants. With respect to the 14 taxa in this rule, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for

endangered plants and 17.71 for threatened plants, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce; remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to *Isodendron longifolium* in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few permits would be sought or issued because these 14 taxa are not common in cultivation or in the wild.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. Such information is intended to clarify the potential

impacts of the species' listing on proposed and ongoing activities within the species' range. Nine of the taxa occur on Federal lands under the jurisdiction of the U.S. Army or U.S. Navy. Collection, damage, or destruction of these taxa on Federal lands is prohibited although in appropriate cases a Federal endangered species permit may be issued to allow collection. Such activities on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of Hawaii State law or regulations or in violation of State criminal trespass law. The Service is not aware of any trade in these species.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Pacific Islands Office (see ADDRESSES section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the Fish and Wildlife Service, Ecological Services, Endangered Species Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (telephone: 503/231-6241; facsimile: 503/231-6243).

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species act. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (Hawaii Revised Statutes (HRS), sect. 195D-4(a)). The State law prohibits taking of listed species on private and State lands and encourages conservation by State agencies (HRS, sect. 195D-4).

National Environmental Policy Act

The Service has determined that Environmental Assessments or Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted

pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion Office (see ADDRESSES section).

Author

The authors of this rule are Christa Russell and Marie M. Bruegmann, Pacific Islands Ecoregion Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended 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. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.
 * * * * *
 (h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS:							
<i>Achyranthes mutica</i>	None	U.S.A. (HI)	Amaranthaceae	E	592	NA	NA
<i>Cenchrus agrimonoides</i>	Kamanomano	U.S.A. (HI)	Poaceae	E	592	NA	NA
<i>Cyanea grimesiana</i> ssp. <i>grimesiana</i>	Haha	U.S.A. (HI)	Campanulaceae	E	592	NA	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Cyperus trachysanthos</i>	Pu'uka'a	U.S.A. (HI)	Cyperaceae	E	592	NA	NA
<i>Euphorbia haeleeleana</i>	'Akoko	U.S.A. (HI)	Euphorbiaceae	E	592	NA	NA
<i>Isodendron laurifolium</i>	Aupaka	U.S.A. (HI)	Violaceae	E	592	NA	NA
<i>Isodendron longifolium</i>	Aupaka	U.S.A. (HI)	Violaceae	T	592	NA	NA
<i>Panicum niihauense</i>	Lau 'ehu	U.S.A. (HI)	Poaceae	E	592	NA	NA
<i>Phyllostegia parviflora</i>	None	U.S.A. (HI)	Lamiaceae	E	592	NA	NA
<i>Platanthera holochila</i>	None	U.S.A. (HI)	Orchidaceae	E	592	NA	NA
<i>Sanicula purpurea</i>	None	U.S.A. (HI)	Apiaceae	E	592	NA	NA
<i>Schiedea hookeri</i>	None	U.S.A. (HI)	Caryophyllaceae	E	592	NA	NA
<i>Schiedea kauaiensis</i>	None	U.S.A. (HI)	Caryophyllaceae	E	592	NA	NA
<i>Schiedea nuttallii</i>	None	U.S.A. (HI)	Caryophyllaceae	E	592	NA	NA

Dated: September 24, 1996.
 John G. Rogers,
 Acting Director, Fish and Wildlife Service.
 [FR Doc. 96-25556 Filed 10-9-96; 8:45 am]
 BILLING CODE 4310-55-P

50 CFR Part 17

RIN 1018-AC56

Endangered and Threatened Wildlife and Plants; Endangered Status for the Plant *Delissea undulata* (No Common Name)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered species status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Delissea undulata* (No Common Name). This species is known in the wild from only a single individual, located on the island of Hawaii. The greatest immediate threats to the survival of this species are habitat degradation and predation by domestic and feral mammals, fire, and competition with alien plants. The small population size of one individual with its limited gene pool also comprises a serious threat to this species. This rule implements the protection provisions provided by the Act for this species.

EFFECTIVE DATE: November 12, 1996.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business

hours at the Pacific Islands Ecoregion Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Marie M. Brueggemann, at the above address or telephone 808-541-3441.

SUPPLEMENTARY INFORMATION:

Background

Delissea undulata was first described by Charles Gaudichaud-Beaupre from specimens he collected in the Hawaiian Islands ("Isles Sandwich") in 1819 (St. John 1959). He chose the specific epithet to refer to the undulating margins of the leaves. F.E. Wimmer named a specimen J.F. Rock collected in 1911 from Kanahaha, Kona, as *Cyanea argutidentata*, which H. St. John later moved to the genus *Delissea* (St. John 1959, Wimmer 1943). St. John also named a specimen collected in 1968 from the southern Kona District as *D. konaensis* (St. John 1986). The current treatment of the family (Lammers 1988, 1990) considers all of the above species to be synonymous with *D. undulata*. Lammers recognizes three subspecies of *D. undulata*—subsp. *niihauensis*, subsp. *kauaiensis*, and subsp. *undulata* (Lammers 1988, 1990).

Delissea undulata of the bellflower family (Campanulaceae) is a palm-like tree with unbranched woody stems 2 to 10 meters (m) (6 to 30 feet (ft)) tall. The leaves are long and narrow or elliptic with long petioles and undulate or flat, toothed margins, about 5 to 21 centimeters (cm) (2 to 8 inches (in)) long

and 3 to 10 cm (1 to 4 in) wide. The 5 to 15 flowering stalks each bear 5 to 20 greenish-white, slightly down-curved flowers 1.6 to 2.5 cm (0.6 to 1.0 in) long with one or two small knobs on the upper surfaces. The fruits are ovoid to globose purple berries 0.6 to 1.2 cm (0.2 to 0.4 in) long. The three subspecies of *D. undulata* can be distinguished from each other by leaf shape and leaf margin characteristics—subsp. *kauaiensis* has ovate leaves with flat, sharply toothed margins; subsp. *niihauensis* has leaves with heart-shaped bases and shallow roundly toothed margins; and subsp. *undulata* has narrower, lance-shaped leaves with undulating margins and spreading, pointed teeth (Lammers 1988, 1990). The species *D. undulata* is distinguished from closely related species in this genus by its broader leaf bases, larger flowers, and larger berries (Lammers 1990).

Historically, *Delissea undulata* is known from Niihau, Kauai, Maui, and Hawaii. Subspecies *kauaiensis* was collected west of the Hanapepe River on the island of Kauai by A.A. Heller in 1895 and has not been relocated (Hawaii Heritage Program (HHP) 1991a, Heller 1897, Lammers 1988). Subspecies *niihauensis* was collected twice in the 1800's on the island of Niihau and has not been located since (HHP 1991b, Hillebrand 1888, St. John 1959). Both of these subspecies are considered extinct (HHP 1991a, 1991b; Lammers 1990). *Delissea undulata* subsp. *undulata* was reported from four valleys of southwestern Maui in the 1800's, and from the Kona region of the island of Hawaii (HHP 1991c1 to 1991c9). This

subspecies was observed in 1971 at Puu Lehua and was subsequently thought to be extinct (HHP 1991c6, Lammers 1990). However, one individual plant was discovered on April 24, 1992, at Puu Waawaa, at a previously unreported location on Hualalai on the island of Hawaii. This site is owned by the State and leased to a private individual for ranching (Jon Giffin, Hawaii Department of Land and Natural Resources (Hawaii DLNR), *in litt.* 1993). Harold L. Lyon Arboretum of the University of Hawaii at Manoa is propagating seeds collected from the one remaining individual as part of an *ex situ* conservation program. The Arboretum has sent approximately 50 individual plants propagated from seed to the State's Hawaii forestry district for experimental outplanting in the Puu Waawaa area. Several outplanted individuals have produced seed after only two years, although no seedlings have been produced by these outplanted individuals (Charles H. Lamoureux, Harold L. Lyon Arboretum at University of Hawaii, pers. comm. 1993; J. Giffin, pers. comms. 1993, 1994).

Delissea undulata grows primarily in dry and mesic forests at about 1,000 to 1,750 m (3,300 to 5,700 ft) elevation (Lammers 1990; J. Giffin, *in litt.* 1993). The substrate is a thin organic soil layer over 'a'a or pahoe-hoe lava (Department of Geography 1983). The only known wild individual grows on the brink of a collapsed lava tube at 1,070 m (3,520 ft) elevation. The vegetation is open *Sophora chrysophylla* (mamane)-*Metrosideros polymorpha* ('ohi'a) forest with such associated species as *Santalum ellipticum* ('iliahi) and *Acacia koa* (koa). The endangered species *Nothocestrum breviflorum* ('aiea) also is found in the area of the one remaining wild individual of *D. undulata*. Introduced plants in the area include *Pennisetum clandestinum* (kikuyu grass), *Passiflora mollissima* (banana poka), and *Senecio mikanioides* (German ivy) (J. Giffin, *in litt.* 1993).

The greatest immediate threats to the survival of *Delissea undulata* are damage from domestic and feral herbivores and competition with alien plants. Fire, whether started naturally or by arson, poses a serious threat to the population. Slug damage has been observed on outplanted individuals of this species, and slugs may eat the fruits before germination can occur. The one individual known from the wild with its limited gene pool also comprises a serious threat to this species (M. Brueggemann, *in litt.* 1994; J. Giffin, *in litt.* 1993). The long-term viability or survivorship of the approximately 50 outplanted individuals is not known.

Previous Federal Action

Federal action on this species began as a result of section 12 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. In this and subsequent notices, *Delissea undulata* var. *undulata* was included as extinct, and *D. undulata* var. *argutidentata* was included as endangered. As a result of this review, on June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species, including *D. undulata*, endangered pursuant to section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the Federal Register (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, including *D. undulata*, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480), including *Delissea undulata* as a category 1 candidate, meaning that the Service had substantial information indicating that a listing proposal was appropriate. In the updated Notice of Review for plants on September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183), *D. undulata* was included as a Category 1* candidate, meaning that the Service had substantial information indicating that this taxon was vulnerable in the recent past but that it may already have become extinct.

Section 4(b)(3)(B) of the Act, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. The latter was the case for *Delissea undulata* because the Service had accepted the 1975 Smithsonian report as a petition.

On October 13, 1983, the Service found that the listing of the species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be reconsidered periodically, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, and 1992. The proposed rule published on June 27, 1994 (59 FR 32946), to list *D. undulata* as an endangered species constituted the final 1-year finding that was required for this species.

Based on comments received in response to the proposal (see Comments and Recommendations, below), the Service now determines *Delissea undulata* to be endangered with the publication of this final rule.

Summary of Comments and Recommendations

In the June 27, 1994, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The public comment period ended on August 26, 1994, but was reopened until November 29, 1994 to ensure that all parties had adequate time to provide comments on the proposed rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the "Hawaii Tribune-Herald" on November 7, 1994.

Comments were received from two parties. Both parties supported the listing of the *Delissea undulata* as an endangered species. One of the parties also requested the designation of critical habitat for this species, to force State action to protect the species, and also to allow for citizen action if necessary. However, the designation of critical habitat is not necessary for citizen suits under Section 11(g)(1) of the Act, which states that any person may commence a civil suit on his own behalf to enjoin any person in violation of the Act. Furthermore, it is unclear how designation of critical habitat under the Federal Endangered Species Act would prompt any more State action than simply listing the plant. The protections afforded a species by designating critical habitat are limited and apply only in the context of section 7 of the Act, which affects only Federal agency actions.

Pursuant to the Service's policy on peer review (59 FR 34270), the Service also solicited the expert opinions of four appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and biological and ecological information for *Delissea undulata*. No responses from these peer reviewers were received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Delissea undulata* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Delissea undulata* Gaud. (No Common Name) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat of *Delissea undulata* has undergone extreme alteration because of past and present land management practices, including deliberate and accidental alien mammal and plant introductions and agricultural development. Natural disturbances such as the collapse of lava tubes also destroy habitat and can have a significant effect on small populations of plants. Competition with alien plants as well as destruction of individuals and modification of habitat by introduced animals are the primary threats facing this species.

Beginning with Captain James Cook in 1792, early European explorers introduced livestock, which became feral, increased in number and range, and caused significant changes to the natural environment of Hawaii. The 1848 provision for land sales to individuals allowed large-scale agricultural and ranching ventures to begin. Land was cleared for these enterprises to such a great extent that climatic conditions began to change and the amount and distribution of rainfall were altered (Wenkam 1969).

Past and present impacts of introduced alien animals are the primary factor in altering and degrading vegetation and habitats on the island of Hawaii as well as on Kauai and Maui, where populations of *Delissea undulata* previously existed. Feral ungulates trample and eat native vegetation and

disturb open areas. This causes erosion and allows the invasion of alien plant species (Cuddihy and Stone 1990, Wagner *et al.* 1990). *Delissea undulata* is threatened by habitat degradation resulting from introduced ungulates (e.g., cattle, goats, sheep, and pigs). Habitat degradation by these ungulates threatens the only known wild plant, any potential natural germination of seedlings, as well as potential suitable habitat occurring throughout the historic range of the species.

Cattle (*Bos taurus*), native to Europe, northern Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. Large feral herds developed as a result of restrictions on killing cattle decreed by King Kamehameha I. Large ranches in the tens of thousands of acres were created on Maui and Hawaii. Much of the land used in these private enterprises was leased from the State or was privately owned. Feral cattle formerly existed on Maui and damaged the forests there. Feral cattle are presently found on the island of Hawaii, and ranching is still a major commercial activity there. Cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas into which alien plants invade, and spread seeds of alien plants in their feces and on their bodies. The forest becomes degraded to grassland pasture in areas grazed by cattle, and plant cover is reduced for many years following removal of cattle from an area. Several alien grasses and legumes purposely introduced for cattle forage have become noxious weeds (Cuddihy and Stone 1990, Tomich 1986). Cattle have altered and degraded the vegetation of much of Hawaii, including the areas where *Delissea undulata* formerly grew, and where it is still known to exist (Tomich 1986; J. Giffin, *in litt.* 1993). Hunting of feral cattle is no longer allowed in Hawaii (Hawaii DLNR 1985).

Goats (*Capra hircus*), native to the Middle East and India, were successfully introduced to the Hawaiian Islands in 1792, and currently there are populations on Kauai, Oahu, Molokai, Maui, and Hawaii. On Kauai, feral goats have been present in drier, more rugged areas since 1820; they still occur in Waimea Canyon. On Hawaii, goats damage low elevation dry forests, montane parklands, subalpine woodlands, and alpine grasslands. Goats are managed in Hawaii as a game animal, but many herds populate inaccessible areas where hunting has little effect on their numbers. Goat hunting is allowed year-round or during certain months, depending on the area (Hawaii DLNR n.d., 1985). Goats browse

on introduced grasses and native plants, especially in drier and more open ecosystems. They also trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Cuddihy and Stone 1990, Culliney 1988, Tomich 1986). *Delissea undulata* currently is threatened by goats that use the area where the single known wild individual exists (J. Giffin, *in litt.* 1993).

Sheep (*Ovis aries*) became firmly established on the island of Hawaii (Tomich 1986) following their introduction almost 200 years ago (Cuddihy and Stone 1990). Like feral goats, sheep roam the upper elevation dry forests, including Puu Waawaa, causing damage similar to that of goats (Stone 1985). Sheep have decimated vast areas of native forest and shrubland on Hawaii. Sheep threaten the habitat of *Delissea undulata* (Cuddihy and Stone 1990; J. Giffin, *in litt.* 1993) as well as the one remaining wild plant.

Pigs (*Sus scrofa*) are originally native to Europe, northern Africa, Asia Minor, and Asia. European pigs, introduced to Hawaii by Captain James Cook in 1778, became feral and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. They currently are present on Kauai, Oahu, Molokai, Maui, and Hawaii and inhabit rain forests and grasslands. Pig hunting is allowed on all islands either year-round or during certain months, depending on the area (Hawaii DLNR n.d., 1985). While rooting in the ground in search of the invertebrates and plant material they eat, feral pigs disturb and destroy vegetative cover, trample plants and seedlings, and threaten forest regeneration by damaging seeds and seedlings. They disturb soil substrates and cause erosion, especially on slopes. Alien plant seeds are dispersed in their hooves and coats as well as through their feces, and the disturbed soil is fertilized by their feces, helping alien plants to establish (Cuddihy and Stone 1990, Smith 1985, Stone 1985, Tomich 1986, Wagner *et al.* 1990). Feral pigs pose a threat to *Delissea undulata* and its habitat (J. Giffin, *in litt.* 1993).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to *Delissea undulata*, which was once thought to be extinct and is represented now by only one known wild plant. The long-term viability or survivorship of the

approximately 50 outplanted individuals propagated from seed is not known. The species is of some horticultural and ornamental interest. Taking and vandalism are potential threats that could result from increased specific publicity.

C. *Disease or predation.* Cattle, goats, pigs, and sheep have been reported in the area where *Delissea undulata* is known to occur. As this taxon is not known to be unpalatable to these ungulates, predation is a probable threat where these animals have been reported. The lack of seedlings and the occurrence of the only known individual in an area less accessible to ungulates seem to indicate the effect that browsing mammals, especially cattle, have had in restricting the distribution of this plant. Though not legally obligated to protect the species prior to this listing, the State fenced the one wild individual to protect it from damage by ungulates (J. Giffin, *in litt.* 1993). See Factor D.

Of the four species of rodents which have been introduced to the Hawaiian Islands, the species with the greatest impact on the native flora and fauna is probably the roof or black rat (*Rattus rattus*), which now occurs on all the main Hawaiian Islands around human habitations, in cultivated fields, and in dry to wet forests. Roof rats, and to a lesser extent house mouse (*Mus musculus*), Polynesian rat (*R. exulans*), and Norway rat (*R. norvegicus*), eat the fruits of some native plants, especially those with large, fleshy fruits. Many native Hawaiian plants produce their fruit over an extended period of time, and this produces a prolonged food supply that supports rodent populations. It is probable that rats damage the fleshy fruit of *Delissea undulata*. Introduced game birds also may eat the fruits (J. Giffin, *in litt.* 1993).

Little is known about the predation of rare Hawaiian plants by slugs. Predation by slugs on plant parts of *Delissea undulata* has been observed by field botanists (M. Bruegmann, *in litt.* 1994). The effect of slugs on the decline of this and related species is unclear, although slugs may pose a threat to this species, because they feed on the stems and may eat the fruit before germination can occur, reducing the vigor of the plants and limiting the number of seeds for germination. While seeds produced on the wild plant and outplanted individuals are viable, no germination has been observed in the wild (M. Bruegmann, *in litt.* 1994, J. Giffin, pers. comm. 1994).

D. *The inadequacy of existing regulatory mechanisms.* The only known wild *Delissea undulata* occurs

on State land within the State's conservation district. Conservation district lands (HRS, sect. 205-4) are regarded, among other purposes, as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Activities permitted in the conservation district are chosen by considering how best to make multiple use of the land (HRS, sect. 205-2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by both Federal and State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205-4). Before decisions on these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205-4, 205-17), as well as the maintenance of natural resources, is required to be taken into account (HRS, sects. 205-2, 205-4). For any proposed land use change that would occur on county or State land, that would be funded in part or whole by county or State funds, or that would occur within land classified as a conservation district, an environmental assessment is required to determine whether or not the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement under State law is required. Hawaii environmental policy and, thus, approval of land use, is required by law to safeguard " * * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344-3(1)) and includes guidelines to "protect endangered species of individual plants and animals * * *" (HRS, sect. 344-4(3)(A)). Despite provisions for conserving endemic resources, individual rare species may be overlooked during consideration of other land use priorities.

Hawaii's endangered species act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D-4(a)). Therefore, Federal listing automatically invokes listing under Hawaii State law. State law prohibits cutting, collecting, uprooting, destroying, injuring, or possessing any

listed species of plant on State or private land, or attempting to engage in any such conduct. The State law encourages conservation of such species by State agencies and triggers other State regulations to protect the species (HRS, sect. 195AD-4 and 5).

E. *Other natural or manmade factors affecting its continued existence.* The fact that there is only one remaining wild individual of *Delissea undulata* increases the potential for extinction from random events. While seeds produced on the wild plant and outplanted individuals are viable, no germination has been observed in the wild (M. Bruegmann, *in litt.* 1994, J. Giffin, pers. comm. 1994). The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy the only known extant individual. This constitutes a major threat to *D. undulata*.

Natural changes to habitat and substrate can result in the death of individual plants as well as the destruction of their habitat. This especially affects the continued existence of taxa or populations with limited numbers or narrow ranges and is often exacerbated by human disturbance and land use practices (see Factor A). Additional collapse of the lava tube where the only known wild individual of *Delissea undulata* occurs is a potential threat to this species (J. Giffin, *in litt.* 1993).

Three species of introduced plants threaten *Delissea undulata*. The historic native flora of Hawaii consisted of about 1,000 species, 89 percent of which were endemic. Of the total native and naturalized Hawaiian flora of 1,817 species, 47 percent were introduced from other parts of the world and nearly 100 species have become pests (Smith 1985, Wagner *et al.* 1990). Naturalized, introduced species degrade the Hawaiian landscape and compete with native plants for space, light, water, and nutrients (Cuddihy and Stone 1990). Some of these species were brought to Hawaii by various groups of people, including the Polynesian immigrants, for food or cultural reasons. Plantation owners, alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral animals, supported the introduction of alien tree species for reforestation. Ranchers intentionally introduced pasture grasses and other species for agriculture, and sometimes inadvertently introduced weed seeds as well. Other plants were brought to Hawaii for their potential horticultural value (Cuddihy and Stone 1990, Wenkam 1969).

Passiflora mollissima (banana poka), a woody vine, poses a serious problem to mesic forests, in which *Delissea undulata* primarily grows, on Kauai and Hawaii by covering trees, reducing the amount of light that reaches trees as well as understory, and causing damage and death to trees by the weight of the vines. Animals, especially feral pigs, eat the fruit and distribute the seeds (Cuddihy and Stone 1990, Escobar 1990). *P. mollissima* is a threat to *D. undulata* and its habitat (J. Giffin, *in litt.* 1993).

Senecio mikanioides (German ivy) is another vine that poses a serious threat to mesic and dry forests on Hawaii. It is becoming established on Maui as well. *Senecio mikanioides* may be capable of establishing itself over vast areas of the island of Hawaii, including most of Hualalai. The vine covers the forest canopy, which can result in structural damage and the reduction of available light. *Senecio mikanioides* also can form a significant ground cover in native forests of the southern Kona region of Hawaii where it may limit native plant reproduction (Cuddihy and Stone 1990). *Senecio mikanioides* threatens *Delissea undulata* and its habitat (J. Giffin, *in litt.* 1993).

Pennisetum clandestinum (Kikuyu grass), an aggressive, fire adapted, perennial grass introduced to Hawaii as a pasture grass, withstands trampling and grazing and has naturalized on four Hawaiian Islands in dry to mesic forest. It produces thick mats which choke out other plants and prevent their seedlings from becoming established. It has been declared a noxious weed by the U.S. Department of Agriculture (7 CFR 360) (O'Connor 1990, Smith 1985).

Because Hawaiian plants were subjected to fire during their evolution only in areas of volcanic activity and from occasional lightning strikes, they are not adapted to recurring fire regimes and do not recover quickly following a fire. Fires may result from natural causes, or they may be accidentally or purposely set by people. Vegetation on the slopes of Hualalai is particularly vulnerable to fire due to the extensive invasion of *P. clandestinum*. Alien plants are often better adapted to fire than native plant species, and some fire-adapted grasses have become widespread in Hawaii. Native shrubland can thus be converted to land dominated by alien grasses. The presence of such species in Hawaiian ecosystems greatly increases the intensity, extent, and frequency of fire, especially during drier months or drought. Many fire-adapted alien species can quickly reestablish in burned areas, resulting in a reduction in

the amount of native vegetation after each fire. Fire can destroy dormant seeds as well as mature plants and seedlings, even in steep or inaccessible areas (Cuddihy and Stone 1990). The only known wild individual of *Delissea undulata* occurs in an area heavily grazed by cattle, and is offered some protection from fires since the cattle reduce the fuel load of *P. clandestinum*. However, fire remains a potentially serious threat to the only known wild individual of *D. undulata*, its potential regeneration, and other suitable habitat (J. Giffin, *in litt.* 1993).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Delissea undulata* in determining to make this rule final. Based on this evaluation, this rulemaking will list *D. undulata* as endangered. Only one wild individual of this species is known to exist, and it is threatened by habitat degradation by feral ungulates and alien plants, fire, and lack of legal protection. The seeds produced on the wild plant and the outplanted individuals are viable but no germination has been observed in the wild. Small population size makes this species particularly vulnerable to reduced reproductive vigor and/or extinction from stochastic events. Because this species is in danger of extinction throughout all of its range, it fits the definition of endangered as defined in the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

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 should designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Delissea undulata*. Service

regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Such a determination would provide no additional protection to *Delissea undulata* and could increase the degree of threat to the species. The extant population is on State land; State government agencies can be alerted to the presence of the plant without the publication of critical habitat descriptions and maps. The publication of such descriptions and maps would potentially increase the degree of threats from taking or vandalism because a live specimen of *D. undulata* would be of interest to curiosity seekers or collectors of rare plants. Although taking by humans is not currently a primary threat, listing *D. undulata* is likely to substantially increase interest in the plant, thus increasing the threat from human disturbance. All involved parties and landowners have been notified of the importance of protecting this species' habitat. In addition, protection of the species' habitat will be addressed through the recovery planning process. Furthermore, the limited protections added by designating critical habitat are provided by section 7 of the Act, which applies only to actions by Federal agencies. There are no known Federal activities within the currently known habitat of this species. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing can result in conservation actions by Federal, State, and local agencies, private organizations, and individuals. Harold L. Lyon Arboretum of the University of Hawaii at Manoa is propagating seeds collected from the one remaining individual as part of an *ex situ* conservation program. The Arboretum has over 400 seedlings growing as part

of this conservation program, and has sent approximately 50 individuals to the State's Hawaii forestry district for experimental outplanting in the Puu Waawaa area. Several outplanted individuals have produced seed after only two years, although no seedlings have been produced by these outplanted individuals (Charles H. Lamoureux, Harold L. Lyon Arboretum at University of Hawaii, pers. comm. 1993; J. Giffin, pers. comms. 1993, 1994). The Act provides for possible land acquisition and cooperation with State agencies and requires that recovery actions be carried out for all listed species. Since *Delissea undulata* is known to occur on State land, cooperation between Federal and State agencies is necessary to provide for its conservation. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7 of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is known or anticipated that would affect *Delissea undulata*, as the only known site is on State owned land.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply to *Delissea undulata*. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce an endangered plant species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the

removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation and survival of the species. It is anticipated that few 50 CFR 17.63 permits relating to economic hardship would ever be sought or issued because the species is uncommon in cultivation and is very rare in the wild.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. Such information is intended to clarify the potential impacts of a species' listing on proposed and ongoing activities within the species' range. The only known wild individual of *Delissea undulata* occurs on State land. Collection, damage, or destruction of this species on State land would constitute a violation of section 9 if conducted in knowing violation of Hawaii State law or regulations or in violation of a State criminal trespass law (see Hawaii State Law section below). Damage or destruction of the last known individual of this species via vandalism, arson fire, domestic cattle, feral ungulates, or as a result of the deliberate introduction of plant predators or pathogens that attack this species could be considered such a violation.

Requests for copies of the regulations regarding listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232-4181, telephone (503) 231-6131.

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species legislation. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D-4(a)). Therefore, Federal listing will accord the species listed status under Hawaii State Law. State law prohibits cutting, collecting, uprooting, destroying, injuring, or possessing any listed

species of plant on State or private land, or attempting to engage in any such conduct. The State law encourages conservation of such species by State agencies and triggers other State regulations to protect the species (HRS, sect. 195D-4 and 5).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ecoregion Manager, Pacific Islands Ecoregion Office (see ADDRESSES section).

Author

The primary author of this final rule is Marie M. Bruegmann of the Pacific Islands Ecoregion Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants. (h) * * *

* * * * *

SPECIES		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Delissea undulata	None	U.S.A. (HI)	Campanulaceae	E	593	NA	NA

Dated: September 19, 1996.
 John G. Rogers,
 Acting Director, Fish and Wildlife Service.
 [FR Doc. 96-25555 Filed 10-9-96; 8:45 am]
 BILLING CODE 4310-55-P

50 CFR Part 17

RIN 1018-AD49

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Plant Species (*Cyanea dunbarii*, *Lysimachia maxima*, and *Schiedea sarmentosa*) from the Island of Molokai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for three plants: *Cyanea dunbarii* (haha), *Lysimachia maxima* (No common name (NCN)), and *Schiedea sarmentosa* (NCN). All three species are endemic to the island of Molokai, Hawaiian Islands. The three plant species and their habitats have been variously affected or are currently threatened by one or more of the following—competition, predation, or habitat degradation from introduced species; fire; and natural disasters. This rule implements the Federal protection and recovery provisions afforded by the Act for these three species.

EFFECTIVE DATE: This rule takes effect November 12, 1996.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Pacific Islands Ecoregion Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3108, P.O. Box 50088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Brooks Harper, Field Supervisor (see ADDRESSES section) (telephone 808/541-3441; facsimile 808/541-3470).

SUPPLEMENTARY INFORMATION:

Background

Cyanea dunbarii, *Lysimachia maxima*, and *Schiedea sarmentosa* are endemic to the island of Molokai. This island, the fifth largest in the Hawaiian island chain, is approximately 61 kilometers (km) (38 miles (mi)) long, up to 16 km (10 mi) wide, and encompasses an area of about 688 square (sq) km (266 sq mi) (Foote *et al.* 1972, Plasch 1985). Three shield volcanoes make up most of the land mass of Molokai—West Molokai Mountain, East Molokai Mountain, and a volcano that formed Kalaupapa Peninsula (Department of Geography 1983). Molokai can also be divided into three major sections—the west Molokai section, comprising West Molokai Mountain; the central Molokai section or Hoolehua Plain formed between the two large mountain masses; and the east Molokai section, incorporating East Molokai Mountain and Kalaupapa Peninsula (Foote *et al.* 1972).

The taller and larger East Molokai Mountain rises 1,813 meters (m) (4,970 feet (ft)) above sea level (Walker 1990) and comprises roughly 50 percent of the island's land area. Topographically, the windward side of East Molokai differs from the leeward side. Precipitous cliffs line the northern windward coast with deep inaccessible valleys dissecting the coastline. The annual rainfall on the windward side is 200 to over 375 centimeters (cm) (75 to over 150 inches (in)), distributed throughout the year. The soils are poorly drained and high in organic matter. The gulches and valleys are usually very steep, but sometimes gently sloping (Foote *et al.* 1972). Much of the native vegetation on the northern part of East Molokai is intact because of its relative inaccessibility to humans and animals (Culliney 1988), although destructive ungulates have begun to enter the coastline in recent years (Joel Lau, Hawaii Heritage Program (HHP), pers. comm. 1990). *Lysimachia maxima* is found in windward wet forest.

Although Molokai's windward side receives most of the island's rainfall, some falls onto the upper slopes of the

leeward (southern) side, decreasing as elevation decreases, and resulting in diverse leeward communities, from wet forests to dry shrub and grasslands. The average annual rainfall on the leeward side of East Molokai is between 80 and 130 cm (30 and 50 in), mostly falling between November and April. The gently sloping to very steep topography of upland regions has predominantly well drained and medium-textured soils (Foote *et al.* 1972). *Cyanea dunbarii* and *Schiedea sarmentosa* are found in lowland mesic forest and dry shrubland on the leeward side of the island.

With the advent of cattle ranching and later pineapple cultivation, most of Molokai, particularly West Molokai and East Molokai's southern section, was converted to pasture land. The only remaining large tracts of native vegetation are found within the Molokai Forest Reserve on the upper elevation portions of East Molokai. All three plant species in this rule are restricted to this forest reserve (Culliney 1988). The land that supports these three plant species is owned by various private parties and the State of Hawaii (including forest reserves). The only known populations of *Lysimachia maxima* and *Schiedea sarmentosa* occur on privately owned land. The only known population of *Cyanea dunbarii* occurs on State land.

Discussion of the Three Species Included in This Final Rule

Cyanea dunbarii was first described by Joseph F. Rock, who named it in honor of the collector, L.M. Dunbar (Rock 1919). Harold St. John (1987a, St. John and Takeuchi 1987) merged *Cyanea* with *Delissea*, the genus with priority. Lammers (1990) retained both genera in the currently accepted treatment of the family.

Cyanea dunbarii, a member of the bellflower family (Campanulaceae), is a branched shrub 1.5 to 2 m (4.9 to 6.6 ft) tall. The oval to broadly elliptic leaves are 10 to 22 cm (3.9 to 8.7 in) long and 6 to 14 cm (2.4 to 5.5 in) wide, with irregularly lobed or cleft margins. The flowers are arranged in groups of six to eight on a stalk that is 3 to 7 cm (1.2 to 2.8 in) long. The corolla is white,

tinged or striped with pale lilac and 30 to 38 mm (1.2 to 1.5 in) long. The corolla is slightly curved, with spreading lobes three-fourths as long as the tube. This species is distinguished from others in this endemic Hawaiian genus by the lack of prickles on the stems and the irregularly lobed and cleft leaf margins (Lammers 1990).

Cyanea dunbarii was collected in 1918 at Waihanau and Waialae valleys, and was not observed again until 1992, when Joel Lau of HHP found it in Mokomoko Gulch (HHP 1993a1 to 1993a3, Rock 1919, Wimmer 1943). Approximately 15 to 20 mature plants are known from this population, which occurs on State-owned land within Molokai Forest Reserve, at an elevation of 685 m (2,250 ft) (HHP 1993a3; Loyal Mehrhoff, U.S. Fish and Wildlife Service, *in litt.*, 1994). *Cyanea dunbarii* is found in mesic to wet *Dicranopteris linearis* (uluhe)-*Metrosideros polymorpha* ('ohi'a) forest on moderate to steep slopes along a stream (HHP 1993a3; L. Mehrhoff, *in litt.* 1994). Associated species include *Perrottetia sandwicensis* (olomea), *Pipturus albidus* (mamaki), *Clermontia kakeana* (haha), *Cheirodendron trigynum* ('olapa), and *Freycinetia arborea* ('ie'ie) (L. Mehrhoff, *in litt.*, 1994). The major threats to *Cyanea dunbarii* are competition with the alien plants *Rubus rosifolius* (thimbleberry), *Commelina diffusa* (honohono), *Hedychium* sp. (ginger), and *Kalanchoe pinnata* (air plant); and a risk of extinction from naturally occurring events (such as landslides or flooding) and/or reduced reproductive vigor due to the small number of individuals in the only known population (HHP 1993a3; L. Mehrhoff, *in litt.* 1994). Rats (*Rattus* spp.) are a potential threat since they are known to be in the area and eat stems and fruits of other species of *Cyanea* (Cuddihy and Stone 1990). Axis deer (*Axis axis*) and pigs (*Sus scrofa*) are potential threats to this species, since they are known to occur in areas adjacent to the only known population (L. Mehrhoff, *in litt.*, 1994; Ed Misaki, The Nature Conservancy (TNC), pers. comm., 1991).

William Hillebrand considered a plant he collected in Pelekunu Valley in the 1800's to be a new variety of *Lysimachia hillebrandii* (Hillebrand 1888). In 1905, R. Knuth named Hillebrand's specimen *Lysimachia hillebrandii* var. *maxima* (Pax and Knuth 1905). St. John (1987b) elevated the variety to a species, *Lysimachia ternifolia*. Wagner *et al.* (1990) called this taxon *Lysimachia maxima*. An ongoing revision of the genus has determined that *L. ternifolia* is an invalidly published name and concurs

that *L. maxima* is the correct name for this species (Ken Marr, University of British Columbia, *in litt.* 1994).

Lysimachia maxima, a member of the primrose family (Primulaceae), is a sprawling shrub with reddish brown bark. The leaves, borne in groups of three along the stems, are oval with the broadest portion at the tip of the leaves. The leaves are 3.8 to 8 cm (1.5 to 3 in) long and 1.8 to 5 cm (0.7 to 2 in) wide. The upper surface of the leaves has a few scattered hairs when young and the lower surface is sparsely covered with long, soft, rusty hairs when young. The corolla is purplish-yellow, bell-shaped, and about 10 to 12 mm (0.4 to 0.5 in) long. This species is differentiated from others in this genus by the leaves borne in groups of three, the broadest portion of the leaf above the middle, and rusty hairs that disappear with maturity (Wagner *et al.* 1990).

Lysimachia maxima is only known from one population on the rim of Pelekunu Valley near Ohialele, on TNC's Pelekunu Preserve immediately adjacent to State-owned land managed as part of Kalaupapa National Historical Park (HHP 1991a, Hawaii Plant Conservation Center (HPCC) 1991a, Hillebrand 1888, Pax and Knuth 1905, Wagner *et al.* 1990). Approximately 20 to 40 individuals are currently known (L. Mehrhoff, *in litt.* 1994). This species occurs in 'ohi'a-uluhe montane wet forest at an elevation of 975 m (3,200 ft). Associated species include *Psychotria* sp. (kopiko), *Vaccinium* sp. (ohelo), *Hedyotis* sp. (manono), *Dubautia* sp. (na'ena'e), and *Ilex anomala* (kawa'u) (HPCC 1991a; L. Mehrhoff, *in litt.* 1994). The major threats to *Lysimachia maxima* are landslides and the risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of individuals in the only known population (HPCC 1991a; L. Mehrhoff, *in litt.* 1994). Pigs and goats are known from adjacent areas and pose a potential threat to this species (L. Mehrhoff, *in litt.* 1994).

In 1928, Otto Degener collected a plant on Molokai that E.E. Sherff (1946) later named *Schiedea sarmentosa*. *Schiedea sarmentosa* was included in *Schiedea menziesii* by Wagner *et al.* (1990). Warren Wagner and Stephen Weller, who are preparing a monograph of the genus, now consider *S. sarmentosa* to be a separate species (Warren Wagner, Smithsonian Institution, and Stephen Weller, University of California, Irvine, *in litt.* 1994).

Schiedea sarmentosa, a member of the pink family (Caryophyllaceae), is a many-branched shrub 30 to 45 cm (12

to 18 in) tall. The opposite leaves are slender and threadlike, 1.5 to 4.5 cm (0.6 to 1.8 in) long, and 0.5 to 1.5 mm (0.01 to 0.05 in) wide. The leaves are covered with dense, glandular hairs. There may be as many as 40 to 60 inflorescences on one plant, often with 50 to 100 flowers in each inflorescence. The flowers are female on some plants and bisexual on others. The green sepals are egg-shaped, 2 to 3 mm (0.07 to 0.12 in) long, and somewhat hairy. The staminodes (false stamens) are half as long as the sepals and two-branched at the tip. The fruits are oval capsules. This species differs from others in this endemic Hawaiian genus by its densely bushy habit, leaf width, hairiness, and staminode length (Sherff 1946; S. Weller and W. Wagner, *in litt.*, 1994).

Schiedea sarmentosa has been found in Kawela Gulch, Makolelau, and Onini Gulch (HHP 1991b, 1993b; HPCC 1991b, 1992; Sherff 1946; J. Lau, HHP, *in litt.* 1994). Currently, only two populations are known. One population at the boundary of TNC's Kamakou Preserve in Onini Gulch has approximately 30 individuals (HHP 1993b). The other population occurs on privately owned land in Makolelau, and consists of 4 subpopulations totaling approximately 300 to 400 individuals (Steve Perlman, HPCC, and S. Weller, pers. comms. 1994). Estimates of the total number of individuals have ranged up to 1,000 (J. Lau, HHP, pers. comm. 1994). An accurate count is somewhat difficult because this species is interspersed with *Schiedea lydgatei* (Steve Perlman, HPCC, and S. Weller, pers. comms. 1994). *Schiedea sarmentosa* is typically found on steep slopes in 'ohi'a-*Dodonaea viscosa* ('a'ali'i) lowland dry or mesic shrubland between 610 and 790 m (2,000 and 2,600 ft) elevation (HHP 1991b, 1993b; HPCC 1991b, 1992). Associated species include *Styphelia tameiameiae* (pukiawe), *Chenopodium oahuensis* ('aheahea), *Alyxia oliviformis* (maile), *Pleomele* sp. (hala pepe), and *Chamaesyce* sp. ('akoko) (HHP 1993b; HPCC 1991b, 1992). Major threats to *Schiedea sarmentosa* include feral goats and pigs, the alien plants *Melinis minutiflora* (molasses grass) and *Ricinus communis* (castor bean), and fire. The species is also threatened by a risk of extinction from naturally occurring events due to the low number of populations (J. Lau, *in litt.* 1994; S. Perlman, pers. comm. 1994).

Previous Federal Action

Federal government action on these plants began when the Service published a revised notice of review in the *Federal Register* (55 FR 6183) on February 21, 1990, of native plants

considered for listing under the Act. *Lysimachia maxima* (as *L. ternifolia*) and *Schiedea sarmentosa* (as *S. menziesii*) were included as Category 2 candidate species. Category 2 candidates were those for which listing as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats was not currently available to support proposed rules. *Lysimachia maxima* (as *L. ternifolia*) and *Schiedea sarmentosa* (as *S. menziesii*) were also included as Category 2 candidates in the September 30, 1993 (58 FR 51144) notice of review. A proposed rule to list *Cyanea dunbarii*, *Lysimachia maxima* and *Schiedea sarmentosa* as endangered was published on October 2, 1995 (60 FR 51436) and the February 28, 1996 (61 FR 7596) notice of review listed all three species as proposed for endangered status.

Based on comments and recommendations received in response to the proposal (see Comments and Recommendations, below), the Service now determines these three plant species to be endangered with publication of this rule.

Summary of Comments and Recommendations

In the October 2, 1995 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended on December 1, 1995. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in "The Garden Island" on October 19, 1995, the "Maui News" on October 20, 1995, the "Kauai Times" on October 18, 1995, the "Hawaii Tribune-Herald" on October 18, 1995, and the "Honolulu Advertiser" on October 20, 1995.

Comments were received from three parties. All three parties expressed support for the proposed listing. No additional information was offered.

Pursuant to the Service's policy on peer review (59 FR 34270), the expert opinions of three appropriate and independent specialists were also solicited regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for these three species. A response was received from one peer reviewer.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cyanea dunbarii* Rock (haha), *Lysimachia maxima* (R. Knuth) St. John (NCN), and *Schiedea sarmentosa* Degener & Sherff (NCN) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* The habitats of the plants included in this rule have undergone extreme alteration because of past and present land management practices, including deliberate alien animal and plant introductions, agricultural development, and recreational use. Natural disturbances such as storms and landslides also destroy habitat and can have a significant effect on small populations of plants. Destruction and modification of habitat by introduced animals pose serious threats to one of the species in this rule and pose serious potential threats in the event that these introduced animals spread to portions of Molokai where the other species occur (See Table 1.).

When Polynesian immigrants settled in the Hawaiian Islands, they brought water-control and slash-and-burn systems of agriculture and encouraged plants that they introduced to grow in valleys. These land use practices resulted in erosion, changes in the composition of native communities, and a reduction of biodiversity (Cuddihy and Stone 1990, Kirch 1982, Wagner *et al.* 1985). Hawaiians settled and altered many areas of Molokai, including areas in which some of the species in this final rule grew. Many forested slopes were denuded in the mid-1800's to supply firewood to whaling ships, plantations, and island residents. Native plants were undoubtedly affected by these practices. Also, sandalwood and tree fern harvesting occurred in many areas, changing forest composition and affecting native species (Cuddihy and Stone 1990).

Beginning with Captain James Cook in 1792, early European explorers introduced livestock, which became feral, increased in number and range, and caused significant changes to the natural environment of Hawaii. The 1848 provision for land sales to

individuals allowed large-scale agricultural and ranching ventures to begin. So much land was cleared for these enterprises that climatic conditions began to change, and the amount and distribution of rainfall were altered (Wenkam 1969). Plantation owners supported reforestation programs that resulted in many alien trees being introduced in the hope that the watershed could be conserved. Beginning in the 1920's, water collection and diversion systems were constructed in upland areas to irrigate lowland fields, and this undoubtedly destroyed individuals and populations of native plants. The irrigation system also opened new routes for the invasion of alien plants and animals into native forests (Cuddihy and Stone 1990, Culliney 1988, Wagner *et al.* 1990, Wenkam 1969).

Past and present activities of introduced alien mammals are the primary factor in altering and degrading vegetation and habitats on Molokai. Feral ungulates trample and eat native vegetation and disturb and open areas. This causes erosion and allows the entry of alien plant species (Cuddihy and Stone 1990, Wagner *et al.* 1990). While only one of the species in this rule is directly threatened by habitat degradation resulting from introduced ungulates, goats, deer, and pigs are known to occur in adjacent areas and pose a serious potential threat if they spread to the areas where the other two species occur.

The goat (*Capra hircus*), a species originally native to the Middle East and India, was successfully introduced to the Hawaiian Islands in 1792. Currently populations exist on Molokai and four other islands. On Molokai, feral goats degrade dry forests and are now invading the wetter regions along the northern coast of East Molokai (Stone 1985; J. Lau, pers. comm. 1990). Goats are managed in Hawaii as a game animal and goat hunting is allowed year-round or during certain months, depending on the area (Hawaii Department of Land and Natural Resources (DLNR) n.d.-a, n.d.-b, n.d.-c, 1988). Goats browse on introduced grasses and native plants, especially in drier and more open ecosystems. Feral goats trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Culliney 1988, Cuddihy and Stone 1990, Scott *et al.* 1986, Tomich 1986, van Riper and van Riper 1982). Although northeastern Molokai is considered one of the most remote and inaccessible places in the main Hawaiian islands, the vegetation

there is predominantly exotic (Culliney 1988). The replacement of native vegetation is attributed to the large number of goats. Due to their agility, goats are able to reach vegetation not usually accessible to other animals (Culliney 1988). Goats are a threat to the larger population of *Schiedea sarmentosa* and a potential threat to the only known population of *Lysimachia maxima*, since they may invade the area where this taxon occurs (L. Mehrhoff, *in litt.* 1994; S. Perlman, pers. comm. 1994).

The pig (*Sus scrofa*) is a species originally native to Europe, northern Africa, Asia Minor, and Asia. European pigs, introduced to Hawaii by Captain James Cook in 1778, became feral and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. They are currently present on Molokai and four other islands, and inhabit rain forests and grasslands. Pig hunting is allowed on all islands either year-round or during certain months, depending on the area (DLNR n.d.-a, n.d.-b, n.d.-c, 1988). While rooting in the ground in search of the invertebrates and plant material to eat, feral pigs disturb and destroy vegetative cover, trample plants and seedlings, and threaten forest regeneration by damaging seeds and seedlings. They disturb soil and cause erosion, especially on slopes. Alien plant seeds are dispersed on their hooves and coats as well as through their feces (Cuddihy and Stone 1990, Scott *et al.* 1986, Stone 1985, Tomich 1986, Wagner *et al.* 1990). Feral pigs pose an immediate threat to *Schiedea sarmentosa* and a potential threat to *Cyanea dunbarii* and *Lysimachia maxima*. If not controlled, habitat degradation by pigs may become a significant problem to the only known populations of the latter two species (L. Mehrhoff, *in litt.* 1994; S. Perlman, pers. comm. 1994).

Of the ungulates that have become established on Molokai during the past 150 years, the axis deer (*Axis axis*) has probably had the greatest impact on the native vegetation. Eight axis deer, introduced to Molokai in 1868, increased to thousands of animals by the 1960's (Culliney 1988, Graf and Nichols 1966, Tomich 1986). By the turn of the century, these deer had occupied much of the dry to mesic lowland areas and were also found in the wet forests of East Molokai, where herds so damaged the vegetation that professional hunters were hired to control their numbers (Culliney 1988, Graf and Nichols 1966, van Riper and van Riper 1982). The native vegetation has suffered irreparable damage from overgrazing by these animals. Deer

degrade the habitat by trampling, consuming, and overgrazing vegetation, which removes ground cover, exposing the soil to erosional action (J. Lau, pers. comm. 1990). Alien plant species are then able to exploit the newly disturbed areas.

A large portion of the axis deer population on Molokai has been actively managed for recreational hunting by the Hawaii Division of Forestry and Wildlife since 1959. At present, five of the seven managed hunting areas on Molokai are within the Molokai Forest Reserve. Many areas lack maintained boundary fences that would prevent deer from entering more fragile habitats to the north (Cuddihy *et al.* 1982) and non-game areas to the east. Recently, axis deer have begun to enter the windward valleys and northern coastline of East Molokai where they were not previously observed (J. Lau, pers. comm. 1990). Axis deer have been observed in areas south of the only known population of *Cyanea dunbarii*, and pose a potential threat to this species (E. Misaki, pers. comm., 1991).

Although not a direct threat at present to the plant species in this rule, cattle (*Bos taurus*) ranching on Molokai has played a significant role over most of the past 150 years by reducing areas of native vegetation to vast pastures of alien grasses (Cuddihy and Stone 1990, Pekelo 1973, Stone 1985). In 1960, approximately 61 percent of Molokai's land area was devoted to grazing, primarily the lower elevation dry to mesic forests, shrublands, and grasslands of west and central Molokai (Baker 1961). Cattle degraded the habitat by trampling and feeding on vegetation, eventually opening up the ground cover and exposing the soil, increasing its vulnerability to erosion (Cuddihy and Stone 1990, Lindgren 1908, Pekelo 1973). Because of this alteration of vegetation, natural areas became limited to the upper elevation mesic to wet forests of East Molokai, where the State designated a single protected area—the Molokai Forest Reserve. One of the species in this rule is restricted to this forest reserve, which occupies about 30 percent of Molokai's land area (Baker 1961).

Substrate loss due to agriculture, grazing animals (especially goats), hikers, and alteration of vegetation results in habitat degradation and loss. This particularly affects plant populations vulnerable to landslides on cliffs or steep slopes, including all three species in this rule.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Unrestricted collecting for scientific or horticultural purposes and

excessive visits by individuals interested in seeing rare plants could seriously impact *Cyanea dunbarii* and *Lysimachia maxima*, both of which are known from single populations with less than 20 individuals each. Collection of whole plants or reproductive parts of these two species could threaten their survival. *Cyanea dunbarii* and *Schiedea sarmentosa* have populations close to trails or roads and are, thus, easily accessible to collectors. The three species are, therefore, potentially threatened by overcollection (HHP 1993a3; HPCC 1991b, 1992; J. Lau, *in litt.* 1994).

C. Disease or Predation. Browsing damage by goats and/or deer is a potential threat to the species in this rule in the event that these ungulates, present in areas adjacent to these species, invade the population sites (Cuddihy *et al.* 1982; J. Lau, *in litt.* 1994; E. Misaki, pers. comm. 1991).

Of the four species of rodents that have been introduced to the Hawaiian Islands, the species with the greatest impact on the native flora and fauna is probably *Rattus rattus* (black or roof rat), which now occurs on all the main Hawaiian Islands around human habitations, in cultivated fields, and in dry to wet forests. Black rats and to a lesser extent *Mus musculus* (house mouse), *Rattus exulans* (Polynesian rat), and *R. norvegicus* (Norway rat) eat the fruits of some native plants, especially those with large, fleshy fruits. Many native Hawaiian plants produce their fruit over an extended period of time, and this produces a prolonged food supply that supports rodent populations. Black rats strip bark from some native plants. Rats are known to damage the stems and eat fruit of *Cyanea* species and are therefore a potential threat to *Cyanea dunbarii* (Cuddihy and Stone 1990; Tomich 1986).

D. The inadequacy of existing regulatory mechanisms. The only known population of *Lysimachia maxima* occurs on TNC's Pelekunu Preserve, and the two known populations of *Schiedea sarmentosa* occur on TNC's Kamakou Preserve. The only known population of *Cyanea dunbarii* occurs on State land, within Molokai Forest Reserve. All three of the species are located on land classified within conservation districts. Regardless of the owner, lands in these districts, among other purposes, are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Activities permitted in conservation districts are chosen by considering how

best to make multiple use of the land (Hawaii Revised Statutes (HRS), sect. 205-2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by both Federal and State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205-4). Before decisions about these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitats" (HRS, sects. 205-4, 205-17) as well as the maintenance of natural resources is required to be taken into account (HRS, sects. 205-2(e), 205-4). However, the species in this rule are not presently protected as endangered species under the State's endangered species provisions, and, despite provisions for conserving endemic resources, individual rare species may be overlooked during consideration of other land use priorities.

Before any proposed change in land use occurs on State land, is funded in part or in whole by county or State funds, or will occur within lands classified as conservation districts, an environmental assessment is required to determine whether or not the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy and, thus, approval of land use, is intended to safeguard "the State's unique natural environmental characteristics" (HRS, sect. 344-3(1)). However, despite the existence of such State laws and regulations which give protection to Hawaii's native plants, their enforcement is difficult due to limited funding and personnel.

Listing of these three plant species will invoke the protection available under the State Endangered Species Act and supplement the protection available under other laws. For example, it is a violation of State law to take, possess, or export an endangered plant species (HRS sect. 195D-4(e)). In turn, pursuant to section 9(a)(2) of the Federal ESA, it will be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant(s) in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law. The lack of adequate resources to enforce State laws and regulations makes this provision particularly important.

In addition, State law contains provisions requiring consideration of endangered plants in certain State or county agency actions that would be triggered by listing under the Federal ESA (See Guidelines to "Protect endangered species of indigenous plants and animals." HRS, sect. 344-4(3)(A)). State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D-5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D-5(c)). With the listing of these three species, funds for these activities could be made available under section 6 of the Act (State Cooperative Agreements). The Hawaii DLNR is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D-5.1).

E. *Other natural or manmade factors affecting their continued existence.* Six species of introduced plants directly threaten populations of one or more of the species in this rule. The original native flora of Hawaii consisted of about 1,000 species, 89 percent of which were endemic. Of the total of 1,817 species of native and naturalized Hawaiian flora, 47 percent were introduced from other parts of the world. Nearly 100 of these species have become pests (Smith 1985, Wagner *et al.* 1990). Naturalized, introduced species degrade the Hawaiian landscape and compete with native plants for space, light, water, and nutrients (Cuddihy and Stone 1990). Some of these species were brought to Hawaii by various groups of people, including the Polynesian immigrants, for food or cultural reasons. Plantation owners, alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral animals, supported the introduction of alien tree species for reforestation. Ranchers intentionally introduced pasture grasses and other species for agriculture and, sometimes inadvertently, introduced weed seeds as well. Other plants were brought to Hawaii for their potential horticultural value (Cuddihy and Stone 1990, Scott *et al.* 1986, Wenkam 1969).

Rubus rosifolius (thimbleberry), native to Asia, is naturalized in disturbed mesic to wet forest on all of the main Hawaiian Islands (Wagner *et*

al. 1990). This shrub threatens the only known population of *Cyanea dunbarii* (L. Mehrhoff, *in litt.* 1994).

Kalanchoe pinnata (air plant) is an herb that occurs on all the main islands except Niihau and Kahoolawe, especially in dry to mesic areas (Wagner *et al.* 1990). Air plant is a threat to the only known population of *Cyanea dunbarii* (L. Mehrhoff, *in litt.* 1994).

Ricinus communis (castor bean) became naturalized in Hawaii prior to 1819. Castor bean is found on all the main islands of Hawaii in low elevation, dry, disturbed habitats (Wagner *et al.* 1990). Castor bean is a threat to the two populations of *Schiedea sarmentosa* (HPCC 1991b, 1992).

Two species of *Hedychium* (ginger) were introduced to Hawaii in the late 1800's, probably by Chinese immigrants. Both species escaped from cultivation and are found in lowland wet and mesic forests on most of the main Hawaiian islands. These large, vigorous herbs mainly reproduce vegetatively, forming very dense stands that exclude all other growth (Cuddihy and Stone 1990, Wagner *et al.* 1990). *Hedychium* threatens the only known population of *Cyanea dunbarii* (L. Mehrhoff, *in litt.* 1994).

Commelina diffusa (honohono) is an annual herb native to the Old World tropics. It has become widely naturalized and is found in disturbed mesic and wet forests and other disturbed sites on all of the main Hawaiian islands except Niihau and Kahoolawe (Wagner *et al.* 1990). This species is a threat to the only known population of *Cyanea dunbarii* (L. Mehrhoff, *in litt.* 1994).

Several hundred species of grasses have been introduced to the Hawaiian Islands, many for animal forage. Of the approximately 100 grass species that have become naturalized, one species threatens the two populations of *Schiedea sarmentosa*. *Melinis minutiflora* (molasses grass), a perennial grass first brought to Hawaii for cattle fodder and then planted for erosion control, is now naturalized in dry to mesic disturbed areas on most of the main Hawaiian Islands. The mats it forms smother other plants, essentially preventing seedling growth and native plant reproduction. As a fuel for fire, molasses grass intensifies the heat and carries the fire into areas with woody plants. Fire is a major threat to native plant species in dry to mesic habitats, especially on the leeward slopes of Molokai, where the largest population of *Schiedea sarmentosa* is located (J. Lau, *in litt.* 1994). The presence of molasses grass greatly enhances the potential and destructiveness of fires. For example, in

1988, a human-caused fire consumed roughly 38 sq km (15 sq mi) of shrubland and forest from the southern coastline of East Molokai to the southwest corner of Kamakou Preserve, about 3.5 mi (5.5 km) inland (E. Misaki, pers. comm. 1991). Molasses grass was the main carrier of that fire (E. Misaki, pers. comm. 1991). Molasses grass is able to spread prolifically after a fire and effectively competes with the few fire-adapted native plant species, creating a dense stand of alien grass where forests once stood. It is becoming a major problem in dry sites along the many leeward ridges of East Molokai (Bottenfield 1958, Cuddihy and Stone 1990, O'Connor 1990, Smith 1985).

The small numbers of populations and individuals of these species increase the potential for extinction from naturally occurring events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only

known extant population. Two of the species in this rule, *Cyanea dunbarii* and *Lysimachia maxima*, are known from only a single population. *Schiedea sarmentosa* is known from only two populations. *Cyanea dunbarii* is known from fewer than 20 individuals and *Lysimachia maxima* is known from fewer than 50 individuals.

Erosion, landslides, and rock slides due to natural weathering result in the death of individual plants as well as habitat destruction. This especially affects the continued existence of species or populations with limited numbers and/or narrow ranges, including all three species in this rule. This process is often exacerbated by human disturbance and land use practices (See Factor A.).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this final rule. Based on this evaluation, the preferred action is to list *Cyanea*

dunbarii, *Lysimachia maxima*, and *Schiedea sarmentosa* as endangered. All 3 species either number fewer than 50 individuals in 1 population or are known from only 2 populations. The three species are threatened by one or more of the following—competition from alien plants; potential habitat degradation and/or predation by feral pigs, feral goats, rats, and deer; fire; substrate loss; potential human impacts; and lack of legal protection or difficulty in enforcing laws that are already in effect. Small population size and limited distribution make these species particularly vulnerable to extinction and/or reduced reproductive vigor from naturally occurring events. Because these three species are in danger of extinction throughout all or a significant portion of their ranges, they meet the definition of endangered as defined in the Act. Therefore, the determination of endangered status for these three species is warranted. A summary of the threats facing these taxa is presented in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Alien mammals				Alien plants	Substrate loss	Human impacts	Fire	Limited numbers*
	Deer	Goats	Pigs	Rats					
<i>Cyanea dunbarii</i>	P	.....	P	P	X	X	P	.....	X1,2
<i>Lysimachia maxima</i> .....	.....	P	P	.....	.....	X	P	.....	X1,2
<i>Schiedea sarmentosa</i> .....	.....	X	X	.....	X	P	P	X	X1

KEY:

X=Immediate and significant threat.

P=Potential threat.

*=No more than 100 individuals and/or no more than 5 populations.

1=No more than 5 populations.

2=No more than 100 individuals.

Critical habitat is not being proposed for the three species included in this rule, for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

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 same time the species is listed. The Service finds that designation of critical habitat is not prudent for *Cyanea dunbarii*, *Lysimachia maxima*, and *Schiedea sarmentosa* at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such a designation of critical habitat would not be beneficial to the species. The three species have very low total populations and face anthropogenic threats (see Factor B). The publication of precise maps and

descriptions of critical habitat in the Federal Register would make these plants more vulnerable to incidents of collection and vandalism and, therefore, could contribute to the decline of these species and increase enforcement problems. The listing of these species as endangered also publicizes the rarity of these plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants.

The additional protection provided by the designation of critical habitat to a species is granted through section 7 of the Act. Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or

destroy or adversely modify its critical habitat. The three species in this rule are confined to small geographic areas, and each population is composed of so few individuals that the determinations for jeopardy to the species and adverse modification of critical habitat would be similar. Therefore, designation of critical habitat provides no benefits beyond those that these species would receive by virtue of their listing as endangered species, and would likely increase the risk of threat from collecting or other human activities.

All involved parties and the major landowners have been notified of the location of these species. Protection of the habitats of these species will be addressed through the recovery process and through the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to plant species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. 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 the Service 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. If a species is listed subsequently, 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 the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. None of the three species in this rule occurs on Federal lands and no known Federal

activities occur within the present known habitat of these three plant species. The Service has not pursued prelisting conservation agreements for the three plant species due to time and resource constraints.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plant species. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport such species in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale such species in interstate or foreign commerce, or remove and reduce such species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damaging or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of any such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few permits would ever be sought or issued because the species in this rule are not common in cultivation or in the wild.

It is the policy of the Service (July 1, 1994; 59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not likely constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the species' range. The only known population of *Cyanea dunbarii* is found on a steep slope on State-owned land. The only known population of *Lysimachia maxima* and one population of *Schiedea sarmentosa* are found on steep slopes on land owned by TNC. The other population of *Schiedea sarmentosa* is found on steep slopes on privately owned land. Collection, damage, or destruction of these species on non-Federal lands would constitute a violation of section 9, if conducted in knowing violation of Hawaii State law or regulations, or in violation of State

criminal trespass law. The Service is not aware of any trade in these species or of any activities currently being conducted by the public that would be affected by this listing or result in violation of section 9 of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Pacific Islands Ecoregion Manager (see ADDRESSES section). Requests for copies of the regulations regarding listed plants and inquiries regarding prohibitions and permits may be addressed to the Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (telephone: 503/231-2063; facsimile: 503/231-6243).

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species act. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D-4(a).) This Federal listing will automatically invoke listing under Hawaii State law. The State law prohibits taking of endangered species and encourages conservation by State agencies (HRS, sect. 195D-4, 195D-5).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments or Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from

the Pacific Islands Ecoregion Office (see ADDRESSES section).

Author

The author of this final rule is Marie M. Brueggmann, Pacific Islands Ecoregion Office (see ADDRESSES section). Substantial data were contributed by HHP and Steve Perlman and Ken Wood of HPCC.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service hereby amends 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. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* <i>Cyanea dunbarii</i>	* Haha	* U.S.A. (HI)	* Campanulaceae ...	E	* 594	NA	* NA
* <i>Lysimachia maxima</i>	* No common name	* U.S.A. (HI)	* Primulaceae	E	* 594	NA	* NA
* <i>Schiedea sarmentosa</i>	* No common name	* U.S.A. (HI)	* Caryophyllaceae ...	E	* 594	NA	* NA
*	*	*	*		*		*

Dated: September 23, 1996.
John G. Rogers,
Acting Director, Fish and Wildlife Service.
[FR Doc. 96–25554 Filed 10–9–96; 8:45 am]
BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AD25

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Thirteen Plants From the Island of Hawaii, State of Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 13 plants: *Clermontia drepanomorpha* ('oha wai), *Cyanea platyphylla* (haha), *Hibiscadelphus giffardianus* (hau kuahiwi), *Hibiscadelphus hualalaiensis* (hau kuahiwi), *Melicope zahlbruckneri* (alani), *Neraudia ovata* (no common name (NCN)), *Phyllostegia racemosa* (kiponapona), *Phyllostegia velutina* (NCN), *Phyllostegia warshaueri* (NCN), *Pleomele hawaiiensis* (hala pepe), *Pritchardia schattaueri* (loulu), *Sicyos alba* ('anunu), and *Zanthoxylum*

dipetalum var. *tomentosum* (a'e). All 13 taxa are endemic to the island of Hawaii, Hawaiian Islands. The 13 plant taxa and their habitats have been threatened by one or more of the following—competition for space, light, water, and nutrients by naturalized, introduced vegetation; habitat degradation by wild, feral, or domestic animals (cattle, pigs, goats, and sheep); agricultural and residential development and recreational activities; habitat loss and damage to plants from fires; predation by animals (cattle, pigs, goats, sheep, insects, and rats); and natural disasters such as volcanic activity. Due to the small number of existing individuals and their very narrow distributions, these 13 taxa and their populations are subject to an increased likelihood of extinction and/or reduced reproductive vigor from natural disasters. This final rule implements the Federal protection provisions provided by the Act for listed plants. Listing under the Act also triggers listed status for these 13 taxa under State law.

EFFECTIVE DATE: This rule takes effect November 12, 1996.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3108, Box 50088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Brooks Harper, Field Supervisor, Ecological Services, Pacific Islands Ecoregion (see ADDRESSES section) (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

Clermontia drepanomorpha ('oha wai), *Cyanea platyphylla* (haha), *Hibiscadelphus giffardianus* (hau kuahiwi), *Hibiscadelphus hualalaiensis* (hau kuahiwi), *Melicope zahlbruckneri* (alani), *Neraudia ovata* (no common name (NCN)), *Phyllostegia racemosa* (kiponapona), *Phyllostegia velutina* (NCN), *Phyllostegia warshaueri* (NCN), *Pleomele hawaiiensis* (hala pepe), *Pritchardia schattaueri* (loulu), *Sicyos alba* ('anunu), and *Zanthoxylum dipetalum* var. *tomentosum* (a'e) all are endemic to the island of Hawaii, Hawaiian Islands.

The island of Hawaii is the southernmost, easternmost, and youngest of the eight major Hawaiian Islands. Hawaii, the largest island of the Hawaiian archipelago comprises 10,458 square kilometers (sq km) (4,038 sq miles (mi)), or two-thirds of the land area of the State of Hawaii, giving rise to its common name, the "Big Island." The Hawaiian Islands are volcanic islands formed over a "hot spot," a fixed area of pressurized molten rock deep within the Earth. As the Pacific Plate, a

section of the Earth's surface many miles thick, has moved to the northwest, the islands of the chain have separated. Currently, this hot spot is centered under the southeast part of the island of Hawaii, which is one of the most active volcanic areas on Earth. Five large shield volcanoes make up the island of Hawaii: Mauna Kea at 4,205 meters (m) (13,796 feet (ft)) and Kohala at 1,670 m (5,480 ft), both extinct; Hualalai, at 2,521 m (8,271 ft), which is dormant and will probably erupt again; and Mauna Loa at 4,169 m (13,677 ft) and Kilauea at 1,248 m (4,093 ft), both of which are currently active and adding land area to the island. Compared to Kauai, which is the oldest of the main islands and was formed about 5.6 million years ago, Hawaii is very young, with fresh lava and land up to 0.5 million years old (Cuddihy and Stone 1990, Culliney 1988, Department of Geography 1983, Macdonald *et al.* 1983).

Because of the large size and range of elevation of the island, Hawaii has a great diversity of climates. Windward (northeastern) slopes of Mauna Loa have rainfall up to 300 centimeters (cm) (118 inches (in)) per year in some areas. The leeward coast, shielded by the mountains from rain brought by trade winds, has areas classified as desert that receive as little as 20 cm (7.9 in) of rain annually. The summits of Mauna Loa and Mauna Kea experience snowfall each year, and Mauna Kea was glaciated during the last Ice Age (Culliney 1988, Department of Geography 1983, Macdonald *et al.* 1983, Wagner *et al.* 1990).

Plant communities on Hawaii include those in various stages of primary succession on the slopes of active and dormant volcanoes, ones in stages of secondary succession following disturbance, and relatively stable climax communities. On Hawaii, vegetation is found in all classifications—coastal, dryland, montane, subalpine, and alpine; dry, mesic, and wet; and herblands, grasslands, shrublands, forests, and mixed communities. The vegetation and land of the island of Hawaii have undergone much change through the island's history. Since it is an area of active volcanism, vegetated areas are periodically replaced with bare lava. Polynesian immigrants, first settling on Hawaii by 750 A.D., made extensive alterations to lowland areas for agriculture and habitation. European contact with Hawaii brought intentional and inadvertent introductions of alien plant and animal taxa. In 1960, 65 percent of the total land area of the island of Hawaii was used for grazing, and much land has also been converted

to modern cropland (Cuddihy and Stone 1990, Gagné and Cuddihy 1990).

The 13 taxa included in this rule occur between 120 and 1,850 m (400 and 6,080 ft) in elevation in various portions of the island of Hawaii. Most of the taxa exist as remnant plants persisting in grazed areas or in higher elevations which have only recently been heavily invaded by alien plant and animal taxa. The thirteen taxa grow in a variety of vegetation communities (pioneer lava, shrublands, and forests), elevational zones (lowland and montane) and moisture regimes (dry, mesic, and wet). In lowland habitats, the 13 taxa are found in pioneer lava, shrubland, dry forest, mesic forest, and wet forest. In montane habitats, the thirteen taxa are found in dry forest, mesic forest, and wet forest.

The lands on which these 13 plant taxa are found are owned by various private parties, the State of Hawaii (including conservation district lands, forest reserves, natural area reserves, and plant and wildlife sanctuaries), or are owned or managed by the Federal government (including a U.S. Fish and Wildlife Service refuge, a National Park, and a U.S. Army training area).

Discussion of the 13 Taxa Included in This Final Rule

Joseph F. Rock (1913) named *Clermontia drepanomorpha* on the basis of specimens collected in the Kohala Mountains of the island of Hawaii in the early 1900's. This taxonomy was retained in the latest treatment of the genus (Lammers 1990).

Clermontia drepanomorpha, of the bellflower family (Campanulaceae), is a terrestrial or epiphytic (not rooted in the soil), branching tree 2.5 to 7 m (8.2 to 23 ft) tall. The stalked leaves are 10 to 27 cm (4 to 11 in) long and 1.5 to 4.5 cm (0.6 to 1.8 in) wide. Two to four flowers, each with a stalk 2 to 3.5 cm (0.8 to 1.4 in) long, are positioned at the end of a main flower stalk 5 to 12 cm (2 to 5 in) long. The calyx (fused sepals) and corolla (fused petals) are similar in size and appearance, and each forms a slightly curved, five-lobed tube 4 to 5.5 cm (1.6 to 2.2 in) long and 1.5 to 2 cm (0.6 to 0.8 in) wide which is blackish purple. The berries are orange and 2 to 3 cm (0.8 to 1.2 in) in diameter. This species is distinguished from others in this endemic Hawaiian genus by similar sepals and petals, the long drooping inflorescence, and large blackish purple flowers (Lammers 1990, Rock 1919).

Historically, *Clermontia drepanomorpha* was known from four populations in the Kohala Mountains on the island of Hawaii (Hawaii Heritage Program (HHP) 1993a1 to 1993a4, Rock

1913, Skottsberg 1944, Stemmermann and Jacobson 1987). Only 13 to 20 individuals in two populations, bordering private ranch lands, were known to be extant until recent surveys (Corn 1983; HHP 1993a1, 1993a4; Hawaii Plant Conservation Center (HPCC) 1993a; Marie M. Bruegmann, U.S. Fish and Wildlife Service (USFWS), *in litt.*, 1994; Carolyn Corn, Hawaii Division of Forestry and Wildlife (DOFAW), *in litt.*, 1994). In 1995, the Service contracted the National Tropical Botanical Garden (NTBG) to conduct a thorough survey of the Kohala area. Approximately five populations totalling 200 individuals of *Clermontia drepanomorpha* were found within a 3.2 km (2 mi) by 8 km (5 mi) State-owned area of the only remaining habitat for the species (Diane Ragone and Ken Wood, NTBG, *in litt.*, 1995).

This species typically grows in *Metrosideros polymorpha* ('ohi'a), *Cheirodendron trigynum* ('olapa), and *Cibotium glaucum* (hapu'u) dominated Montane Wet Forests, often epiphytically, at elevations between 1,170 and 1,570 m (3,850 and 5,150 ft) (Corn 1983; HHP 1993a1, 1993a4; HPCC 1993a). Associated taxa include *Carex alligata*, *Melicope clusiifolia* (alani), *Styphelia tameiameia* (pukiawe), *Astelia menziesii* (pa'iniu), *Rubus hawaiiensis* ('akala), *Cyanea pilosa* (haha), and *Coprosma* sp. (pilo) (HHP 1993a1, HPCC 1993a).

The major threats to *Clermontia drepanomorpha* are ditch improvements, competition from alien plant taxa, like *Rubus rosifolius* (thimbleberry), habitat disturbance by feral pigs (*Sus scrofa*); girdling of the stems by rats (*Rattus* spp.); and a risk of extinction from naturally occurring events (such as hurricanes) and/or reduced reproductive vigor due to the small number of existing populations (Bruegmann 1990, Center for Plant Conservation (CPC) 1990, HHP 1993a1, HPCC 1993a).

Asa Gray (1861) named *Delissea platyphylla* from a specimen collected by Horace Mann and W.T. Brigham in the Puna District of the island of Hawaii. Wilhelm Hillebrand (1888) transferred the species to *Cyanea*, creating *Cyanea platyphylla*. Harold St. John (1987a, St. John and Takeuchi 1987), believing there to be no generic distinction between *Cyanea* and *Delissea*, transferred the species back to the genus *Delissea*, the older of the two generic names. The current treatment of the family (Lammers 1990), however, maintains the separation of the two genera. The following taxa have been synonymized with *Cyanea platyphylla*: *C. bryanii*, *C. crispohirta*, *C. fernaldii*, *C.*

nolimtangere, *C. pulchra*, and *C. rollandioides*. However, some field biologists feel that *C. fernaldii*, represented by the Laupahoehoe populations, is a distinct entity that should be resurrected as a separate species (Frederick Warshauer, National Biological Service, pers. comm., 1994).

Cyanea platyphylla, of the bellflower family, is an unbranched palm-like shrub 1 to 3 m (3 to 10 ft) tall with stems that are covered with short, sharp, pale spines on the upper portions, especially as juveniles. This species has different leaves in the juvenile and adult plants. The juvenile leaves are 10.5 to 25 cm (4.1 to 10 in) long and 4 to 7.5 cm (1.6 to 3.0 in) wide, with prickles on leaves and stalks. Adult leaves are 34 to 87 cm (13 to 34 in) long and 7 to 22 cm (2.8 to 8.7 in) wide, and are only sparsely prickled. Six to 25 flowers are clustered on the end of a main stalk 20 to 90 cm (8 to 35 in) long, and each flower has a stalk 1 to 2.5 cm (0.4 to 1 in) long. The hypanthium is topped by five small, triangular calyx lobes. Petals, which are white or yellowish white with magenta stripes, are fused into a curved tube with five spreading lobes. The corolla is 4.2 to 5.4 cm (1.7 to 2.1 in) long and 5 to 10 millimeters (mm) (0.2 to 0.4 in) wide. Berries are pale orange, 8 to 10 mm (0.3 to 0.4 in) long, and 6 to 8 mm (0.2 to 0.3 in) wide. The species differs from others in this endemic Hawaiian genus by its juvenile and adult leaves, precocious flowering, and smaller flowers (Lammers 1990).

Cyanea platyphylla was historically known from the Kohala Mountains, Laupahoehoe in the Hamakua District, in the mountains above Hilo, Paho, Glenwood, Honaunau in South Kona, and the unknown location "Kalanilehua" (HHP 1991a1 to 1991a4, 1991a7, 1991a8, 1991a11, 1991a12, 1993b; Rock 1917, 1919, 1957; Skottsberg 1926; Wimmer 1943 and 1968). One population of five mature individuals and two juveniles is known to still exist in Laupahoehoe Natural Area Reserve (NAR) (CPC 1989, 1990; Cuddihy *et al.* 1982; HHP 1991a6; HPCC 1991a; C. Corn, *in litt.*, 1994), which is owned and managed by the State of Hawaii. Approximately four additional populations, totalling 50 to 100 individuals, were recently rediscovered during surveys by NTBG in the Kohala Mountains (D. Ragone and K. Wood, *in litt.*, 1995). Two additional populations in Laupahoehoe NAR have not been seen since 1982 and could not be relocated in 1989. The extant Laupahoehoe population has been spot-fenced by the NAR System to protect it from pig depredation (Cuddihy *et al.* 1982; HHP 1991a5, 1991a9, 1991a10;

Linda Pratt, Hawaii Volcanoes National Park (HVNP), pers. comms., 1991 and 1994).

Cyanea platyphylla is typically found in *Metrosideros polymorpha* ('ohi'a)—*Acacia koa* (koa) Lowland and Montane Wet Forests at elevations between 120 and 915 m (390 and 3,000 ft) (Lammers 1990). Associated taxa include *Cibotium* sp. (hapu'u), *Athyrium sandwichianum* (ho'i'o), *Antidesma* sp. (hame), *Clermontia* spp. ('oha wai), *Hedyotis* sp. (pilo), and *Cyrtandra* spp. (ha'iwale) (HHP 1991a6, HPCC 1991a).

The major known threats to *Cyanea platyphylla* are pigs; habitat-modifying introduced plant taxa, including *Psidium cattleianum* (strawberry guava), *Psidium guajava* (guava), *Passiflora ligularis* (sweet granadilla), and thimbleberry; rats, which may eat the fruit; and volcanic activity (Cuddihy *et al.* 1982; HHP 1991a6, 1991a9; HPCC 1991a; M. Bruegmann, *in litt.*, 1994; L. Pratt, pers. comm., 1994). Another threat is the risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the low numbers of populations and individuals.

Rock (Radlkofer and Rock 1911) named *Hibiscadelphus giffardianus* to honor W.M. Giffard, who first saw the taxon in 1911. This species was used as the type specimen to describe *Hibiscadelphus* as a new genus, meaning "brother of *Hibiscus*" (Bryan 1971). This taxonomy was retained in the latest treatment of the genus (Bates 1990).

Hibiscadelphus giffardianus, of the mallow family (Malvaceae), is a tree up to 7 m (23 ft) tall with the trunk up to 30 cm (12 in) in diameter and whitish bark. The leaf blades are heart-shaped and 10 to 30 cm (4 to 12 in) long with a broad tip, a notched base, and stalks nearly as long as the blades. Flowers are typically solitary in the axils of the leaves and have stalks 1.5 to 4 cm (0.6 to 1.6 in) long. Five to seven filament-like bracts are borne below each flower and the calyx is pouch-like. The overlapping petals form a curved bisymmetrical flower with the upper petals longer, typical of bird-pollinated flowers. The flowers are grayish green on the outside and dark magenta within, and 5 to 7 cm (2 to 3 in) long. The fruit is woody with star-shaped hairs. This species differs from others in this endemic Hawaiian genus by its flower color, flower size, and filamentous bracts (Baker and Allen 1976b, Bates 1990, Degener 1932a, Degener and Degener 1977, Radlkofer and Rock 1911).

Only one tree of *Hibiscadelphus giffardianus* has ever been known in the

wild, from Kipuka Puauulu (or Bird Park) in HVNP. This tree died in 1930, but plants exist in cultivation from seeds originally collected by Giffard before the tree died (Degener 1932a). Cuttings from these cultivated trees have been planted back into the now fenced original habitat at Kipuka Puauulu and currently nine mature plants and two suckers are known to exist (Baker and Allen 1977; Bishop and Herbst 1973; HHP 1991b; HPCC 1991b1, 1991b2; M. Bruegmann, *in litt.*, 1994). Individuals planted in Kipuka Ki were later determined to be hybrids and were removed by Park personnel (Baker and Allen 1977, Mueller-Dombois and Lamoureux 1967). The cultivated plants in Kipuka Puauulu have spontaneously produced fertile hybrids with cultivated plants of *Hibiscadelphus hualalaiensis* that were also planted into Kipuka Puauulu and Kipuka Ki. Both the *Hibiscadelphus hualalaiensis* and the hybrids have been removed from the Park (Baker and Allen 1976a, 1977; Carr and Baker 1977). *Hibiscadelphus giffardianus* has been listed as endangered in the *IUCN Plant Red Data Book* (Lucas and Synge 1978).

This taxon grows in mixed Montane Mesic Forest at elevations between 1,200 and 1,310 m (3,900 and 4,300 ft) (Bates 1990; HHP 1991b; HPCC 1991b1, 1991b2). Associated taxa include 'ohi'a, *Sapindus saponaria* (a'e), ho'i'o, *Coprosma* sp. (pilo), *Pipturus albidus* (mamaki), *Psychotria* sp. (kopiko), *Nestegis sandwicensis* (olopua), *Melicope* sp. (alani), *Dodonaea viscosa* ('a'ali'i), *Myoporum sandwicense* (naio), and introduced grasses (HHP 1991b; HPCC 1991b1, 1991b2).

The major threats to *Hibiscadelphus giffardianus* are bark, flower, and fruit feeding by roof rats (*Rattus rattus*); leaf damage in the form of stippling and yellowing by *Sophonia rufofascia* (two-spotted leafhopper) and yellowing by the native plant bug *Hyalopeplus pellucidus*; competition from the alien grasses *Ehrharta stipoides* (meadow ricegrass), *Paspalum conjugatum* (Hilo grass), and *Paspalum dilatatum* (Dallis grass); habitat change from volcanic activity; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing cultivated individuals, all from a single parent (Baker and Allen 1978; M. Bruegmann, *in litt.*, 1994; L. Pratt, pers. comm., 1994). Cattle (*Bos taurus*) were known in the area before it became a National Park and probably had a large influence on the habitat (Anonymous 1920, Rock 1913, St. John 1981).

Rock (Radlkofer and Rock 1911) named *Hibiscadelphus hualalaiensis* after Hualalai, the volcano on which the

plant was found in 1909 (Rock 1913). This taxonomy was retained in the latest treatment of the genus (Bates 1990).

Hibiscadelphus hualalaiensis, of the mallow family, is a tree 5 to 7 m (16 to 23 ft) tall with the trunk up to 30 cm (12 in) in diameter and whitish bark. The leaf blades are heart-shaped and 10 to 15 cm (4 to 6 in) long with a broad tip, a notched base, stellate hairs, and stalks 4 to 10 cm (1.5 to 4 in) long. One or two flowers are borne in the axils of the leaves and have stalks 1.5 to 14 cm (0.6 to 5.5 in) long. Five toothlike bracts are borne below each flower and the calyx is tubular or pouch-like. The overlapping petals form a curved bisymmetrical flower with longer upper petals, typical of bird-pollinated flowers. The flowers are greenish yellow on the outside and yellowish green, fading to purplish within, and 2 to 5.5 cm (0.8 to 2.2 in) long. The fruit is woody and the seeds have a dense covering of hairs. The species differs from others in this endemic Hawaiian genus by its flower color, smaller flower size, and toothlike bracts (Baker and Allen 1976b, Bates 1990, Degener 1932b, Radlkofer and Rock 1911).

Hibiscadelphus hualalaiensis was historically known from three populations, located in the Puu Waawaa region of Hualalai, on the island of Hawaii (HHP 1993c1 to 1993c3; HPCC 1990a, 1991c, 1992a). The last known wild tree was in Puu Waawaa I Plant Sanctuary, owned and managed by the Department of Land and Natural Resources, State of Hawaii. This tree died in 1992, but 12 cultivated trees have been planted within the fenced sanctuary (HHP 1993c2; M. Bruegmann, *in litt.*, 1994; Joel Lau, HHP, *in litt.*, 1991). In addition, approximately ten cultivated plants can be found near the State's Kokia Sanctuary in Kaupulehu (HPCC 1990a; Steven Bergfeld, pers. comm., 1994). Cultivated individuals were planted in Kipuka Puauulu in HVNP, but were removed to prevent further hybridization with the *Hibiscadelphus giffardianus* plants that are native to the kipuka (Baker and Allen 1977, 1978). The area where the plants are presently found is surrounded by State land that is leased for cattle ranching.

This species grows in mixed Dry to Mesic Forest remnants on lava fields, at elevations between 915 and 1,020 m (3,000 and 3,350 ft) (Bates 1990; HHP 1993c3; HPCC 1991c, 1992a). Associated taxa include 'ohi'a, *Diospyros sandwicensis* (lama), *Sophora chrysophylla* (mamane), naio, *Pouteria sandwicensis* ('ala'a), *Charpentiera* sp. (papala), *Nothocestrum* sp. ('aiea), *Claoxylon sandwicense* (po'ola), and

Pennisetum clandestinum (kikuyu grass) (HHP 1993c3; HPCC 1991c, 1992a; J. Lau, *in litt.*, 1991).

The major threats to *Hibiscadelphus hualalaiensis* are fire; cattle, pigs, and sheep (*Ovis aries*) that may get through the fence; flower and seed feeding by roof rats; competition from alien plants such as kikuyu grass and *Lantana camara* (lantana); ranching activities; habitat change from volcanic activity; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of known cultivated individuals from a single parent (Anonymous 1920; Baker and Allen 1978; HHP 1993c3; HPCC 1991c, 1992a; M. Bruegmann, *in litt.*, 1994).

Based on a specimen he collected in 1911 in Kipuka Puauulu, on the island of Hawaii, Rock (1913) described *Pelea zahlbruckneri*, in honor of Dr. A. Zahlbruckner, director of the Botanical Museum in Vienna. *Pelea* has since been submerged into *Melicope*, creating the combination *Melicope zahlbruckneri* (Stone *et al.* 1990).

Melicope zahlbruckneri, of the citrus family (Rutaceae), is a medium-sized tree 10 to 12 m (33 to 40 ft) tall. New growth is covered with yellowish brown, fine, short, curly hairs. The opposite, stalked, elliptically oblong leaves are 6 to 24 cm (2.4 to 9.5 in) long and 4 to 12.5 cm (1.6 to 4.9 in) wide, with well defined lateral veins. Clusters of two to five flowers have main flowering stalks 15 to 20 cm (5.9 to 7.9 in) long and each flower has a stalk about 0.4 cm (0.2 in) long. Female flowers consist of four sepals about 1.5 mm (0.05 in) long, four petals about 3 mm (0.1 in) long, an eight-lobed nectary disk, eight reduced and nonfunctional stamens, and a hairless four-celled ovary. Male flowers consist of four sepals 3.5 mm (0.01 in) long, four petals about 6 mm (0.2 in) long, and eight functional stamens in two whorls equal to or longer than the petals. The fruit is squarish, 12 to 14 mm (0.4 to 0.5 in) long, and up to 30 mm (1.2 in) wide. *Melicope zahlbruckneri* is distinguished from other species of the genus by its branching habit, large leaves, and very large, squarish capsules (Rock 1913, Stone 1969, Stone *et al.* 1990).

Historically, *Melicope zahlbruckneri* was known only from the island of Hawaii near Glenwood, in Kipuka Puauulu, and at Moaula in Kau (Degener 1930, HHP 1991c1 to 1991c3, HPCC 1991d, Rock 1913, Stone 1969, Stone *et al.* 1990). Today, the species is known to be extant only in Kipuka Puauulu, on land owned by HVNP, with 30 to 35 individuals remaining (HHP 1991c2; HPCC 1991d; L. Pratt, pers. comm.,

1994). The species is reproducing at this fenced site, and juvenile plants are present (L. Pratt, pers. comm., 1994). This species is found in koa- and 'ohi'a-dominated Montane Mesic Forest at elevations between 1,195 and 1,300 m (3,920 and 4,265 ft) (HHP 1991c2, HPCC 1991d, Stone *et al.* 1990). Associated taxa include pilo, a'e, mamaki, kopiko, olopuu, naio, *Pisonia* sp. (papala), several species of *Melicope* (alani), ho'i'o, 'a'ali'i, and the introduced grasses, meadow ricegrass, Hilo grass, and Dallis grass (HHP 1991c2; HPCC 1991d; M. Bruegmann, *in litt.*, 1994; L. Pratt, pers. comm., 1994).

The major threats to *Melicope zahlbruckneri* are the two-spotted leafhopper; competition from introduced grasses (meadow ricegrass, Hilo grass, and Dallis grass); habitat change due to volcanic activity; potential fruit damage by rats; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of individuals in the one remaining population (HPCC 1991d; M. Bruegmann, *in litt.*, 1994; L. Pratt, pers. comm., 1994).

Neraudia pyrifolia was named by Charles Gaudichaud-Beaupré from material he collected in the early 1800's on the island of Hawaii (Cowan 1949). This name was determined to be invalidly published, lacking an adequate description. Gaudichaud-Beaupré named *Neraudia ovata* from an additional specimen, and this has been maintained in the current taxonomic treatment for the species. H.A. Weddell considered this taxon a variety of *Neraudia melastomifolia*, but this has not been upheld by other taxonomists. S.L. Endlicher and E.G. Steudel placed this species in the genus *Boehmeria*, but the current taxonomic treatment maintains *Neraudia* as an endemic Hawaiian genus. Harold St. John named a new species, *Neraudia cookii*, from a collection by David Nelson on Cook's 1779 voyage to Hawaii (St. John 1976). That specimen is considered to be *Neraudia ovata* in the current taxonomic treatment (Cowan 1949, Wagner *et al.* 1990).

Neraudia ovata, of the nettle family (Urticaceae), is a sprawling or rarely erect shrub to a small tree, with stems 1 to 3 m (3 to 10 ft) long, and branches bearing short, somewhat erect hairs. The alternate, thin, stalked leaves are smooth-margined, grayish on the undersurface, 5 to 14 cm (2 to 5.5 in) long and 2 to 6.5 cm (0.8 to 2.6 in) wide, and have spreading, curved, nearly translucent hairs. Male and female flowers are found on separate plants. Male flowers have extremely short

stalks and a densely hairy calyx. Female flowers have no stalks and a densely hairy, boat-shaped calyx. The fruit is an achene (a dry one-seeded fruit that does not open at maturity). This species is distinguished from others in this endemic Hawaiian genus by the density, length, and posture of the hairs on the lower leaf surface; smooth leaf margin; and the boat-shaped calyx of the female flower (Cowan 1949, Wagner *et al.* 1990).

Historically, *Neraudia ovata* was found on the island of Hawaii on the Kona coast from North Kona to Kau (Cowan 1949; HHP 1991d1 to 1991d3, 1993d1 to 1993d7; Hillebrand 1888; St. John 1976 and 1981; Skottsberg 1944). One extant population of five individuals is known from privately owned land in Kaloko, North Kona (Nishida 1993; Warshauer and Gerrish 1993; M. Bruegmann, *in litt.*, 1994; Winona Char, Char and Associates, *in litt.*, 1995). An additional population of six individuals was rediscovered in late 1995 at the boundary of the U.S. Army's Pohakuloa Training Area (HHP 1993d4, 1993d5; M. Bruegmann, *in litt.* 1996).

Neraudia ovata grows in open 'ohi'a- and mamane-dominated Lowland and Montane Dry Forests at elevations of 115 m (380 ft) at Kaloko and 1,325 and 1,520 m (4,350 to 5,000 ft) at Pohakuloa Training Area (HHP 1993d4, 1993d5; Nishida 1993; M. Bruegmann, *in litt.*, 1994, 1996; R. Shaw, *in litt.* 1996). Associated taxa include *Reynoldsia sandwicensis* ('ohe), naio, *Coccoloba triloba* (huehue), *Myrsine* sp. (kolea), and *Schinus terebinthifolius* (Christmas berry), as well as the federally endangered *Nothocestrum breviflorum* (ai'ae) and *Pleomele hawaiiensis* (hala pepe), and other species of concern, including *Capparis sandwichiana* (pua pilo), *Fimbristylis hawaiiensis*, and *Bidens micrantha* ssp. *ctenophylla* (ko'oko'olau) (Nishida 1993; Warshauer and Gerrish 1993; M. Bruegmann, *in litt.*, 1994, 1996).

The major threats to *Neraudia ovata* are heavy browsing and habitat modification by feral sheep and goats (*Capra hircus*); competition from alien plants such as Christmas berry, *Leucaena leucocephala* (koa haole), and *Pennisetum setaceum* (fountain grass); habitat change due to volcanic activity; residential development; insects, like spiralling whitefly (*Aleurodicus dispersus*); and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals in the two remaining populations (Nishida 1993; M. Bruegmann, *in litt.*, 1994, 1996). From a specimen collected by James Macrae on Mauna Kea, on the

island of Hawaii, Bentham named *Phyllostegia racemosa* in 1830 (Sherff 1935). The current treatment of the genus includes E.E. Sherff's (1935) *Phyllostegia racemosa* var. *bryanii* with *Phyllostegia mannii*, rather than with this species (Wagner *et al.* 1990).

Phyllostegia racemosa, of the mint family (Lamiaceae), is a climbing vine with many-branched, square stems and spicy-smelling leaves. Leaves are opposite, moderately covered with short, soft hairs, dotted with small glands, 3.4 to 6 cm (1.3 to 2.4 in) long, and 1.4 to 4.3 cm (0.6 to 1.7 in) wide, with shallow, rounded teeth. The leaf stalks are densely covered with short hairs. Flower clusters, densely covered with short soft hairs, are comprised of 6 to 12 flowers with individual flower stalks 1 to 3 mm (0.04 to 0.12 in) long and leaflike bracts. The green bell-shaped calyx is about 3.5 to 5 mm (0.1 to 0.2 in) long, covered with glands, and has triangular lobes. The white corolla is two-lipped, with a tube about 7 to 10 mm (0.3 to 0.4 in) long, upper lip 2 to 2.5 mm (0.08 to 0.1 in) long, and lower lip 4 to 5 mm (0.16 to 0.2 in) long. Fruits are divided into four nutlets about 1.5 to 2 mm (0.06 to 0.08 in) long. This species is distinguished from others in this genus by its leaf shape, lack of a main stalk to the flower clusters, and calyx teeth that are rounded and shallow (Hillebrand 1888, Sherff 1935, Wagner *et al.* 1990).

Historically, *Phyllostegia racemosa* was found only on the island of Hawaii in the Hakalau and Saddle Road areas of Mauna Kea and the Kulani/Keauhou and Kipuka Ahiu areas of Mauna Loa (Clarke *et al.* 1983; HHP 1990a1, 1991a2, 1991e1 to 1991e4; Pratt and Cuddihy 1990; Sherff 1935, 1951; Jack Jeffrey, USFWS, *in litt.*, 1993; Jaan Lepson, University of Hawaii (UH), *in litt.*, 1990). Today, four populations of the species are known to occur on private and State lands in the Kulani/Keauhou area, on Federal land managed as the Hakalau National Wildlife Refuge, and in Hawaii Volcanoes National Park. Together, these four populations comprise 25 to 45 individuals (HHP 1991e1, 1991e4; HPCC 1991d; J. Jeffrey, *in litt.*, 1993; J. Lepson, *in litt.*, 1993; J. Jeffrey, pers. comm., 1994; L. Pratt, pers. comm., 1995).

Phyllostegia racemosa is typically found epiphytically in disturbed koa-, 'ohi'a-, and hapu'u-dominated Montane Mesic or Wet Forests at elevations between 1,400 and 1,850 m (4,650 to 6,070 ft). Associated taxa include *Vaccinium calycinum* (ohelo), *Rubus hawaiiensis* (akala), and *Dryopteris wallichiana* (Clarke *et al.* 1983; HHP

1991e1, 1991e4; HPCC 1991e; Wagner *et al.* 1990; J. Jeffrey, *in litt.*, 1993).

The major threats to *Phyllostegia racemosa* are habitat disturbance by feral pigs and cattle; logging; competition from alien plant taxa, such as banana poka, kikuyu grass, *Anthoxanthum odoratum* (sweet vernalgrass), and *Paspalum urvillei* (Vasey grass); habitat change due to volcanic activity; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing populations and individuals (Clarke *et al.* 1983; HHP 1991e1, 1991e4; HPCC 1991e; Pratt and Cuddihy 1990).

Based on a specimen collected on Mauna Kea by the U.S. Exploring Expedition in 1840, Sherff described a new variety of *Phyllostegia macrophylla*, variety *velutina*, named for its velvety leaves and stems (Sherff 1935). St. John (1987b) determined that this entity was sufficiently different to constitute a separate species, *Phyllostegia velutina*, which has been maintained in the current treatment of the genus (Wagner *et al.* 1990).

Phyllostegia velutina, of the mint family, is a climbing vine with dense, backward-pointing hairs on the leaves and square stems. The hairs are silky on the opposite, narrow, toothed leaves, which are 9.2 to 17.5 cm (3.6 to 6.9 in) long and 2.5 to 5 cm (1 to 2 in) wide. Six to 10 flowers are borne in an unbranched inflorescence with conspicuous leaflike bracts. The green bell-shaped calyx is 6 to 7 mm (0.2 to 0.3 in) long, densely covered with upward-pointing hairs, and has triangular lobes. The white corolla is densely covered with upward-pointing hairs and is two-lipped, with a slightly curved tube about 12 mm (0.4 in) long, upper lip 5 to 7 mm (0.2 to 0.3 in) long, and lower lip 4 to 5 mm (0.1 to 0.2 in) long. Fruits are divided into four nutlets about 4 to 5 mm (0.1 to 0.2 in) long. This species is distinguished from others in this genus by its silky hairs, lack of a main stalk to the flower clusters, and calyx teeth that are narrow and sharply pointed (Sherff 1935, Wagner *et al.* 1990).

Historically, *Phyllostegia velutina* occurred on the island of Hawaii on the southern slopes of Hualalai and the eastern, western, and southern slopes of Mauna Loa (Clarke *et al.* 1983, HHP 1991f1 to 1991f4, Sherff 1935, Wagner *et al.* 1990). Three extant populations are known to occur at Puu Waawaa on a State-owned wildlife sanctuary, in Honuaula Forest Reserve on State-owned land, and at Kulani/Keauhou on a State-owned correctional facility and

adjacent privately owned land (Clarke *et al.* 1983; HHP 1991f1; HPCC 1990b, 1991f, 1992b; S. Bergfeld, *in litt.*, 1995; M. Brueggmann, *in litt.*, 1994; Jon Giffin, DOFAW, pers. comm., 1994). Approximately 30 to 55 plants are known from these three populations (HHP 1991f1; HPCC 1990b, 1991f, 1992b; S. Bergfeld, *in litt.*, 1995; M. Brueggmann, *in litt.*, 1994). A fourth population has been reported from the general area of Waiea Tract in South Kona, but the exact location and current status of this population are unknown (HHP 1991f2).

Phyllostegia velutina typically grows in 'ohi'a- and koa-dominated Montane Mesic and Wet Forests at elevations between 1,490 and 1,800 m (4,900 and 6,000 ft). Associated taxa include hapu'us, *Cheirodendron trigynum* ('olapa), 'ohelo, pilo, *Dryopteris wallichiana*, akala, mamaki, ho'i'o, *Myrsine* sp. (kolea), and *Ilex anomala* (kawa'u) (Clarke *et al.* 1983; HHP 1991f1; HPCC 1990b, 1991f, 1992b; Wagner *et al.* 1990).

Threats to *Phyllostegia velutina* are habitat damage by cattle, feral pigs and sheep; prison facility expansion, road clearing, and logging; competition from alien plants, such as kikuyu grass, *Rubus ellipticus* (yellow Himalayan raspberry), Vasey grass, and fountain grass; fire; habitat change due to volcanic activity; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing populations and individuals (HHP 1991f1; HPCC 1990b, 1991f, 1992b; M. Brueggmann, *in litt.*, 1994).

Phyllostegia ambigua var. *longipes* was first collected by J.M. Lydgate and named by Hillebrand (1888). The type locality was suggested to be "probably East Maui" (Hillebrand 1888), but this is assumed to be in error since Rock's field notes indicate that he and Lydgate were in the Kohala Mountains at the time of that collection (Cuddihy 1982, Wagner *et al.* 1990). E.E. Sherff did not consider *Phyllostegia ambigua* different from *Phyllostegia brevidens*, and created the combination *Phyllostegia brevidens* var. *longipes* (Sherff 1935). Based on newly collected material, St. John considered this variety sufficiently different to warrant designation as the species *Phyllostegia warshaueri* (St. John 1987b). The current treatment has maintained this species (Wagner *et al.* 1990).

Phyllostegia warshaueri, of the mint family, is either a sprawling or climbing vine with end branches turning up, covered with upward-pointing fine, short hairs on the square stems which are about 1 to 3 m (3.3 to 10 ft) long.

The opposite, nearly hairless, toothed leaves are 9.5 to 20 cm (3.7 to 7.9 in) long and 2 to 6.6 cm (0.8 to 2.6 in) wide. Six to 14 flowers are borne in an unbranched inflorescence up to 20 cm (7.9 in) long with a main stalk 25 to 40 mm (1.0 to 1.6 in) long and conspicuous leaflike bracts. The green, hairless, cone-shaped calyx is 6 to 8 mm (0.2 to 0.3 in) long and has triangular lobes. The corolla is white with a dark rose upper lip, sparsely hairy, and has a tube about 18 to 20 mm (0.7 to 0.8 in) long, upper lip about 6 mm (0.2 in) long, and lower lip 12 to 15 mm (0.5 to 0.6) long. Fruits are divided into four nutlets about 6 to 7 mm (0.2 to 0.3 in) long. This species is distinguished from others in this genus by its long main stalk to the flower clusters, toothed leaves, and the distribution of hairs (Sherff 1935, Wagner *et al.* 1990).

Historically, *Phyllostegia warshaueri* was found only on the island of Hawaii, in the Hamakua region on the northern slopes of Mauna Kea and in the Kohala Mountains (Clarke *et al.* 1981; Cuddihy *et al.* 1982; HHP 1991g1 to 1991g3, 1993e). The only known individuals occur in two populations in the Kohala Mountains near the Hamakua Ditch Trail in the Kohala Mountains, on privately owned land (HPCC 1992c; M. Brueggmann, *in litt.*, 1994; D. Ragone and K. Wood, *in litt.*, 1995). The total number of individuals is 5 to 10 (D. Ragone and K. Wood, *in litt.*, 1995). This species grows in 'ohi'a and hapu'u Montane Wet Forest in which koa or olapa may codominate, at elevations between 730 and 1,150 m (2,400 and 3,770 ft) (Clarke *et al.* 1981; Cuddihy *et al.* 1982; HHP 1991g1, 1991g2; HPCC 1992c; Wagner *et al.* 1990). Associated taxa include *Sadleria* sp. ('amau), hapu'us, *Broussaisia arguta* (kanawao), mamaki, *Dubautia plantaginea* (na'ena'e), 'oha wai, ho'i'o, *Machaerina angustifolia* ('uki'uki), *Cyanea pilosa* (haha), and other species of *Cyanea* (HPCC 1992c).

The major threats to *Phyllostegia warshaueri* are habitat destruction by pigs; competition from alien plant taxa, like thimbleberry, strawberry guava, *Setaria palmifolia* (palmgrass), *Juncus planifolius*, and *Tibouchina herbacea* (glorybush); ditch improvements and road clearing; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals in the one remaining population (HPCC 1992c; M. Brueggmann, *in litt.*, 1994).

Otto and Isabelle Degener named *Pleomele hawaiiensis* from a specimen collected in 1977, which was first validly published in 1980 (Degener and Degener 1980). Some experts considered

this genus to be part of the larger genus *Dracaena*, but this combination is no longer used. St. John (1985) distinguished two separate species, *Pleomele haupukehuensis* and *P. konaensis*, which the current treatment includes in *Pleomele hawaiiensis* (Wagner *et al.* 1990).

Pleomele hawaiiensis, of the agave family (Agavaceae), is a branching tree, 5 to 6 m (16 to 20 ft) tall, with leaves spirally clustered at the tips of branches and leaving large brown leaf scars as they fall off. The leaves measure 23 to 38 cm (9 to 15 in) long and 1.4 to 2.7 cm (0.6 to 1 in) wide. Flowers are numerous in terminal clusters with a main stalk 6 to 13 cm (2 to 5 in) long and individual flower stalks 5 to 12 mm (0.2 to 0.5 in) long. The three sepals and three petals of the flower are similar and pale yellow, 33 to 43 mm (1.3 to 1.7 in) long, with a constricted base. The fruit is a red berry about 10 to 13 mm (0.4 to 0.5 in) long. This species differs from other Hawaiian species in this genus by its pale yellow flowers, the size of the flowers, the length of the constricted base of the flower, and the width of the leaves (Degener and Degener 1930, St. John 1985, Wagner *et al.* 1990).

Historically, *Pleomele hawaiiensis* was found only on the island of Hawaii ranging from Hualalai to Kau (Degener and Degener 1980; HHP 1991h1 to 1991h8, 1993f1 to 1993f4; HPCC 1991g, 1992d, 1993b; St. John 1985; Tunison *et al.* 1991; Wagner *et al.* 1990). Six to eight populations are currently known—one to three in the Puu Waawaa region of Hualalai on State-leased and private land; two in the Kaloko/Kaloao area on private land; two in the Kapua/Kahuku area on private land; and one on Holei Pali within HVNP. These populations total 300 to 400 individuals (Char 1987; HHP 1991h1, 1991h2, 1991h4, 1991h5, 1993f3, 1993f4; HPCC 1991g, 1992d, 1993b; Nagata 1984; Nishida 1993; Tunison *et al.* 1991; M. Brueggmann, *in litt.*, 1994, 1996; W. Char, *in litt.*, 1995; Samuel Gon III, HHP, *in litt.*, 1992; J. Lau, *in litt.*, 1990 and 1993; L. Pratt, *in litt.*, 1994; W. Char, pers. comm., 1994; Clyde Imada, Bishop Museum, pers. comm., 1994). The only populations that are successfully reproducing are at Kaloko and Holei Pali (M. Brueggmann, *in litt.*, 1994). An additional population may exist along the western boundary of HVNP, but it has not been revisited recently (L. Pratt, *in litt.*, 1995).

Pleomele hawaiiensis typically grows on open aa lava in diverse Lowland Dry Forests at elevations between 300 and 800 m (1,000 and 2,700 ft) (HHP 1991h1, 1991h2, 1991h4, 1991h5, 1993f3, 1993f4; HPCC 1991g, 1992d, 1993b; Wagner *et al.* 1990; S. Gon, *in*

litt., 1992; J. Lau, *in litts.*, 1990 and 1993). Associated taxa include 'ohi'a, lama, mamane, *Sydrax odoratum* (alaha'e), huehue, naio, olopuu, *Nototrichium sandwicense* (kulu'i), *Sida fallax* ('ilima), *Erythrina sandwicensis* (wiliwili), *Santalum* sp. ('iliahi), *Osteomeles anthyllidifolia* ('ulei), and fountain grass as a dominant ground cover, as well as four federally endangered species (*Caesalpinia kavaiensis* (uhiuhi), *Colubrina oppositifolia* (kauila), *Nothoecstrum breviflorum* (ai'ae)), and *Neraudia ovata*, and other species of concern, including *Capparis sandwichiana* (pua pilo) and *Bidens micrantha* ssp. *ctenophylla* (ko'oko'olau) (Char 1987; HHP 1991h2, 1991h4 to 1991h6; HPCC 1991g, 1992d, 1993b; M. Bruegmann, *in litt.*, 1994; S. Gon, *in litt.*, 1992; J. Lau, *in litts.*, 1990 and 1993).

The major threats to *Pleomele hawaiiensis* are habitat conversion associated with residential and recreational development; habitat destruction by cattle, pigs, sheep, and goats; fire (which destroyed a large portion of one Puu Waawaa population in 1986); competition from alien plant taxa, like fountain grass, koa haole, Christmas berry, and lantana; habitat change due to volcanic activity; and the lack of reproduction in all but two populations (Char 1987; HHP 1991h2, 1991h4, 1991h5; HPCC 1991g, 1992d, 1993b; Nagata 1984; M. Bruegmann, *in litt.*, 1994; J. Lau, *in litt.*, 1990; C. Imada, pers. comm., 1994).

Donald Hodel (1985) described *Pritchardia schattaueri* based on a specimen collected from plants discovered by George Schattauer in 1957 (M. Bruegmann, *in litt.*, 1994).

Pritchardia schattaueri, of the palm family (Arecaceae), is a large palm 30 to 40 m (100 to 130 ft) tall with a gray, longitudinally grooved trunk 30 cm (12 in) in diameter. Leaves form a spherical crown and are sometimes persistent after death. Leaves are fan-shaped, glossy green with small brown scales on the lower surface, up to 3.6 m (11.8 ft) long and 1.7 m (5.6 ft) wide. Flowers are on two- to four-branched inflorescences with a main stalk 1.2 to 1.75 m (3.9 to 5.7 ft) long and individual branches 1 to 1.4 m (3.2 to 4.6 ft) long. The five bracts are lance-shaped, the lowest one 60 cm (2 ft) long, and the uppermost one 20 to 30 cm (9 to 12 in) long. The calyx is green, shading to yellow-green at the tip, three-toothed, 6 mm (0.2 in) long, and 4 mm (0.1 in) wide. Fruits are round or pear-shaped, black with brown spots when mature, 3 to 5 cm (1.2 to 2 in) long, and 3 to 4 cm (1.2 to 1.6 in) wide. This species differs from its closest relative, *Pritchardia beccariana*,

by its slender inflorescence branches, more deeply divided leaves, and pendulous rather than stiff tips of the leaf blade segments (Hodel 1985, Read and Hodel 1990).

Pritchardia schattaueri is known from 12 individuals in three locations in South Kona on the island of Hawaii, on privately owned land. Ten individuals are known from a forest partially cleared for pasture in Hoomau. Two other individuals are found singly at the edge of a macadamia nut farm and in an area owned by a development company. Ten seedlings have been planted near the macadamia farm individual (HHP 1991i1 to 1991i3; HPCC 1992e1, 1992e2; Hodel 1980, 1985; M. Bruegmann, *in litt.*, 1994; Donald Hodel, University of California, Los Angeles, *in litt.*, 1995).

Pritchardia schattaueri grows in 'ohi'a-dominated Lowland Mesic Forest, at elevations between 600 and 800 m (1,970 to 2,600 ft) (HHP 1991i1 to 1991i3; HPCC 1992e1, 1992e2; Hodel 1985; Read and Hodel 1990). Associated taxa include 'ohi'a, olopuu, papala, hapu'us, kolea, and *Pittosporum* sp. (ho'awa) (HHP 1991i2; HPCC 1992e1; M. Bruegmann, *in litt.*, 1994).

The major threats to *Pritchardia schattaueri* are grazing and trampling by cattle and feral pigs; competition from alien plant taxa, like strawberry guava, common guava, kikuyu grass, Christmas berry, and thimbleberry; seed predation by rats; residential and commercial development; habitat change due to volcanic activity; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing populations and individuals and the lack of successful regeneration (HHP 1991i1 to 1991i3; HPCC 1992e1, 1992e2; Hodel 1980, 1985; M. Bruegmann, *in litt.*, 1994). Lethal yellowing is a disease particular to palms that represents a potential threat if the disease ever reaches Hawaii.

First collected by the U.S. Exploring Expedition of 1840 and 1841, and considered a new but unnamed variety of *Sicyos cucumerinus* by Gray in 1854, *Sarx alba* was named by St. John in 1978, creating *Sarx* as a new genus (St. John 1978, Telford 1990). Ian Telford returned this entity to the genus *Sicyos*, maintaining the species as *Sicyos alba* (Telford 1989).

Sicyos alba, of the gourd family (Cucurbitaceae), is an annual vine up to 20 m (65 ft) long, minutely hairy, and black-spotted. Leaves are pale, broadly heart-shaped, shallowly to deeply three- to five-lobed, 7 to 11 cm (2.8 to 4.3 in) long, and 9 to 12 cm (3.5 to 4.7 in) wide. Male and female flowers are borne in separate flower clusters on the same

plant. Male flower clusters have main stalks 2.5 to 3.7 cm (1 to 1.5 in) long and individual flower stalks 2 to 4 mm (0.08 to 0.1 in) long. The male flowers are white, five-lobed, dotted with glands, and 2 to 2.5 mm (0.08 to 0.09 in) long. The female flower clusters have two to eight flowers, a main stalk 1 to 3.5 cm (0.4 to 1.4 in) long, and no stalks on the individual flowers. The flowers are white and four-lobed, with the lobes 1.7 to 2 mm (0.07 to 0.08 in) long. The fruit is white, fleshy, oblong, 29 to 32 mm (1.1 to 1.3 in) long, and 10 to 11 mm (about 0.4 in) wide. This species can be distinguished from its nearest relative, *Sicyos cucumerinus*, by its white fruit without bristles and ten or fewer female flowers per cluster (St. John 1978, Telford 1990).

Historically, *Sicyos alba* was found only on the island of Hawaii, from Mauna Kea, Kilauea, and the Puu Makaala area (HHP 1991j1 to 1991j4, St. John 1978). Today, the two known populations are restricted to Puu Makaala NAR and Olaa Forest Reserve, both on State-owned land in the Puna District (HHP 1991j1; HPCC 1991h, 1993c). The number of individuals fluctuates from year to year because this species is an annual. At last report, only one individual was growing at Puu Makaala NAR, but about 20 individuals are known from the Olaa population (HPCC 1993c; M. Bruegmann, *in litt.*, 1994; Steve Perlman, NTB, pers. comm., 1994). A *Sicyos* collected in HVNP's Olaa Tract may also be this species, but the identification is unconfirmed at this time (L. Pratt, *in litt.*, 1995).

Sicyos alba typically grows in 'ohi'a- and hapu'u-dominated Montane Wet Forests, at elevations between 975 and 1,130 m (3,200 to 3,720 ft) (HHP 1991j1; HPCC 1991h, 1993c; Telford 1990). Associated taxa include hapu'u, kawa'u, kanawao, ha'iwale, *Stenogyne* sp., kopiko, *Perrottetia sandwicensis* (olomea), olapa, ho'i'o, and *Cyanea tritomantha* (haha) (HHP 1991j1; HPCC 1991h, 1993c; M. Bruegmann, *in litt.*, 1994).

The major threats to *Sicyos alba* are habitat damage by feral pigs; trail clearing; competition from alien plant taxa, like banana poka, palmgrass, strawberry guava, and yellow Himalayan raspberry; habitat change due to volcanic activity; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals (HHP 1991j1; HPCC 1991h, 1993c).

Horace Mann described *Zanthoxylum dipetalum* in 1867, and Rock named a new variety *Zanthoxylum dipetalum*

var. *tomentosum*, based on a specimen he collected at Puu Waawaa on Hualalai, on the island of Hawaii, in 1909 (Rock 1913). The specific epithet refers to the dense covering of soft hairs on the undersurface of the leaflets.

Some authors have placed Hawaiian taxa in the genus *Fagara*, resulting in *F. dipetala* var. *tomentosa* (Stone *et al.* 1990). However, *Zanthoxylum dipetalum* var. *tomentosum* is maintained in the current treatment of the Hawaiian species (Stone *et al.* 1990).

Zanthoxylum dipetalum var. *tomentosum*, of the citrus family, is a thornless tree 4 to 15 m (13 to 49 ft) tall with a trunk up to 30 cm (12 in) in diameter. It has alternate leaves comprised of three to seven leathery, elliptical, gland-dotted, smooth-edged leaflets usually 6 to 36 cm (2.4 to 12 in) long and 2.5 to 13.5 cm (1 to 5.3 in) wide. The undersurface of the leaflets is densely covered with fine, short hairs, and the lowest pair of leaflets is often strongly reduced. The stalks of the side leaflets have one joint each, and the stalk of the terminal leaflet has two joints. Flowers are usually either male or female, and usually only one sex is found on a single tree. Clusters of 5 to 15 flowers, 9 to 18 mm (0.4 to 0.7 in) long, have a main flower stalk 10 to 40 mm (0.4 to 1.6 in) long and individual flower stalks 3 to 8 mm (0.1 to 0.3 in) long. Each flower has four broadly triangular sepals about 1 to 1.5 mm (0.04 to 0.06 in) long and two or four yellowish white petals, sometimes tinged with red, 6 to 10 mm (0.2 to 0.4 in) long. The fruit is an oval follicle (dry fruit that opens along one side) 15 to 33 mm (0.6 to 1.3 in) long, containing one black seed about 10 to 26 mm (0.4 to 1 in) long. This variety is distinguished from *Zanthoxylum dipetalum* var. *dipetalum* by the hairs on the undersurface of the leaflets. It is distinguished from other Hawaiian species of the genus by its reduced lower leaflets, the presence of only one joint on some of the leaflet stalks, and the large seeds (Rock 1913, Stone *et al.* 1990).

Only one population of *Zanthoxylum dipetalum* var. *tomentosum* has ever been known, located at Puu Waawaa on Hualalai, on the island of Hawaii (HHP 1993g, Rock 1913, Stone *et al.* 1990). Approximately 24 individuals are now known, scattered through the area (HHP 1993g; HPCC 1991i, 1993d; M. Bruegmann, *in litt.*, 1994; J. Giffin, *in litt.*, 1992; J. Lau, *in litt.*, 1992).

Zanthoxylum dipetalum var. *tomentosum* grows in degraded 'ohi'a-dominated Montane Mesic Forest, often on aa lava, at elevations between 915 and 1,040 m (3,000 and 3,400 ft) (M.

Bruegmann, *in litt.*, 1994). Associated species include mamane, lama, 'ala'a, 'ilihi, 'ohe, kolea, and kopiko (HHP 1993g; HPCC 1993d).

Threats to *Zanthoxylum dipetalum* var. *tomentosum* include browsing, trampling, and habitat disturbance by cattle, feral pigs, and sheep; competition from alien plant species, such as kikuyu grass, fountain grass, lantana, koa haole, and *Grevillea robusta* (silk oak); habitat change due to volcanic activity; and fire (HHP 1993g; HPCC 1993d; M. Bruegmann, *in litt.*, 1994; J. Lau, *in litt.*, 1992). In addition, the species is threatened by a risk of extinction from naturally occurring events and/or reduced reproductive vigor due to the small number of existing individuals in only one population.

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, *Clermontia drepanomorpha*, *Cyanea platyphylla* (as *C. bryanii*), *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Melicope zahlbruckneri* (as *Pelea zahlbruckneri*), and *Neraudia ovata* were considered to be endangered. *Zanthoxylum dipetalum* var. *tomentosum* was considered to be threatened. 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 giving notice of its intention to review the status of the plant species 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 species, including all of the above species considered to be endangered. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, Federal Register publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 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), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). All of the taxa in this final rule (including synonymous taxa) have at one time or another been considered either category 1 or category 2 candidates for Federal listing. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals but for which listing proposals have not been published because they were precluded by other listing activities. Category 2 species were those for which listing as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats was not currently available to support proposed rules. *Hibiscadelphus giffardianus* and *Hibiscadelphus hualalaiensis* were considered category 1 candidates on all five notices of review; *Clermontia drepanomorpha*, *Neraudia ovata*, and *Pleomele hawaiiensis* (including the synonym *Dracaena hawaiiensis*) were considered category 1 species in the 1980, 1983, and 1985 notices and category 2 species in the 1990 and 1993 notices. *Cyanea platyphylla* (as *Cyanea bryanii* and *Cyanea fernaldii*) was considered a category 1 species in the 1980, 1983, and 1985 notices, but was removed from consideration as a candidate in 1990 when *C. bryanii* and *C. fernaldii* were synonymized. The resulting taxon, *Cyanea platyphylla*, was thought to be more common than previous records indicated. Current information indicates that removing this taxon from consideration for listing was inappropriate. *Melicope zahlbruckneri* appeared as a category 1 candidate in the 1985 notice (as *Pelea zahlbruckneri*). This taxon was transferred into the genus *Melicope* and its status was changed to category 2 in the 1990 notice. *Pritchardia schattaueri* was considered a category 2 species in the 1985, 1990, and 1993 notices. *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Sicyos alba*, and *Zanthoxylum dipetalum* var. *tomentosum* all first appeared in the 1990 notice, and again

in 1993, as category 2 species. Designation of Category 2 species was discontinued in the February 28, 1996, notice (61 FR 7596).

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions that present substantial information indicating the petitioned action may be warranted within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the Service to consider the petition as having been resubmitted, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, and 1993. The proposed rule published on September 25, 1995 (60 FR 49377) to list these 13 plant taxa as endangered species constituted the final 12-month finding for these species.

Based on comments received in response to the proposal (see Comments

and Recommendations below), the Service now determines *Clermontia drepanomorpha*, *Cyanea platyphylla*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Pleomele hawaiiensis*, *Pritchardia schattaueri*, *Sicyos alba*, and *Zanthoxylum dipetalum* var. *tomentosum* to be endangered.

Summary of Comments and Recommendations

In the September 25, 1995, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The public comment period ended on November 24, 1995. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the "Honolulu Advertiser", the "Kauai Times", and the "Hawaii Herald Tribune" on October 18, 1995.

Comments were received from nine parties. Five parties supported the listing of these 13 plant species as

endangered species and three only included an acknowledgement of receiving a copy of the proposed rule. Four of the comments included additional information on the numbers of individuals and populations for some of the 13 plant species. This information has been incorporated into this final rule.

The Service also solicited the expert opinions of four appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and biological and ecological information for these 13 species. Two responses from the specialists were received, and their comments on the numbers of individuals and populations of six species were incorporated into this final rule.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the criteria for adding species to the Federal lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). The threats facing these 13 taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Alien mammals					Disease/insects	Alien plants	Fire	Natural disasters	Human impacts	Limited numbers*
	Cattle	Pigs	Rats	Sheep	Goats						
<i>Clermontia drepanomorpha</i>		X	X				X		P	X	X1
<i>Cyanea platyphylla</i>		P	P				X		X	X	X1,3
<i>Hibiscadelphus giffardianus</i>			X			X	X	X	X		X1,3,4
<i>Hibiscadelphus hualalaiensis</i>	P	P	X	P			X	X	X	X	X1,3,4
<i>Melicope zahlbruckneri</i>			P			X	X		X		X1,3
<i>Neraudia ovata</i>				X	X	X	X		X	X	X1,3
<i>Phyllostegia racemosa</i>	X	X					X		X	X	X1,3
<i>Phyllostegia velutina</i>	X	X		X			X	X	X	X	X1,3
<i>Phyllostegia warshaueri</i>		X					X			X	X1,2
<i>Pleomele hawaiiensis</i>	X	X		X	X		X	X	X	X	
<i>Pritchardia schattaueri</i>	X	X	X			P	X		X	X	X1,3
<i>Sicyos alba</i>		X					X		X	X	X1,2
<i>Zanthoxylum dipetalum</i> var. <i>tomentosum</i> .	X	X		X			X	X	X	X	X1,3

KEY: X = Immediate and significant threat. P = Potential threat. * = No more than 100 known individuals and/or no more than 5 known populations. 1 = No more than 5 known populations. 2 = No more than 10 known individuals. 3 = No more than 100 known individuals. 4 = All original wild populations extinct; planted individuals only.

These factors and their application to *Clermontia drepanomorpha* Rock ('oha wai), *Cyanea platyphylla* (A. Gray) Hillbr. (haha), *Hibiscadelphus giffardianus* Rock (hau kuahiwi), *Hibiscadelphus hualalaiensis* Rock (hau kuahiwi), *Melicope zahlbruckneri* Rock (alani), *Neraudia ovata* Gaud. (no common name (NCN)), *Phyllostegia*

racemosa Benth. (kiponapona), *Phyllostegia velutina* (Sherff) St. John (NCN), *Phyllostegia warshaueri* St. John (NCN), *Pleomele hawaiiensis* Degener and I. Degener (hala pepe), *Pritchardia schattaueri* Hodel (loulu), *Sicyos alba* (St. John) Telford ('anunu), and *Zanthoxylum dipetalum* var. *tomentosum* Rock (a'e) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitats of the plants included in this final rule have undergone extreme alteration because of past and present land management practices, including deliberate alien animal and plant introductions; agricultural, commercial,

and urban development; and recreational use. Natural disturbances such as volcanic activity also destroy habitat and can have a significant effect on small populations of plants. Competition with alien plants as well as destruction of plants and modification of habitat by introduced animals are the primary threats facing all of taxa in this final rule (See Table 1.).

Beginning with Captain James Cook in 1792, early European explorers introduced livestock, which became feral, increased in number and range, and caused significant changes to the natural environment of Hawaii. The 1848 provision for land sales to individuals allowed large-scale agricultural and ranching ventures to begin. So much land was cleared for these enterprises that climatic conditions began to change, and the amount and distribution of rainfall were altered (Wenkam 1969). Plantation owners supported reforestation programs which resulted in many alien trees being introduced in the hope that watersheds could be conserved.

Past and present activities of introduced alien mammals are the primary factors in altering and degrading vegetation and habitats on the island of Hawaii where populations of the 13 species occur. Feral ungulates trample and eat native vegetation and disturb and open areas. This causes erosion and allows the entry of alien plant taxa (Cuddihy and Stone 1990, Wagner *et al.* 1990). Eleven taxa in this proposal are directly threatened by habitat degradation resulting from introduced ungulates: six taxa are threatened by cattle, two taxa by goats, ten by pigs, and five by sheep.

Cattle (*Bos taurus*), the wild progenitor of which was native to Europe, northern Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. Large feral herds developed as a result of restrictions on killing cattle decreed by King Kamehameha I. While small cattle ranches were developed on Kauai, Oahu, and West Maui, very large ranches of tens of thousands of acres were created on East Maui and Hawaii. Much of the land used in these private enterprises was leased from the State or was privately owned and considered Forest Reserve and/or Conservation District land. Feral cattle can presently be found on the island of Hawaii, and ranching is still a major commercial activity there. Hunting of feral cattle is no longer allowed in Hawaii (Hawaii Department of Land and Natural Resources (DLNR) 1985). Cattle eat native vegetation, trample roots and seedlings, cause erosion, create

disturbed areas into which alien plants invade, and spread seeds of alien plants in their feces and on their bodies. The forest in areas grazed by cattle becomes degraded to grassland pasture, and plant cover is reduced for many years following removal of cattle from an area. Several alien grasses and legumes purposely introduced for cattle forage have become noxious weeds (Cuddihy and Stone 1990, Tomich 1986).

The habitats of many of these 13 plants were degraded in the past by feral cattle, and this has had effects which still persist. Some taxa in this final rule that are still directly affected by cattle include: *Phyllostegia racemosa*, *Phyllostegia velutina*, *Pleomele hawaiiensis*, *Pritchardia schattaueri*, and *Zanthoxylum dipetalum* var. *tomentosum*. The *Hibiscadelphus hualalaiensis* site is currently fenced to exclude cattle and pigs, but these alien mammals constitute a potential threat to this taxon if the fencing is not monitored and maintained (HHP 1991i2, 1993g; HPCC 1991e, 1991i, 1992d, 1992e1, 1993b, 1993d; Hodel 1980, 1985; Pratt and Cuddihy 1990; M. Bruegmann, *in litt.*, 1994; J. Jeffrey, pers. comm., 1994).

Pigs (*Sus scrofa*) are originally native to Europe, northern Africa, Asia Minor, and Asia. European pigs, introduced to Hawaii by Captain James Cook in 1778, became feral and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. They are currently present on Kauai, Oahu, Molokai, Maui, and Hawaii and inhabit rain forests and grasslands. Pig hunting is allowed on all islands either year-round or during certain months, depending on the area (Hawaii DLNR n.d., 1985). While rooting in the ground in search of the invertebrates and plant material they eat, feral pigs disturb and destroy vegetative cover, trample plants and seedlings, and threaten forest regeneration by damaging seeds and seedlings. They disturb soil substrates and cause erosion, especially on slopes. Alien plant seeds are dispersed in their hooves and coats as well as through their digestive tracts, and the disturbed soil is fertilized by their feces, helping establish these plants (Cuddihy and Stone 1990, Smith 1985, Stone 1985, Tomich 1986, Wagner *et al.* 1990). Feral pigs pose an immediate threat to one or more populations of the following taxa: *Clermontia drepanomorpha*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Pleomele hawaiiensis*, *Pritchardia schattaueri*, *Sicyos alba*, and *Zanthoxylum dipetalum* var. *tomentosum*. The *Cyanea platyphylla* population is currently fenced to

exclude pigs and the *Hibiscadelphus hualalaiensis* site to exclude pigs and cattle, but these alien mammals still pose a potential threat to these taxa if fencing is not monitored and maintained (Clarke *et al.* 1983; HHP 1991e1, 1991e4, 1991j1; HPCC 1990b, 1991a, 1991f, 1991h, 1992a to 1992d, 1993a, 1993c; Pratt and Cuddihy 1990; M. Bruegmann, *in litt.*, 1994; J. Jeffrey and L. Pratt, pers. comms., 1994).

Goats (*Capra hircus*), originally native to the Middle East and India, were successfully introduced to the Hawaiian Islands in 1792, and currently there are populations on Kauai, Oahu, Molokai, Maui, and Hawaii. On Hawaii, goats damage low-elevation dry forest, montane parkland, subalpine woodlands, and alpine grasslands. Goats are managed in Hawaii as a game animal, but many herds populate inaccessible areas where hunting has little effect on their numbers. Goat hunting is allowed year-round or during certain months, depending on the area (Hawaii DLNR n.d., 1985). Goats browse on introduced grasses and native plants, especially in drier and more open ecosystems. They also trample roots and seedlings, cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Cuddihy and Stone 1990, Culliney 1988, Tomich 1986). *Neraudia ovata* and *Pleomele hawaiiensis* are currently threatened by goats (Char 1987; HPCC 1993b; M. Bruegmann, *in litt.*, 1996).

Sheep (*Ovis aries*) have become established on the island of Hawaii (Tomich 1986) since their introduction almost 200 years ago (Cuddihy and Stone 1990). Sheep roam the upper elevation dry forests of Hualalai (above 1,000 m (3,300 ft)), causing damage similar to that of goats (Stone 1985). Sheep have decimated vast areas of native forest and shrubland on Mauna Kea and continue to do so as a managed game species. Sheep threaten the habitat of the following plant species in this final rule: *Hibiscadelphus hualalaiensis*, *Neraudia ovata*, *Phyllostegia velutina*, *Pleomele hawaiiensis*, and *Zanthoxylum dipetalum* var. *tomentosum* (Cuddihy and Stone 1990; Stone 1985; M. Bruegmann, *in litt.*, 1994, 1996).

Land development for housing and commercial activities threatens *Neraudia ovata*, *Pleomele hawaiiensis*, and *Pritchardia schattaueri* since individuals of these species grow on private land that may be developed (Char 1987; HHP 1991j1; HPCC 1992e2; Nagata 1984; M. Bruegmann, *in litt.*, 1994). In addition, the populations of

Phyllostegia velutina within the Kulani Correctional Facility are potentially threatened by expansion of the prison facilities (M. Bruegmann, *in litt.*, 1994). *Clermontia drepanomorpha* and *Phyllostegia warshaueri* are threatened by irrigation ditch improvements (HHP 1993a1, HPCC 1993a, HPCC 1992c). *Phyllostegia racemosa* is threatened by logging operations (Pratt and Cuddihy 1990).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants are potential threats to all of the 13 taxa. This is a threat to *Pleomele hawaiiensis* because little regeneration is occurring in the wild. All of the other 12 taxa in this final rule are also threatened by overcollection, since each taxon comprises 1 to 3 populations and 100 or fewer known individuals, or exist only as cultivated individuals. Any collection of whole plants or reproductive parts of any of these species could cause an adverse impact on the gene pool and threaten the survival of the species.

C. *Disease or predation.* Pigs, cattle, goats, or sheep have been reported in areas where populations of most of the 13 taxa occur. Extensive browse damage from goats and/or sheep was observed on all individuals of the newly rediscovered population of *Neraudia ovata* in Pohakuloa Training Area, and numerous seedlings were completely defoliated (M. Bruegmann, *in litt.*, 1996). As the other 12 taxa are not known to be unpalatable to these ungulates, predation is a probable threat where those animals have been reported, potentially affecting the following taxa: *Clermontia drepanomorpha*, *Cyanea platyphylla*, *Hibiscadelphus hualalaiensis*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Pleomele hawaiiensis*, *Pritchardia schattaueri*, *Sicyos alba*, and *Zanthoxylum dipetalum* var. *tomentosum*. The lack of seedling production or survival in two of the taxa (*Pleomele hawaiiensis* and *Pritchardia schattaueri*) and the occurrence of some populations or taxa only in areas inaccessible to ungulates seem to indicate the effect that browsing mammals, especially cattle and goats, have had in restricting the distribution of these plants.

Of the four species of rodents which have been introduced to the Hawaiian Islands, the species with the greatest impact on the native flora and fauna is probably *Rattus rattus* (roof or black

rat), which now occurs on all the main Hawaiian Islands around human habitations, in cultivated fields, and in dry to wet forests. Roof rats, and to a lesser extent *Mus musculus* (house mouse), *R. exulans* (Polynesian rat), and *R. norvegicus* (Norway rat), eat the fruits of some native plants, especially those with large, fleshy fruits. Many native Hawaiian plants produce their fruit over an extended period of time, and this produces a prolonged food supply which supports rodent populations (Cuddihy and Stone 1990). Rats damage fruit of *Pritchardia schattaueri* and fruits, flowers, and bark of *Hibiscadelphus giffardianus* and *Hibiscadelphus hualalaiensis* (Baker and Allen 1978; HPCC 1992e2; M. Bruegmann, *in litt.*, 1994; L. Pratt, pers. comm., 1994). Rats probably feed on the fruits of *Cyanea platyphylla* and *Melicope zahlbruckneri* (M. Bruegmann, *in litt.*, 1994; L. Pratt, pers. comm., 1994). Girdling by rats has been observed for *Clermontia drepanomorpha* (Bruegmann 1990).

Sophonia rufofascia (two-spotted leafhopper) is a recently introduced insect that causes feeding damage on leaves, typically in the form of stippling and yellowing. In addition to mechanical feeding damage, this insect may introduce a plant virus. It is suspected of causing severe dieback of the native fern *Dicranopteris linearis* (uluhe) and economic damage to crops and ornamental plants in Hawaii. The two-spotted leafhopper is a threat to *Hibiscadelphus giffardianus* and *Melicope zahlbruckneri* (M. Bruegmann, *in litt.*, 1994; Adam Asquith, USFWS, pers. comm., 1994).

The native plant bug, *Hyalopeplus pellucidus*, was found feeding and breeding on *Hibiscadelphus giffardianus*. Leaf yellowing is caused by this insect, which has been known to achieve large populations and cause economic damage to some crops (M. Bruegmann, *in litt.*, 1994; A. Asquith, pers. comm., 1994).

Aleurodicus dispersus (spiralling whitefly) was first collected on Oahu in 1978 (Nakahara 1981). Spiralling whitefly is a threat to *Neraudia ovata* (M. Bruegmann, *in litt.*, 1994).

Some species of *Pritchardia* are known to be susceptible to lethal yellowing, which is a bacterium-like organism producing disease in many palms. This disease is not yet reported in Hawaii, but if it were ever accidentally introduced on plant material brought into the State, it would be a potential threat to *Pritchardia schattaueri*. In addition, cultivated *Pritchardia* specimens in areas outside

Hawaii may be affected by the disease (Hull 1980).

D. *The inadequacy of existing regulatory mechanisms.* Seven of the 13 taxa in this final rule have populations located on privately owned land. *Pritchardia schattaueri* is the only plant of the 13 taxa exclusively on private land. The following taxa occur exclusively on State land—*Cyanea platyphylla*, *Hibiscadelphus hualalaiensis*, and *Zanthoxylum dipetalum* var. *tomentosum*. Two of these taxa, *Hibiscadelphus hualalaiensis* and *Zanthoxylum dipetalum* var. *tomentosum*, are found exclusively on State land leased to a private ranch. Four of the taxa (*Clermontia drepanomorpha*, *Cyanea platyphylla*, *Phyllostegia velutina*, and *Sicyos alba*) have one or more populations located in State NARs or a State wildlife sanctuary, which have rules and regulations for the protection of resources (Hawaii DLNR 1981; HRS, sects. 183D-4, 184-5, 195-5, and 195-8). However, most of these areas still support large populations of pigs maintained for sport hunting (M. Bruegmann, *in litt.*, 1994).

One or more populations of 9 of the 13 taxa are located on land classified within conservation districts and owned by the State of Hawaii or private companies or individuals. Regardless of the owner, lands in these districts, among other purposes, are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Activities permitted in conservation districts are chosen by considering how best to make a multiple use of the land (HRS, sect. 205-2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205-4). Before decisions about these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205-4, 205-17) as well as the maintenance of natural resources is required to be taken into account (HRS, sects. 205-2, 205-4). For any proposed land use change which will occur on county or State land, will be funded in part or whole by county or State funds, or will occur within land classified as conservation district, an environmental assessment is required to determine whether or not

the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy, and thus approval of land use, is required by law to safeguard "the State's unique natural environmental characteristics" (HRS, sect. 344-3(1)). However, despite the existence of such State laws and regulations which give protection to Hawaii's native plants, their enforcement is difficult due to limited funding and personnel. Furthermore, State law provides little protection for plants not on state land or in designated conservation districts.

Listing of these 13 plant species will trigger State listing under Hawaii's Endangered Species Act and supplement the protection available under other State laws. The Federal Act will, therefore, offer additional protection to these species. For example, it is a violation of State law to take, possess, or export an endangered plant species (HRS sec. 195D-4(e)). In turn, it would be a violation of the Federal Act for any person to remove, cut, dig up, damage, or destroy any listed plant in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law, the lack of adequate resources to enforce State laws and regulations makes this provision particularly important. In addition, State law contains provisions requiring consideration of endangered plants in certain state and private actions which would be triggered by listing under the Federal ACT. (See Guidelines to "Protect endangered species of individual plants and animals." HRS, sec. 344-4(3) (A)). State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D-5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D-5(c)). Funds for these activities could be made available under section 6 (State Cooperative Agreements) of the Federal Act for these 13 taxa. The Hawaii DLNR is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D-5.1).

Although two species, *Hibiscadelphus giffardianus* and *Melicope*

zahlbruckneri, are restricted to Federal land within HVNP and are actively managed by HVNP, they are still threatened with extinction from naturally occurring events.

Hibiscadelphus giffardianus is known only from the 24 individuals that have been replanted into original habitat by HVNP. *Melicope zahlbruckneri* is known only from one population of 30 to 35 individuals. Both of these species are threatened by the two-spotted leafhopper, an introduced insect that is spreading throughout the Hawaiian Islands, may reach epidemic proportions if not controlled, and for which there is currently no known control.

Two additional species, *Phyllostegia racemosa* and *Pleomele hawaiiensis*, have one population each on Federal land within HVNP. However, the majority of the populations and individuals of these species occur on State or private lands.

One of the two known populations of *Neraudia ovata* occurs within the U.S. Army's Pohakuloa Training Area. The Army is fencing the plants, however, the other population is located on private land.

E. *Other natural or manmade factors affecting its continued existence.* The small numbers of populations and individuals of most of these taxa increase the potential for extinction from naturally occurring events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. This constitutes a major threat to 12 of the 13 taxa (See Table 1.). Two of the 13 taxa, *Melicope zahlbruckneri* and *Zanthoxylum dipetalum* var. *tomentosum*, are known from a single population. Eight other taxa, *Clermontia drepanomorpha*, *Cyanea platyphylla*, *Neraudia ovata*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Pritchardia schattaueri*, and *Sicyos alba*, are known from only two to five populations. Eleven of the 13 taxa are estimated to number no more than 100 known individuals. Two taxa, *Hibiscadelphus giffardianus* and *Hibiscadelphus hualalaiensis*, are extinct in the wild and are known only from cultivated material.

One or more of 21 taxa of introduced plants threaten all 13 of the taxa. The original native flora of Hawaii consisted of about 1,000 species, 89 percent of which were endemic. Of the total native and naturalized Hawaiian flora of 1,817 species, 47 percent were introduced from other parts of the world and nearly

100 species have become pests (Wagner *et al.* 1990). Naturalized, introduced plant taxa compete with native plants for space, light, water, and nutrients (Cuddihy and Stone 1990). Some of these taxa were brought to Hawaii by various groups of people, including the Polynesian immigrants, for food or cultural reasons. Plantation owners, alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral animals, supported the introduction of alien tree species for reforestation. Ranchers intentionally introduced pasture grasses and other species for agriculture, and sometimes they inadvertently introduced weed seeds as well. Other plants were brought to Hawaii for their potential horticultural value (Cuddihy and Stone 1990, Wenkam 1969).

Lantana camara (lantana), brought to Hawaii as an ornamental plant, is an aggressive, thicket-forming shrub which can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Wagner *et al.* 1990). Lantana threatens *Pleomele hawaiiensis* and the only known populations of *Hibiscadelphus hualalaiensis*, *Neraudia ovata* and *Zanthoxylum dipetalum* var. *tomentosum* (HHP 1993c2; HPCC 1992a, 1993b, 1993d; M. Bruegmann, *in litt.*, 1994). *Leucaena leucocephala* (koa haole), a naturalized shrub which is sometimes the dominant species in low elevation, dry, disturbed areas on all of the main Hawaiian islands, threatens *Neraudia ovata*, *Pleomele hawaiiensis*, and *Zanthoxylum dipetalum* var. *tomentosum* (Geesnick *et al.* 1990; HPCC 1993d; Nishida 1993; M. Bruegmann, *in litt.*, 1994).

Passiflora mollissima (banana poka), a woody vine, poses a serious problem to mesic forests on Kauai and Hawaii by covering trees, reducing the amount of light which reaches trees as well as understory, and causing damage and death to trees by the weight of the vines. Animals, especially feral pigs, eat the fruit and distribute the seeds (Cuddihy and Stone 1990, Escobar 1990). Banana poka threatens *Phyllostegia racemosa* and *Sicyos alba* (HPCC 1993c; J. Jeffrey, pers. comm., 1994). *Passiflora ligularis* (sweet granadilla) was first collected in Hawaii in 1909, and has since spread to mesic and wet areas of Kauai, Oahu, Lanai, and Hawaii (Escobar 1990). This taxon threatens one population of *Cyanea platyphylla* (HPCC 1991a). After escaping from cultivation, *Schinus terebinthifolius* (Christmas berry) became naturalized on most of the main Hawaiian Islands and threatens *Pleomele hawaiiensis*, *Pritchardia*

schattaueri and one of only two known populations of *Neraudia ovata* (Nishida 1993; Wagner *et al.* 1990; M. Brueggemann, *in litt.*, 1994). *Juncus planifolius* is a perennial rush which has naturalized in moist, open, disturbed depressions on margins of forests and in bogs on Kauai, Oahu, Molokai, Maui, and Hawaii (Coffey 1990). *Juncus planifolius* is a threat to *Phyllostegia warshaueri* (M. Brueggemann, *in litt.*, 1994).

Psidium cattleianum (strawberry guava), an invasive shrub or small tree native to tropical America, has become naturalized on all of the main Hawaiian islands. Like Christmas berry, strawberry guava is capable of forming dense stands that exclude other plant taxa (Cuddihy and Stone 1990) and is dispersed mainly by feral pigs and fruit-eating birds (Smith 1985). This alien plant grows primarily in mesic and wet habitats and provides food for several alien animal species, including feral pigs and game birds, which disperse the plant's seeds through the forest (Smith 1985, Wagner *et al.* 1985). Strawberry guava is considered one of the greatest alien plant threats to Hawaii's rain forests and is known to pose a direct threat to *Pritchardia schattaueri*, *Sicyos alba*, *Cyanea platyphylla*, and *Phyllostegia warshaueri* (Cuddihy *et al.* 1982; HHP 1991g2; HPCC 1991a, 1992e1; M. Brueggemann, *in litt.*, 1994).

Psidium guajava (common guava) was brought to Hawaii and has become widely naturalized on all the main islands, forming dense stands in disturbed areas. Common guava invades disturbed sites, forming dense thickets in dry as well as mesic and wet forests (Smith 1985, Wagner *et al.* 1990). This species also provides food for several alien animal species, including feral pigs and game birds, which disperse the plant's seeds through the forest (Smith 1985, Wagner *et al.* 1985). Common guava threatens *Pritchardia schattaueri* and *Cyanea platyphylla* (Cuddihy *et al.* 1982; HPCC 1991a6, 1991a9; HPCC 1992e1; M. Brueggemann, *in litt.*, 1994).

A recent introduction to the Hawaiian Islands, *Rubus ellipticus* (yellow Himalayan raspberry) is rapidly becoming a major weed pest in wet forests, pastures, and other open areas on the island of Hawaii. It forms large thorny thickets and displaces native plants. Its ability to invade the understory of wet forests enables it to fill a niche presently unoccupied by any other major wet forest weed in Hawaii (Cuddihy and Stone 1990). This has resulted in an extremely rapid population expansion of this alien plant in recent years. *Phyllostegia velutina* and *Sicyos alba* are threatened by

yellow Himalayan raspberry (HPCC 1990b, 1993c). A related species, *Rubus rosifolius* (thimbleberry), was introduced from Asia in the 1880s to the island of Hawaii and is now found in disturbed mesic and wet forests throughout the Hawaiian Islands. Although it is less aggressive than other alien species of *Rubus*, thimbleberry can become very abundant locally, especially in areas disturbed by pigs (Cuddihy and Stone 1990, Wagner *et al.* 1990). This species is a threat to *Clermontia drepanomorpha*, *Pritchardia schattaueri*, *Cyanea platyphylla*, and *Phyllostegia warshaueri* (Cuddihy *et al.* 1982; HHP 1991g2; HPCC 1991a, 1993a; M. Brueggemann, *in litt.*, 1994).

Grevillea robusta (silk-oak) was extensively planted in Hawaii for timber and is now naturalized on most of the main islands (Smith 1985, Wagner *et al.* 1990). Silk-oak threatens the only known population of *Zanthoxylum dipetalum* var. *tomentosum* (HPCC 1993d). *Tibouchina herbacea* (glorybush) first became established on the island of Hawaii in the late 1970's and, by 1982, was collected in Lanilili on West Maui (Almeda 1990). Although the disruptive potential of this alien plant is not fully known, glorybush appears to be invading mesic and wet forests of Hawaii, and is considered a threat to *Phyllostegia warshaueri* (HPCC 1992c).

Several hundred species of grasses have been introduced to the Hawaiian Islands, many for animal forage. Of the approximately 100 grass species which have become naturalized, 8 species threaten 11 of the 13 taxa in this final rule. *Anthoxanthum odoratum* (sweet vernalgrass) is a perennial, tufted grass which has naturalized in pastures, disturbed areas in wet forest, and sometimes in subalpine shrubland on Molokai, Maui, and Hawaii and is a threat to *Phyllostegia racemosa* (O'Connor 1990; J. Jeffrey, pers. comm. 1994). The perennial grass *Paspalum conjugatum* (Hilo grass), naturalized in moist to wet disturbed areas on most Hawaiian Islands, produces a dense ground cover, even on poor soil, and threatens the only known populations of *Hibiscadelphus giffardianus* and *Melicope zahlbruckneri* (Cuddihy and Stone 1990; O'Connor 1990; Smith 1985; L. Pratt, pers. comm., 1994). A related species, *Paspalum dilatatum* (Dallis grass) has become naturalized and common in wet to dry grassland, fields, and roadsides on most Hawaiian Islands, and also threatens *Hibiscadelphus giffardianus* and *Melicope zahlbruckneri* (O'Connor 1990; L. Pratt, pers. comm., 1994). *Ehrharta stipoides* (meadow ricegrass) is

naturalized in openings in wet forest and other moist, shaded sites on Oahu, Maui, and Hawaii (O'Connor 1990). Meadow ricegrass is the third grass species to threaten *Hibiscadelphus giffardianus* and *Melicope zahlbruckneri*. All three of these grass species prevent seedling establishment of the two species (L. Pratt, pers. comm., 1994).

Pennisetum clandestinum (kikuyu grass), an aggressive perennial grass introduced to Hawaii as a pasture grass, withstands trampling and grazing and has naturalized on four Hawaiian Islands in dry to mesic forest. It produces thick mats which choke out other plants and prevent their seedlings from establishing and has been declared a noxious weed by the U.S. Department of Agriculture (7 CFR 360) (O'Connor 1990, Smith 1985). Kikuyu grass is a threat to *Phyllostegia racemosa*, *Phyllostegia velutina*, *Pritchardia schattaueri*, and the only known populations of *Hibiscadelphus hualalaiensis* and *Zanthoxylum dipetalum* var. *tomentosum* (HHP 1992b, 1993c2, 1993g; HPCC 1992a; M. Brueggemann, *in litt.*, 1994; L. Lau, *in litt.*, 1990; J. Jeffrey, pers. comm., 1994).

Pennisetum setaceum (fountain grass) is a fire-adapted bunch grass that has spread rapidly over bare lava flows and open areas on the island of Hawaii since its introduction in the early 1900s. Fountain grass is particularly detrimental to Hawaii's dry forests because it is able to invade areas once dominated by native plants, where it interferes with plant regeneration, carries fires into areas not usually prone to fires, and increases the likelihood of fires (Cuddihy and Stone 1990, O'Connor 1990, Smith 1985). Fountain grass threatens *Neraudia ovata*, *Phyllostegia velutina*, *Pleomele hawaiiensis*, and the only known population of *Zanthoxylum dipetalum* var. *tomentosum* (HHP 1991h5, 1993g; HPCC 1990a, 1991c, 1993b; Nishida 1993; M. Brueggemann, *in litt.*, 1994; J. Lau, *in litt.*, 1990; C. Imada, pers. comm., 1994).

Setaria palmifolia (palmgrass), native to tropical Asia, has become naturalized in mesic valleys, wet forests, and along streams on Oahu, Lanai, Maui, and Hawaii. First collected in 1903, major infestations can now be found in the Olaa area and the windward side of the island of Hawaii (Cuddihy and Stone 1990, O'Connor 1990). Palmgrass is a threat to *Sicyos alba* and *Phyllostegia warshaueri* (HPCC 1993c; M. Brueggemann, *in litt.*, 1994). *Paspalum urvillei* (Vasey grass) is widespread in disturbed areas on the islands of Maui and Hawaii. It has invaded some rain

forests and montane mesic communities, and is a threat to *Phyllostegia racemosa* and *Phyllostegia velutina* (Cuddihy and Stone 1990; HPCC 1992b; O'Connor 1990; J. Jeffrey, pers. comm., 1994).

Because Hawaiian plants were subjected to fire during their evolution only in areas of volcanic activity and from occasional lightning strikes, they are not adapted to recurring fire regimes and do not quickly recover following a fire. Alien plants are often better adapted to fire than native plant species, and some fire-adapted grasses have become widespread in Hawaii. Native shrubland and dry forest can thus be converted to land dominated by alien grasses. The presence of such species in Hawaiian ecosystems greatly increases the intensity, extent, and frequency of fire, especially during drier months or drought. Fire-adapted alien plant taxa can reestablish in a burned area, resulting in a reduction in the amount of native vegetation after each fire. Fire can destroy dormant seeds as well as plants, even in steep or inaccessible areas. Fires may result from natural causes, or they may be accidentally or purposely started by humans. Three fires have occurred in the Puu Waawaa/Kaupulehu dry forests on the slopes of Hualalai over the last ten years, and have destroyed habitat as well as individuals of many endangered species, including *Pleomele hawaiiensis* (Cuddihy and Stone 1990; HHP 1991h4; HPCC 1992d, 1993b; J. Lau, in litt., 1990). Fire is also a threat to *Phyllostegia velutina* and the only known populations of *Hibiscadelphus hualalaiensis* and *Zanthoxylum dipetalum* var. *tomentosum* (HPCC 1991i, 1992a, 1993c2; M. Bruegmann, in litt., 1994).

Natural changes to habitat and substrate can result in the death of individual plants as well as the destruction of their habitat. This especially affects the continued existence of taxa or populations with limited numbers and/or narrow ranges and is often exacerbated by human disturbance and land use practices (See Factor A.). Two of the five volcanoes that make up the island of Hawaii, Kilauea and Mauna Loa, are active and a third, Hualalai, is dormant but may erupt again. Ten of the taxa in this final rule are in areas where volcanic activity could result in the destruction of all of the populations: *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Phyllostegia velutina*, *Pleomele hawaiiensis*, *Pritchardia schattaueri*, *Sicyos alba*, and *Zanthoxylum dipetalum* var.

tomentosum. One of the two known populations of *Cyanea platyphylla* and some populations of *Phyllostegia racemosa* are also threatened by volcanic activity.

People are more likely to come into contact with taxa which have populations near trails or roads or in recreational areas. Alien plants may be introduced into such areas as seeds on footwear, or people may cause erosion, trample plants, or start fires (Cuddihy and Stone 1990). The following taxa in this final rule have populations in recreational areas, close to roads or trails, or in areas where ranching or logging is occurring, and are potentially threatened by human disturbance: *Clermontia drepanomorpha*, *Cyanea platyphylla*, *Hibiscadelphus hualalaiensis*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Sicyos alba*, and *Zanthoxylum dipetalum* var. *tomentosum* (Bruegmann 1990; Corn 1983; HHP 1991f1; HPCC 1991d, 1991h, 1992b; Pratt and Cuddihy 1990; Stemmermann 1987).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to make this rule final. Based on this evaluation, this rulemaking will list these 13 plant taxa as endangered: *Clermontia drepanomorpha*, *Cyanea platyphylla*, *Hibiscadelphus giffardianus*, *Hibiscadelphus hualalaiensis*, *Melicope zahlbruckneri*, *Neraudia ovata*, *Phyllostegia racemosa*, *Phyllostegia velutina*, *Phyllostegia warshaueri*, *Pleomele hawaiiensis*, *Pritchardia schattaueri*, *Sicyos alba*, and *Zanthoxylum dipetalum* var. *tomentosum*. Eleven of the taxa number no more than 100 individuals and are known from 5 or fewer populations. The 13 taxa are threatened by one or more of the following—habitat degradation and/or predation by cattle, pigs, goats, sheep, insects, and rats; competition from alien plants; fire and volcanic activity; human impacts; and lack of legal protection or difficulty in enforcing laws which are already in effect. Small population size and limited distribution make these taxa particularly vulnerable to extinction and/or reduced reproductive vigor from naturally occurring events. Because these 13 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered under the Act.

Critical habitat is not being proposed for the 13 taxa included in this rule, for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

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 a species is listed as endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these 13 taxa. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. As discussed under Factor B, these taxa are threatened by overcollection, due to extremely low population sizes. The publication of precise maps and descriptions of critical habitat in the Federal Register and local newspapers as required in a proposal for critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline. The listing of these taxa as endangered publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the location and importance of protecting the habitat of these taxa. Additional protection of the habitat of these taxa will be addressed through the recovery process and through the section 7 consultation process. For example, in the case of *Neraudia ovata*, the species is confined to small geographic areas, and each population is composed of so few individuals that the determinations for jeopardy to the species and adverse modification of

critical habitat would be similar. Therefore, designation of critical habitat for species already listed provides little additional protection beyond that provided by the jeopardy prohibition of section 7. For these reasons, the Service finds that designation of critical habitat for these 13 taxa is not prudent at this time. Such a designation would increase the degree of threat from vandalism, collecting, or other human activities and is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

Conservation measures provided to taxa listed as endangered under the Endangered Species Act include recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is listed as endangered. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. 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. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. One or more populations of five of the taxa in this final rule are located on federally owned and/or managed land. Four taxa are located in HVNP and one of these taxa is also found in Hakalau Forest National Wildlife Refuge. HVNP is actively managing Kipuka Puauulu to maintain *Melicope zahlbruckneri* and the cultivated plants of *Hibiscadelphus giffardianus* (Mountainspring 1985). Staff at Hakalau National Wildlife Refuge are monitoring *Phyllostegia racemosa* populations and controlling threats (J. Jeffrey, pers. comm., 1994). One of the two known populations of *Neraudia ovata* is found on Army land. The Army is currently constructing small fences around these plants to protect them from browsing by goats and sheep (LTC, FA Lloyd Mues, U.S. Army Garrison, Hawaii, *in litt.*, 1996).

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the 13 plant taxa listed here as endangered, all of the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, will apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant; transport such species in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale such species in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species.

It is the policy of the Service, published in the Federal Register on July 1, 1994, (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. Such information is intended to clarify the potential impacts of a species' listing on proposed and ongoing activities within the species' range. Five of the species occur on Federal lands under the jurisdiction of the U.S. National Park Service, U.S. Fish and Wildlife Service, and the U.S. Army. Collection, damage, or destruction of these species on Federal lands is prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of Hawaii State law or regulations or in violation of a State criminal trespass law (see Hawaii State Law section below). The Service is not aware of any trade in these species.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Pacific Islands Ecoregion Manager (see ADDRESSES section). Requests for copies of the regulations concerning

listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (telephone: 503/231-6241; facsimile: 503/231-6243).

Hawaii State Law

Hawaii's Endangered Species Act states—"Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (Hawaii Revised Statutes (HRS), sect. 195D-4(a)). Therefore, Federal listing automatically invokes listing under Hawaii State law, which prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D-4 and 5). None of the 13 taxa in this final rule are presently listed as an endangered species by the State of Hawaii.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of 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 the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion Office (see ADDRESSES section).

Author

The author of this final rule is Marie M. Bruegmann, Pacific Islands Ecoregion Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service hereby amends 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. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to

the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.
 * * * * *
 (h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* <i>Clermontia drepanomorpha</i>	* 'Oha wai	* U.S.A. (HI)	* Campanulaceae—Bell-flower.	E	595	NA	* NA
* <i>Cyanea platyphylla</i>	* Haha	* U.S.A. (HI)	* Campanulaceae—Bell-flower.	E	595	NA	* NA
* <i>Hibiscadelphus giffardianus</i>	* Hau kuahiwi	* U.S.A. (HI)	* Malvaceae—Mallow	E	595	NA	* NA
* <i>Hibiscadelphus hualalaiensis</i>	* Hau kuahiwi	* U.S.A. (HI)	* Malvaceae—Mallow	E	595	NA	* NA
* <i>Melicope zahlbruckneri</i>	* Alani	* U.S.A. (HI)	* Rutaceae—Citrus	E	595	NA	* NA
* <i>Neraudia ovata</i>	* None	* U.S.A. (HI)	* Urticaceae—Nettle	E	595	NA	* NA
* <i>Phyllostegia racemosa</i>	* Kiponapona	* U.S.A. (HI)	* Lamiaceae—Mint	E	595	NA	* NA
* <i>Phyllostegia velutina</i>	* None	* U.S.A. (HI)	* Lamiaceae—Mint	E	595	NA	* NA
* <i>Phyllostegia warshaueri</i>	* None	* U.S.A. (HI)	* Lamiaceae—Mint	E	595	NA	* NA
* <i>Pleomele hawaiiensis</i>	* Hala pepe	* U.S.A. (HI)	* Agavaceae—Agave	E	595	NA	* NA
* <i>Pritchardia schattaueri</i>	* Loulou	* U.S.A. (HI)	* Arecaceae—Palm	E	595	NA	* NA
* <i>Sicyos alba</i>	* 'Anunu	* U.S.A. (HI)	* Curcubitaceae—Gourd	E	595	NA	* NA
* <i>Zanthoxylum dipetalum</i> var. <i>tomentosum</i>	* A'e	* U.S.A. (HI)	* Rutaceae—Citrus	E	595	NA	* NA
* 	* 	* 	* 				*

Dated: September 23, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96-25559 Filed 10-9-96; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129019-6019-01; I.D. 100296H]

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Greenland turbot in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Greenland turbot in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Greenland turbot total allowable catch (TAC) in the BS has been reached.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), October 6, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the initial TAC for Greenland turbot in the BS was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996), as 3,967 metric tons. The Final 1996 Harvest Specifications of Groundfish also closed the directed fishery with trawl gear for Greenland turbot in the BSAI.

The Director, Alaska Region, NMFS, has determined, in accordance with

§ 679.20(d)(2), that the TAC for Greenland turbot in the BS has been reached. Therefore, NMFS is requiring that further catches of Greenland turbot in the BS be treated as prohibited species in accordance with § 679.21(b).

Classification

This action is taken under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 4, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96-25966 Filed 10-04-96; 4:17 pm]

BILLING CODE 3510-22-F

50 CFR Part 679

[Docket No. 960129019-6019-01; I.D. 100296G]

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Pacific Ocean Perch and "Other Red Rockfish" in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure; notice of change in recordkeeping and reporting requirements.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch and the "other red rockfish" species group in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). NMFS has determined that Daily Production Reports (DPRs) must be submitted by processor vessels using trawl gear that catch or receive Pacific ocean perch or "other red rockfish" and shoreside processing facilities that receive Pacific ocean perch or "other red rockfish" from vessels using trawl gear in the BS. These actions are necessary to fully utilize the total allowable catches (TACs) of Pacific ocean perch and the "other red rockfish" species group in that area and to prevent exceeding the TACs for those species and species groups.

EFFECTIVE DATE: From 1200 hrs, Alaska local time (A.l.t.), October 6, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management

Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the initial TACs for Pacific ocean perch and the "other red rockfish" species group in the BS were established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 1,530 metric tons (mt) and 1,071 mt, respectively. The Final 1996 Harvest Specifications of Groundfish also closed the directed fishery for Pacific ocean perch and the "other red rockfish" species group in the BS in accordance with § 679.20(d)(1)(iii).

The Director, Alaska Region, NMFS (Regional Director), has determined that the 1996 directed fishing allowances of Pacific ocean perch and the "other red rockfish" species group in the BS have not been reached. NMFS has determined that as of September 21, 1996, 1,228 mt of Pacific ocean perch in the BS and 902 mt of the "other red rockfish" species group in the BS remain in the respective directed fishing allowances. Therefore, NMFS is terminating the previous closure and is reopening directed fishing for Pacific ocean perch and the "other red rockfish" species group in the BS. All other closures remain in full force and effect.

In accordance with § 679.20(a)(2), the remainder of the TACs for Pacific ocean perch and the "other red rockfish" species group in the BS will become available for directed fishing at 1200 hrs, A.l.t., October 6, 1996. These remaining TACs are expected to be rapidly harvested.

Pursuant to § 679.5(j), the Regional Director is requiring processor vessels using trawl gear that catch or receive Pacific ocean perch and "other red rockfish" in the BS and shoreside processing facilities that receive Pacific ocean perch and "other red rockfish" from vessels using trawl gear as defined at § 679.2 in the BS to submit DPRs in addition to Weekly Production Reports.

These requirements are necessary to manage Pacific ocean perch and the "other red rockfish" species group in the BS. The Regional Director is doing so in consideration of the potential for exceeding the TACs of Pacific ocean perch and the "other red rockfish" species group in the BS.

DPRs must include all information required by § 679.5(j)(4) for groundfish harvested from the applicable reporting areas. Processors must submit the required information on the "Alaska Groundfish Processor Daily Production Report" form that was distributed to participants in the groundfish fishery with their 1996 Federal fisheries permit. The form also may be obtained from the Regional Director by calling Mary Furuness at 907-586-7228. Processors must transmit completed DPRs to the Regional Director by facsimile transmission to number (907) 586-7131, no later than 12 hours after the end of the day the groundfish was processed.

If and when the Regional Director determines that these reports are no longer necessary, he may terminate the requirement. This determination will be published in the Federal Register. Criteria used to assess the need for the reports include the stability of effort and harvest rates in the fishery, and remaining amounts.

The Assistant Administrator for Fisheries, NOAA, finds that reasons justifying promulgation of this action also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date. Intense fishing effort without DPRs could result in industry's exceeding these allocations.

Classification

This action is taken under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 4, 1996.
Bruce Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 96-25967 Filed 10-04-96; 4:17 pm]
BILLING CODE 3510-22-F

50 CFR Part 679

[Docket No. 960129018-6018-01; I.D. 100496B]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern rockfish in the Western Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the northern rockfish total allowable catch (TAC) in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), October 6, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at

subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the northern rockfish TAC for the Western Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 640 metric tons (mt). The directed fishery for northern rockfish in the Western Regulatory Area opened on July 1, 1996 (61 FR 34377, July 2, 1996) and was closed under § 679.20(d)(1)(iii) on July 11, 1996 (61 FR 37226, July 17, 1996) and reopened on October 1, 1996 (61 FR 50458, September 26, 1996).

The Director, Alaska Region, NMFS (Regional Director), established in accordance with § 679.20(d)(1) a directed fishing allowance for northern rockfish of 600 mt, with consideration that 40 mt will be taken as incidental catch in directed fishing for other species in this area. The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area.

The maximum retainable bycatch amounts are specified at § 679.20(e) and apply at any time during a trip.

Classification

This action is taken under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 4, 1996.

Gary C. Matlock,
Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 96-26022 Filed 10-4-96; 4:45 pm]
BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 61, No. 198

Thursday, October 10, 1996

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. 96-CE-29-AD]

RIN 2120-AA64

Airworthiness Directives; The New Piper Aircraft Corporation Models PA31, PA31-325, PA31-350, and PA31P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to supersede airworthiness directive (AD) 81-11-04 that applies to The New Piper Aircraft (Piper) Models PA31, PA31-325, and PA31-350 airplanes that have Cleveland nose wheel assembly part number (P/N) 40-76B installed. AD 81-11-04 currently requires inspecting the nose wheel flange for cracks. The repetitive inspection may be terminated when the nose wheel assembly is replaced with Cleveland P/N 40-140, which is an improved design. This action was prompted by the lack of designation of Piper Model PA31P in the Applicability section of AD 81-11-04, and the subsequent failure of a nose wheel assembly on a Piper Model PA31P airplane during taxiing operations. The actions specified by this AD are intended to prevent the failure of the nose wheel, which if not corrected, could result in loss of control of the airplane during taxiing, take-off, or landing operations.

DATES: Comments must be submitted on or before December 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE-29-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The New Piper Aircraft Corporation, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Ave., suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7362, facsimile (404) 305-7348.

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 should 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.

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 that summarizes 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 No. 96-CE-29-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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE-29-AD, Room

1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Events Leading to the Proposed Action

The FAA has received reports on PA31 series airplanes indicating that after 2,000 hours time-in-service (TIS) cracks have occurred in the flange area of Cleveland (Parker Hannifin) nose wheel assembly, part number (P/N) 40-76B (Piper P/N 451 785). AD 81-11-04 was issued to mandate inspection of the nose wheel assembly on Piper PA31 series airplanes. This required inspection may be terminated by installing a nose wheel assembly of improved design (Cleveland P/N 40-140). The improved nose wheel assembly contains a thicker flange and is rated to a higher static load and limit load rating which will alleviate the unsafe condition.

Since the issuance of AD 81-11-04, the nose wheel on a Piper Model PA31P airplane failed during a taxiing operation. This airplane was not subject to AD 81-11-04 because the AD did not specify Piper Model PA31P airplanes. After the promulgation of AD 81-11-04, Piper issued a superseding service bulletin including the Piper Model PA31P in the applicability. Therefore, the FAA is proposing to supersede AD 81-11-04 with a new AD that includes Piper Model PA31P airplanes in the applicability and would require the same actions as AD 81-11-04.

Relevant Service Information

Piper issued service bulletin (SB) 700A, dated October 12, 1981, which specifies inspecting the nose wheel assembly with an option for terminating the inspection requirements by installing an improved nose wheel assembly.

FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent the failure of the nose wheel, which if not corrected, could result in loss of control of the airplane during taxiing, take-off and landing operations.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA31, PA31-325, PA31-350 and PA31P

airplanes of the same type design, the proposed AD would supersede AD 81-11-04 with a new AD that would retain the same requirements as AD 81-11-04, which are inspecting the nose wheel assembly for cracks, and if cracked, replacing the nose wheel assembly with the same kind of nose wheel assembly and maintaining the repetitive inspection requirements, or replacing the nose wheel assembly with one of improved design. If no cracks are found, continue to repetitively inspect at regular intervals or at each tire change. Replacing the old assembly with an assembly of improved design would terminate the repetitive inspections. The proposed AD only changes the applicability of AD 81-11-04 to include Piper Model PA31P airplanes. The actions are to be done in accordance with the instructions in Piper SB 700A, dated October 12, 1981.

Cost Impact

The FAA estimates that 1,842 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately \$60 an hour. The improved parts cost approximately \$450 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$1,160,460 or \$630 per airplane. These only account for the replacement of the new part and do not take into account the cost for the repetitive inspections that would be incurred prior to installing the improved parts.

Piper has informed the FAA that parts have been distributed to equip 8 airplanes in the United States which reduce the total figure from \$1,160,460 to \$1,155,420.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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) if promulgated, will not have a significant

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, 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 USC 106(g), 40113, 44701.

§ 39.13—[Amended]

2. Section 39.13 is amended by removing airworthiness directive (AD) 81-11-04, Amendment 39-4114, and by adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. 96-CE-29-AD, Supersedes AD 81-11-04, Amendment 39-4114.

Applicability: The following Model and serial number airplanes that are equipped with Cleveland part number (P/N) 40-76B (Piper P/N 451 784) nose wheel assembly, certificated in any category.

Models	Serial numbers
PA31 and PA31-325.	31-2 through 31-8112038.
PA31-350 ...	31-5001 through 31-8152088.
PA31P	31P-3 through 31P-7730012.

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 within the next 100 hours time-in-service (TIS) after May 22, 1981 (effective date of AD 81-11-04); within the next 100 hours TIS after the effective date

of this AD; or upon the accumulation of 2,000 hours TIS on the nose wheel assembly, whichever occurs later, unless already accomplished.

To prevent the failure of the nose wheel, which if not corrected, could result in loss of control of the airplane during taxiing, take-off, or landing operations, accomplish the following:

(a) Inspect the nose wheel assembly, Cleveland part number (P/N) 40-76B (Piper P/N 451 784), for cracks in accordance with the "Instructions" section of Piper Service Bulletin (SB) 700A, dated October 12, 1981.

(1) If cracked, prior to further flight, replace Cleveland P/N 40-76B (Piper P/N 451 784) with a new Cleveland P/N 40-76B (Piper P/N 451 784) nose wheel assembly. Upon the accumulation of 2,000 hours TIS, reinspect at 100 hour intervals or at each tire change, whichever occurs first; or,

(2) As an alternative to paragraph (a)(1), if cracked, replace Cleveland P/N 40-76B (Piper P/N 451 784) with a serviceable Cleveland P/N 40-140 (Piper P/N 551 791) nose wheel assembly of improved design in accordance with the "Instructions" section of Piper Service Bulletin (SB) 700A, dated October 12, 1981.

(3) If no cracks are found and Cleveland P/N 40-140 (Piper P/N 551-791 is not installed, repetitively inspect at intervals not to exceed 100 hours TIS or at each tire change, whichever occurs first.

(b) The installation of Cleveland P/N 40-140 (Piper P/N 551 791) is considered terminating action for the inspection requirements of paragraph (a) and (a)(3) of this AD.

(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.

(d) An alternative method of or adjustment of the initial and repetitive compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Ave., suite 2-160, College Park, Georgia 30337-2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, FAA, Atlanta Aircraft Certification Office.

(e) Alternative methods of compliance approved in accordance with AD 81-11-04 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

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

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida 32960, or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 81-11-04, Amendment 39-4114.

Issued in Kansas City, Missouri, on October 4, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-26043 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 96-AWP-22]

Proposed Amendment of Class E Airspace; Casa Grande, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Casa Grande, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runways (RWYs) 05/23 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Casa Grande Municipal Airport, Casa Grande, AZ.

DATES: Comments must be received on or before October 31, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP-530, Docket No. 96-AWP-22, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views,

or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96-AWP-22." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposed contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Casa Grande, AZ. The development of GPS SIAP at Casa Grande Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 05/23 SIAP at Casa Grande Municipal Airport, Casa Grande, AZ. Class E airspace designations for airspace areas extending upward from 700 feet or more

above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, effective September 16, 1996 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Casa Grande, AZ [Revised]
Casa Grande Municipal Airport, AZ
(Lat. 32°57'17" N, long. 111°46'00" W)

That airspace extending upward from 700 feet above the surface beginning at lat. 32°57'00" N, long. 111°52'30" W, thence clockwise via the 5.3-mile radius of the Casa Grande Municipal Airport to lat. 32°52'30"

N, long. 111°49'30" W; to lat. 32°50'50" N, long. 111°53'02" W; to lat. 32°55'20" N, long. 111°56'02" W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on September 17, 1996.

James H. Snow,

*Acting Manager, Air Traffic Division,
Western-Pacific Region.*

[FR Doc. 96-26097 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice 2451]

Privacy Act of 1974; Implementation

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to amend its Privacy Act regulations exempting portions of a newly created record system from certain provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a). Certain portions of the Garnishment of Wages Records (STATE-61) are exempted from 5 U.S.C. secs. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

DATES: Comments must be submitted on or before November 19, 1996.

ADDRESSES: Written comments may be mailed or delivered to Jacquelyn Lilly, Acting Chief; Privacy, Plans and Appeals Division; Office of Freedom of Information, Privacy, and Classification Review; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520-1239.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Lilly, 202-647-6620.

SUPPLEMENTARY INFORMATION: A notice of a proposal to create a new system of records (Public Notice 2450) is published elsewhere in this Federal Register. This system principally supports the Office of the Legal Adviser for Legislation and General Management's role in advising and servicing the Department and related foreign affairs agencies in complying with court- or agency-ordered garnishment of wages under 42 U.S.C. 659 and 5 U.S.C. 5520a. The Garnishment of Wages Records contain information relating to the garnishment of employees' wages including, but not limited to, communications between: The Office of the Legal Adviser and the Bureau of Finance and Management Policy; the Office of the Legal Adviser and the employee; the Office of the

Legal Adviser and courts or agencies; the Office of the Legal Adviser and a party named in or affected by the garnishment action to facilitate processing such orders for garnishment. These records may also be used by federal, state and local courts; state and local tax collection and child enforcement offices; the Internal Revenue Service; private collection agencies, law firms and other individuals authorized to receive garnished wages or benefits by court or agency order whenever the information is necessary for a garnishment proceeding.

Due to the nature of the documentation collected in the course of processing the ordered garnishments described above, it may be properly compiled for law enforcement purposes and, accordingly, it may be necessary in some instances to withhold certain information from the public to assure the effective completion of judicial or administrative processes.

List of Subjects in 22 CFR Part 171

Privacy.

The proposed amendment in Title 22, Part 171 covering certain records in STATE-61 is as follows:

PART 171—[AMENDED]

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

Authority: The Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; The Administrative Procedure Act, 5 U.S.C. 551, et seq.; The Ethics in Government Act; 5 U.S.C. App. 201; Executive Order 12958, 60 FR 19825; and Executive Order 12600, 52 FR 23781.

§ 171.32 [Amended]

2. In § 171.32, paragraph (j)(2) will be amended by adding "Garnishment of Wages Records. STATE-61", after "Records of the Inspector General and Automated Individual Cross Reference System. STATE-53".

Ralph Frank,

Acting Assistant Secretary for the Bureau of Administration.

[FR Doc. 96-25831 Filed 10-9-96; 8:45 am]

BILLING CODE 4710-24-M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 605

National Security Information Regulations

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Arms Control and Disarmament Agency (ACDA) proposes to update, revise, and restate in their entirety its National Security Information regulations. In addition to containing internal policies and procedures, these regulations set forth in § 605.8 what members of the public must do to request mandatory declassification review and to appeal denials of requests for declassification. ACDA invites comments from interested groups and individual members of the public on the proposed regulations.

DATES: To be considered, comments must be delivered by mail or in person to the address, or faxed to the telephone number, listed below by 5 p.m. on Friday, November 15, 1996.

ADDRESSES: Comments should be directed to the Office of the General Counsel, United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, NW., Washington, DC 20451; FAX (202) 647-0024. Comments will be available for inspection between 8:15 a.m. and 5 p.m. at the same address.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Jr., United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, NW., Washington, DC 20451, telephone (202) 647-3596.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act Certification

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866 Determination

ACDA has determined that the proposed rule is not a significant regulatory action within the meaning of section 3(f) of that Executive Order.

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act because it does not contain any information collection requirements within the meaning of that Act.

Unfunded Mandates Act Determination

ACDA has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

List of Subjects in 22 CFR Part 605

Administrative practice and procedure, Classified information, Freedom of information.

The Proposed Regulations

ACDA proposes to revise 22 CFR part 605 to read as follows:

PART 605— NATIONAL SECURITY INFORMATION REGULATIONS

Sec.

- 605.1 Basis.
- 605.2 Objective.
- 605.3 Senior agency official.
- 605.4 Original classification.
- 605.5 Classification authority.
- 605.6 Derivative classification.
- 605.7 Declassification and downgrading.
- 605.8 Mandatory declassification review.
- 605.9 Systematic declassification review.
- 605.10 Safeguarding.

Authority: E.O. 12958 (60 FR 19825, April 20, 1995); Information Security Oversight Office Directive No. 1, 32 CFR part 2001.

§ 605.1 Basis.

The regulations in this part, taken together with the Information Security Oversight Office Directive No. 1 dated October 13, 1995, provide the basis for the security classification program of the U.S. Arms Control and Disarmament Agency (ACDA) implementing Executive Order 12958, "Classified National Security Information" (the Executive Order).

§ 605.2 Objective.

The objective of the ACDA classification program is to ensure that national security information is protected from unauthorized disclosure, but only to the extent and for such a period as is necessary.

§ 605.3 Senior agency official.

The Executive Order requires that each agency that originates or handles classified information designate a senior agency official to direct and administer its information security program. The ACDA senior agency official is the Deputy Director. The Deputy Director is assisted in carrying out the provisions of the Executive Order and the ACDA information security program by the Director of Security and by the Classification Adviser.

§ 605.4 Original classification.

(a) *Definition.* Original classification is the initial determination that certain information requires protection against unauthorized disclosure in the interest of national security (i.e., national defense or foreign relations of the United States), together with a designation of the level of classification.

(b) *Classification designations.* (1) *Top Secret* shall be applied only to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security. Examples of "exceptionally grave damage" include, but are not limited to, armed hostilities against the United States or its allies; the compromise of vital national defense plans or cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(2) *Secret* shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security. Examples of "serious damage" include, but are not limited to, disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security.

(3) *Confidential* shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

(c) *Classification restraints.* (1) The classification level of any form of information is premised on an evaluation of its contents as a whole, as well as on its relationship to other information.

(2) In classifying information, the public's interest in access to government information must be balanced against the need to protect national security information.

(3) In case of doubt, the lower level of classification is to be used.

(d) *Duration of classification.* (1) Information shall be classified for as long as is required by national security considerations, subject to the limitations set forth in section 1.6 of the Executive Order. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified. If a specific date or event for declassification cannot be determined, information shall be marked for declassification 10 years from the date of the original decision, except that the original classification authority may classify for a period greater than 10 years specific information that falls

within the criteria set forth in section 1.6(d) of the Executive Order.

(2) An original classification authority may extend the duration of classification or reclassify specific information for successive periods not to exceed 10 years at a time except for records that are more than 25 years old.

(3) Information classified for an indefinite duration under predecessor orders, such as "Originating Agency's Determination Required," shall be subject to the declassification provisions of Part 3 of the Executive Order, including the provisions of section 3.4 regarding automatic declassification of records older than 25 years.

§ 605.5 Classification authority.

(a) *General.* Classification shall be solely on the basis of national security considerations. In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error, or to prevent embarrassment to a person, organization, or agency.

(b) *Designations.* The following ACDA officials shall have original classification authority in each of the three designations under which they are shown in this paragraph. This authority vests only in the officials or positions designated and, except as provided in paragraph (c) of this section, may not be redelegated. In the absence of any of the authorized classifiers (for TDY outside Washington, annual leave, temporary position vacancy, etc.), the officer acting in that person's position may exercise the classifier's authority.

(1) *Top Secret.* (i) Director,

(ii) Deputy Director.

(2) *Secret.* (i) Officials having Top Secret classification authority,

(ii) Such other officials who have a frequent need to exercise Secret authority and are specifically delegated this authority in writing by the Director.

(3) *Confidential.* (i) Officials having Top Secret and Secret classification authority,

(ii) Other officials who have a frequent need to exercise Confidential authority and are specifically delegated this authority in writing by the Director.

(c) *Delegation of classification authority.* (1) The Executive Order restricts delegation of original classification authority to officials who have a demonstrable and continuing need to exercise such authority. Such delegations shall be held to a minimum.

(2) If in the judgment of bureau or office heads an officer has a demonstrable need for classification authority, a written request over the bureau or office head's signature should be forwarded via the Director of

Security to the Deputy Director for action. The request should set forth the officer's name and title, the justification for having the authority, and the level of classification authority sought.

(3) The Director of Security shall maintain a complete current list by classification designation of individuals to whom and positions to which original classification authority has been delegated.

(4) Periodic reviews of delegations of classification authority will be made by the Director of Security to ensure that officials so designated have a continuing need to exercise such authority. Recommendations by the Director of Security for discontinuance of delegations will be forwarded to the Deputy Director for action.

(5) Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classifications markings derived from source material or as directed by a classification guide.

(d) *Classification responsibilities.* Each ACDA officer who signs, authenticates, or otherwise produces a document is responsible for determining that it is properly classified and marked. This responsibility includes determining whether the document contains any originally classified material (in which case the classification must be authorized by an appropriate ACDA classifying official) or contains information already classified (in which case the proper derivative markings must be applied). Any significant doubt about the level of classification shall be resolved in favor of the lower level.

(e) *Classification challenges.* Holders of information who believe that its classification status is improper are expected and encouraged to challenge the need for classification, the classification level, the duration of classification, the lack of classification or other aspect believed to be improper. Classification challenges shall be directed to and decided by the Deputy Director. If the information was not originated within or classified by ACDA, it will be referred to the Classification Adviser for coordination with the responsible agency or department if declassification, downgrading, classification or other change in its status appears to be warranted. Individuals making challenges to the classification status of information shall not be subject to retribution for such action, and they shall be advised of their right to appeal the Deputy Director's decision on the challenge to the Interagency Security

Classification Appeals Panel established by section 5.4 of the Executive Order.

(f) *Contractor classification authority.*

(1) Each ACDA contract calling for classified work shall be processed under the National Industrial Security Program.

(2) Each contract processed under the National Industrial Security Program requires the preparation of a contract security classification specification (DD 254) which serves as the contractor's guidance and authority to apply classification markings.

(3) Each contract processed under the Department of Energy (DOE) Security Requirements (i.e., involving restricted data or formerly restricted data) shall include a provision for naming a classification coordinator in the contractor organization. This individual shall coordinate the derived classification of all documents prepared under the contract in accordance with guidance received from ACDA via the ACDA Contracting Officer's Technical Representative for the contract, or by direct consultation on classification problems with the ACDA Classification Adviser or the Director of Security.

(4) Only designated officials of the U.S. Government may originally classify information. Contractor personnel, as potential developers of classified information, must follow the guidelines outlined in paragraph (d) of this section entitled "Classification responsibilities." When there is a question involving the original classification of information, the contractor is obligated to safeguard it in accordance with the classification designation deemed appropriate and submit recommendations to ACDA for classification determination.

(5) In general, the classification of the information provided by ACDA for use or reference in the completion of the contract will be the source of the classification of documents prepared under the contract.

§ 605.6 Derivative classification.

(a) *Definition.* Derivative classification is the incorporating, paraphrasing, restating or generating in new form information that is already classified and the marking of the new material consistent with the classification of the source material. Duplication or reproduction of existing classified information is not derivative classification.

(b) *Responsibility.* Derivative application of classification markings is the responsibility of those who prepare material using information that is already classified and of those who apply markings in accordance with

instructions from an authorized classifier or in accordance with an authorized classification guide.

(c) *Classification guides.* (1) Classification guides used to direct derivative classification and issued by ACDA shall specifically identify the information to be protected, using categorization to the extent necessary to ensure that the information involved can be identified readily and uniformly.

(2) Each classification guide issued by ACDA shall be approved by the Senior Agency Official.

(3) Each classification guide issued by ACDA shall be kept current and shall be reviewed as required by directives issued under the Executive Order. The Director of Security shall maintain a list of all classification guides.

§ 605.7 Declassification and downgrading.

(a) *Declassification processes.* Declassification of classified information may occur:

(1) After review of material in response to a Freedom of Information Act (FOIA), mandatory declassification review, discovery, subpoena, or other information access or declassification request;

(2) After review as part of ACDA's systematic declassification review program;

(3) As a result of the elapse of the time or the occurrence of the event specified at the time of classification;

(4) By operation of the automatic declassification provisions of section 3.4 of the Executive Order with respect to material more than 25 years old.

(b) *Downgrading.* When material classified at the Top Secret level is reviewed for declassification and it is determined that classification continues to be warranted, a determination shall be made whether downgrading to a lower level of classification is appropriate. If downgrading is determined to be warranted, the classification level of the material shall be changed to the appropriate lower level.

(c) *Authority to downgrade and declassify.* (1) Classified information may be downgraded or declassified by the official who originally classified the information if that official is still serving in the same position, by a successor in that capacity, by a supervisory official of either, by the Classification Adviser, or by any other official specifically designated by the Deputy Director. Contractor personnel do not have authority to downgrade or declassify.

(2) The Director of Security shall maintain a record of ACDA officials specifically designated by the Deputy Director as declassification authorities.

(d) *Declassification after balancing public interest.* It is presumed that information that continues to meet classification requirements requires continued protection. In exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the ACDA official with Top Secret authority having primary jurisdiction over the information in question. That official, after consultation with the Public Affairs Adviser and the Classification Adviser, will determine whether the public interest in disclosure outweighs the damage to national security that reasonably could be expected from disclosure. If the determination is made that the information should be declassified and disclosed, that official will make such a recommendation to the Director or the Deputy Director who shall make the decision on declassification and disclosure.

(e) *Public dissemination of declassified information.* Declassification of information is not authorization for its public disclosure. Previously classified information that is declassified may be subject to withholding from public disclosure under the FOIA, the Privacy Act, and various statutory confidentiality provisions.

§ 605.8 Mandatory declassification review.

(a) *Action on requests.* (1) All requests to ACDA by a member of the public, a government employee, or an agency to declassify and release information shall result in a prompt declassification review of the information, provided the request describes the document or material containing the information with sufficient specificity to enable ACDA to locate it with a reasonable amount of effort.

(2) If a request does not reasonably describe the information sought, the Classification Adviser will notify the requester that unless additional information is provided or the scope of the request is narrowed, no further action will be taken.

(3) Mandatory declassification review requests should be directed to the Classification Adviser, U.S. Arms Control and Disarmament Agency, 320 21st St., NW., Washington, DC 20451.

(4) If the request requires the rendering of services for which reasonable fees should be charged pursuant to the FOIA and ACDA regulations thereunder (22 CFR part 602), such fees shall be imposed at the

FOIA schedule rates and the requester shall be so notified.

(5) The Classification Adviser, in consultation with appropriate ACDA bureaus and offices, will determine whether, under the Executive Order, the requested information may be declassified, in whole or in part, and will promptly make any declassified information available to the requester, unless the information is exempt from disclosure under some other provision of law.

(b) *Appeals from denials.* (1) If it is determined that declassification of the information requested is not warranted, in whole or in part, the requester shall be given a brief statement as to the reasons for the decision, a notice of the right to appeal to the Deputy Director, and a notice that any such appeal must be filed with ACDA within 60 days. Appeals shall be addressed to: Deputy Director, U.S. Arms Control and Disarmament Agency, 320 21st St., NW., Washington, DC 20451.

(2) The Deputy Director shall act within 30 days of receipt on all appeals of denials of requests for declassification. The Deputy Director shall determine whether continued classification is required in whole or in part. If the Deputy Director determines that continued classification is required under the Executive Order, the requester shall be so notified and informed of the reasons therefor. The requester shall also be advised of the right to appeal any denial to the Interagency Security Classification Appeals Panel in accordance with section 5.4 of the Executive Order.

(c) *Information classified by another agency.* When ACDA receives a request for information in its custody that was classified by another agency, the Classification Adviser shall forward the request together with a copy of the document containing the information requested to the classifying agency for review and direct response to the requester. Unless the agency that classified the information objects on the ground that its association with the information requires protection, the Classification Adviser shall also notify the requester of the referral.

(d) *Confirmation of existence or nonexistence of document.* In responding to a request for mandatory declassification review, the Classification Adviser may refuse to confirm or deny the existence or nonexistence of a document if the fact of its existence or nonexistence would itself be classifiable under the Executive Order.

§ 605.9 Systematic declassification review.

The Classification Adviser shall be responsible for conducting a program for systematic declassification review of historically valuable records that were exempted from the automatic declassification provisions of section 3.4 of the Executive Order. The FOIA officer shall prioritize such review on the basis of the recommendations of the Information Security Policy Advisory Council established under section 5.5 of the Executive Order and on the degree of researcher interest and likelihood of declassification upon review.

§ 605.10 Safeguarding.

Specific controls on the use, processing, storage, reproduction and transmittal of classified information within ACDA that provide adequate protection and prevent access by unauthorized persons are contained in Part 1 of the ACDA Security Classification Handbook, an internal guidance manual, and shall be followed by ACDA personnel and, when appropriate, by contractors.

Dated: September 24, 1996.
Mary Elizabeth Hoinkes,
General Counsel.
[FR Doc. 96-25830 Filed 10-9-96; 8:45 am]
BILLING CODE 6820-32-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG-209803-95]

RIN 1545-AU08

Magnetic Media Filing Requirements for Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) of the Internal Revenue Code. The text of those temporary regulations also serves as the text of the proposed regulations. This document also contains a proposed amendment to § 301.6011-2(g)(2). This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by January 8, 1997. Outlines of

topics to be discussed at the public hearing scheduled for February 5, 1997, must be received by January 15, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-209803-95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-209803-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in Room 3313 of the Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Donna Welch, (202) 622-4910; concerning submissions and the hearing, Mike Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations portion of this issue of the Federal Register amend the Income Tax Regulations (26 CFR part 1) relating to section 6045 and the Procedure and Administration Regulations (26 CFR part 301) relating to section 6011(e). The temporary regulations contain rules relating to the filing requirements of information returns on magnetic media or in other machine-readable form under section 6011(e).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that these regulations impose no additional reporting or recordkeeping requirement and only prescribe the method of filing information returns that are already

required to be filed. Further, these regulations are consistent with the requirements imposed by statute. Section 6011(e)(2)(A) provides that, in prescribing regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form, the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Consistent with the statutory provision, these regulations do not require information returns to be filed on magnetic media unless 250 or more returns are required to be filed. Further, the economic impact caused by requiring filing on magnetic media should be minimal. If a taxpayer's operations are computerized, reporting in accordance with the regulations should be less costly than filing on paper. If the taxpayer's operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the existing regulations provide that the IRS may waive the magnetic media filing requirements upon a showing of hardship. It is anticipated that the waiver authority will be exercised so as not to unduly burden taxpayers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 5, 1997, at 10 am. The hearing will be held in room 3313 of the Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by January 8, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 15, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the regulations is Donna Welch, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.6045-1, paragraph (l) is revised to read as follows:

§ 1.6045-1 Returns of information of brokers and barter exchanges.

[The text of paragraph (l) as proposed is the same as the first sentence of § 1.6045-1T(l) published elsewhere in this issue of the Federal Register].

Par. 3. In § 1.6045-2, paragraph (g)(2) is revised to read as follows:

§ 1.6045-2 Furnishing statement required with respect to certain substitute payments.

[The text of paragraph (g)(2) as proposed is the same as the text of the first sentence of § 1.6045-2T(g)(2) published elsewhere in this issue of the Federal Register].

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.6011-2 is amended by revising paragraphs (a)(1), (b) (1) and (2), (c)(1) (i) and (iii), (c)(2), (f) and (g)(2), and by adding (c)(1)(iv), and by removing paragraphs (c) (3) and (4) and the last sentence of paragraph (e). The revisions and additions read as follows:

§ 301.6011-2 Required use of magnetic media.

[The text of paragraphs (a)(1), (b)(1) and (2), (c)(1) (i), (iii), and (iv), (c)(2), (f), and (g)(2) as proposed is the same as the text in § 301.6011-2T(a)(1), (b) (1) and (2), (c)(1) (i), (iii), and (iv), (c)(2), (f), and the first sentence of (g)(2) published elsewhere in this issue of the Federal Register].

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 96-25541 Filed 10-9-96; 8:45 am]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK12-7100; FRL-5634-1]

Approval and Promulgation of Air Quality Implementation Plans; Alaska: Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim rule.

SUMMARY: EPA is proposing an interim approval of a State Implementation Plan (SIP) revision submitted by the State of Alaska. This revision requires the continued implementation of an inspection and maintenance (I/M) program in the Municipality of Anchorage (MOA) and the Fairbanks North Star Borough (FNSB). Alaska's current program was reviewed and approved by EPA in a SIP action that became effective on June 5, 1995. The intended effect of this action is to propose interim approval for a revised I/M program credit claim proposed by the State, based upon the state's good faith estimate, which asserts that the state's claimed network design credits are appropriate and the revision is otherwise in compliance with the Clean Air Act (CAA). This action is being taken under section 348 of the National

Highway System Designation Act of 1995 (NHSDA) and section 110 of the CAA.

DATES: Comments must be received in writing and postmarked on or before November 12, 1996.

ADDRESSES: Comments may be mailed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ 107), Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of the documents relevant to this action are available for public inspection during normal business hours at: EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska, 99801-1795.

FOR FURTHER INFORMATION CONTACT: Ed Jones, EPA, Office of Air Quality (OA-107), 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553-1743.

SUPPLEMENTARY INFORMATION:

I. Background

A. Impact of the National Highway System Designation Act on the Design and Implementation of Inspection & Maintenance Programs Under the Clean Air Act

The National Highway System Designation Act of 1995 (NHSDA) establishes two key changes to the I/M rule requirements previously developed by EPA. Under the NHSDA, EPA cannot require states to adopt or implement centralized, test-only IM240 enhanced vehicle inspection and maintenance programs as a means of compliance with section 182, 184 or 187 of the CAA. Also under the NHSDA, EPA cannot disapprove a State SIP revision, nor apply an automatic discount to a State SIP revision under section 182, 184 or 187 of the CAA, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called 50% credit discount that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, and herein referred to as the I/M Rule) has been effectively replaced with a presumptive equivalency criteria, which places the emission reductions credits for decentralized networks on par with credit assumptions for centralized networks, based upon a state's good faith estimate of reductions as provided by the NHSDA and explained below in this section.

EPA's I/M Rule established many other criteria unrelated to network

design or test type for states to use in designing I/M programs. All other elements of the I/M Rule, and the statutory requirements established in the CAA continue to be required of those states submitting I/M SIP revisions under the NHSDA, and the NHSDA specifically requires that these submittals must otherwise comply in all respects with the I/M Rule and the CAA.

Submission criteria described under the NHSDA allows for a State to submit proposed regulations for this interim program, provided that the State has all of the statutory authority necessary to carry out the program. Also, in proposing the interim credits for this program, states are required to make good faith estimates regarding the performance of their I/M program. Since these estimates are expected to be difficult to quantify, the state need only provide that the proposed credits claimed for the submission have a basis in fact. A good faith estimate of a State's program may be an estimate that is based on any of the following: the performance of any previous I/M program; the results of remote sensing or other roadside testing techniques; fleet and vehicle miles traveled (VMT) profiles; demographic studies; or other evidence which has relevance to the effectiveness or emissions reducing capabilities of an I/M program.

This action is being taken under the authority of both the NHSDA and section 110 of the CAA. Section 348 of the NHSDA expressly directs EPA to issue this interim approval for a period of 18 months, at which time the interim program will be evaluated in concert with the appropriate state agencies and EPA. At that time, the Conference Report on section 348 of the NHSDA states that it is expected that the proposed credits claimed by the State in its submittal, and the emissions reductions demonstrated through the program data may not match exactly. Therefore, the Conference Report suggests that EPA use the program data to appropriately adjust these credits on a program basis as demonstrated by the program data.

B. Interim Approvals Under the NHSDA

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. This Act also directs EPA and the states to review the interim program results at the end of 18 months, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort to reflect the emissions reductions actually measured

by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Evaluation periods must begin such that at least 6 months of operational program data can be collected to demonstrate the effectiveness of the interim program.

The program evaluation to be used by the State during the 18 month interim period must be acceptable to EPA. EPA anticipates that such a program evaluation process will be developed by the Environmental Council of State (ECOS) group that is convening now and that was organized for this purpose. In addition to this interim evaluation, EPA further encourages the State to conduct a longer term, ongoing evaluation of its I/M program.

C. Process for Full Approvals of This Program under the CAA

As per the NHSDA requirements, this interim rulemaking will expire within 18 months of the final interim approval, or the date of final approval. A full approval of the state's final I/M SIP revision (which will include the state's program evaluation and final adopted state regulations) is still necessary under section 110 and under section 182, 184 or 187 of the CAA. After EPA reviews the State's submitted program evaluation, final rulemaking on the State's SIP revision will occur.

II. EPA's Analysis of Alaska's Submittal

On March 26, 1996, the Alaska Department of Environmental Conservation (ADEC) submitted a revision to its State Implementation Plan (SIP) for an I/M program to qualify under the NHSDA. The revision consists of enabling legislation that will allow the state to continue implementing the I/M program, proposed regulations, a description of the I/M program (including a modeling analysis and detailed description of program features), and a good faith estimate that includes the state's basis in fact for emission reductions claims of the program. The state's credit assumptions should be based upon the removal of the 50% credit discount for all portions of the program that are based on a test-and-repair network, and the application of the State's own estimate of the effectiveness of its decentralized test and repair program.

A. Analysis of the NHSDA Submittal Criteria

Transmittal Letter

On March 26, 1996, Alaska submitted an I/M SIP revision to EPA, requesting action under the NHSDA of 1995 and the CAA of 1990. The official submittal was made by the appropriate state official, Michele Brown, Commissioner of ADEC, and was addressed to the appropriate EPA official in the Region.

Enabling Legislation

The State of Alaska has regulations at 18 AAC 52, enabling the implementation of a basic I/M program.

Proposed Regulations

On April 5, 1995, the state of Alaska was granted EPA approval for their basic I/M program (60 FR 17232). The approval became effective on June 5, 1995. On March 26, 1996 the state proposed amendments to the approved program. The state anticipates fully adopting amended regulations by November 1996.

Program Description

Alaska currently operates an approved basic I/M program. Amendments to the program submitted on March 26, 1996, and acted upon in this notice, do not modify the operation of the program in any manner.

Emission Reduction Claim and Basis for the Claim

Alaska has approved basic I/M programs in the Fairbanks North Star Borough (FNSB) and the Municipality of Anchorage (MOA). Currently, to comply with national policy related to the efficacy of test-and-repair I/M operations, the SIP discounts these programs by 50% (in relation to centralized I/M programs). The SIP revision submitted by the state establishes a level of credit for Alaska's basic, de-centralized I/M program at 85% of the credit applied to centralized programs. Alaska's claim is based on: (1) an estimation of approximate equivalency with California's "Smog Check" I/M program; (2) the California I/M Review Committee's 1993 evaluation of the Smog Check program (entitled "Evaluation of the California Smog Check Program and Recommendations for Program Improvements, Fourth Report to the Legislature") and the Report's conclusions about the program's effectiveness; and, (3) an assertion that the carbon monoxide emission reduction effectiveness claimed for the California program should be

translatable into at least 85% of the credit applied to test-only programs.

Although the evidence submitted in support of Alaska's claim that their I/M program is at least 85% as effective as a centralized, test-only program is insufficient by itself to gain full approval of the credit claim, EPA believes that the state's assertion may be borne out by a well-designed demonstration study. It is also the Agency's position that this preliminary credit estimate, however speculative at this time, is based on a factual argument that has been prepared in good faith. EPA, therefore, proposes to conclude that Alaska's 85% estimate for I/M effectiveness merits interim approval for the eighteen month evaluation period.

B. Analysis of the EPA I/M Regulation and CAA Requirements

As previously stated, the NHSDA left those elements of the 1992 I/M Rule that do not pertain to network design and test type intact. Based upon EPA's review of Alaska's submittal, and the lack of any actual modification to the approved program, EPA believes the state has complied with all aspects of the NHSDA, the CAA and the 1992 I/M Rule.

Alaska's currently approved SIP includes provisions that assure that applicable federal regulations contained in 40 CFR 51.350 through 51.373 are met. As part of this Federal Register action, no modifications to these SIP provisions are acted upon.

III. Explanation of the Interim Approval

At the end of the 18 month interim period, pursuant to the NHSDA, the approval status for this program will automatically lapse. It is expected that the state will at that time be able to make a demonstration of the program's effectiveness using an appropriate evaluation criteria. EPA expects that the state will have at least 6 months of program data that can be used for the demonstration. If the state fails to provide a demonstration of the program's effectiveness to EPA within 18 months of the final interim rulemaking, the interim approval will lapse, and EPA will be forced to disapprove the state's permanent I/M SIP revision. If the state's program evaluation demonstrates that a lesser amount of emission reductions were actually realized than were claimed in the state's March 26, 1996 submittal, EPA will adjust the state's credits accordingly, and use this information to act on the state's permanent I/M program.

IV. Requirements for Permanent I/M SIP Approval

At the end of the 18 month period, final approval of the state's full SIP revision will be granted based upon the following criteria:

1. EPA's review of the state's program evaluation confirms that the appropriate amount of program credit was claimed by the state and achieved with the interim program,

2. Final program regulations are submitted to EPA, and

3. The state I/M program continues to meet all of the requirements of EPA's I/M Rule.

V. EPA's Evaluation of the Interim Submittal

EPA's review of this material indicates that a credit claim of 85% of test-only credit was prepared in good faith and is based in fact. EPA is therefore proposing an interim approval of the Alaska SIP revision for I/M program credit claims, which was submitted on March 26, 1996. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

VI. Proposed Action

This action proposes to modify sections III.A, III.B, and III.C of the Alaska SIP, and add an appendix to Section III.B entitled "Estimating the Emission Reductions from the Alaska I/M Programs." The proposal is for interim approval of these modifications and additions. Not all the revisions submitted on March 26 have been acted upon and proposed for interim approval, however. Pages proposed for interim approval by this action include:

- (1) Page III.A.2-5.
- (2) Page III.A.2-6, Table A.2-1.
- (3) Page III.A.2-30, Milestone Table, with the exception of revisions calling for biennial testing.
- (4) Page III.B.3-1, second paragraph.
- (5) Page III.B.5-13, fourth paragraph revisions prior to the new section entitled "Level of Proposed Credit," except for sentence related to biennial testing.
- (6) Page III.B.5-13, section entitled "Level of Proposed Credit."
- (7) Page III.B.5-14, Table B.5-1.
- (8) Page III.C.3-1, second paragraph.
- (9) Page III.C.5-6, first paragraph revisions prior to the new section

entitled "Level of Proposed Credit," except for sentence related to biennial testing.

(10) Page III.C.5-6, section entitled "Level of Proposed Credit."

(11) Page III.C.5-7, Table C.5-1.

(12) Appendix to Section III.B entitled "Estimating the Emission Reductions from the Alaska I/M Programs."

Pages submitted by the state as revisions, but not acted upon, and therefore not proposed for interim approval include:

- (1) Page III.B.3-1, last partial paragraph.
- (2) Page III.B.3-3, Table B.3-2.
- (3) Page III.B.6-5.
- (4) Page III.B.6-6, Figure B.6-1.
- (5) Page III.B.8-6.
- (6) Page III.B.8-7, Figure B.8-1 and the section entitled "State Oxygenated Fuels Program."
- (7) Page III.B.8-8, Figure 8-2.
- (8) Page III.B.8-9.
- (9) Page III.B.8-10.
- (10) Page III.C.3-1, after the second paragraph (reference to Table III.C.3-2).
- (11) Page III.C.3-3, Table C.3-2.
- (12) Page III.C.3-7, Table C.3-3.
- (13) Page III.C.3-7 and 3-8.
- (14) Page III.C.5-4.
- (15) Page III.C.5-5, Figure C.5-1.
- (16) Page III.C.8-2.
- (17) Page III.C.8-3 and 8-4.
- (18) Page III.C.8-3, Figure III.C.8-1.
- (19) appendix to Section III.A entitled "Mobile Source CO Emissions Inventory Update #3."

This latter group of revisions relates to: the effectiveness of the I/M program in the context of total carbon monoxide emission reductions in Anchorage and Fairbanks; state oxyfuel programs; and/or, future biennial I/M testing. Since these topics have not been considered appropriate for inclusion within an action leading to interim approval, the respective revisions will be reviewed, together with other separate state submittals, in a future SIP action by EPA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VII. Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the

procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2). The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any

small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: September 13, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96-25981 Filed 10-9-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[DC031-2004; DC032-2005; FRL-5617-1]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia: Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed disapproval.

SUMMARY: EPA is proposing disapproval of a State Implementation Plan (SIP) revision submitted by the District of Columbia on July 13, 1995 and supplemented on March 27, 1996. This revision amends the District's motor vehicle inspection and maintenance (I/M) program required to be enhanced under the Clean Air Act. The intended effect of this action is to propose disapproval of the enhanced I/M program proposed by the District. This action is being taken under section 348 of the National Highway System Designation Act of 1995 (NHSDA) and section 110 of the Clean Air Act (CAA). EPA is proposing disapproval of the District's enhanced I/M SIP revision because it is deficient with respect to the requirements of the CAA and EPA's enhanced I/M program regulatory requirements.

In taking action under section 110 of the CAA it is appropriate to propose disapproval of the District's enhanced I/M

submittal because there are so many deficiencies with respect to CAA statutory and regulatory requirements described in more detail below.

DATES: Comments must be submitted by November 12, 1996.

ADDRESSES: Comments may be mailed to David L. Arnold (mailcode 3AT21), Chief, Ozone and Mobile Sources Section, United States Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the U.S. EPA, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Kelly A. Sheckler (215) 566-2178.

SUPPLEMENTARY INFORMATION:

I. Background

A. Impact of the National Highway System Designation Act on the Design and Implementation of Enhanced Inspection and Maintenance Programs Under the Clean Air Act

The National Highway System Designation Act of 1995 (NHSDA) establishes two key changes to the enhanced I/M rule requirements previously developed by EPA. First, under the NHSDA, EPA cannot require States to adopt or implement centralized, test-only IM240 enhanced vehicle inspection and maintenance programs as a means of compliance with section 182, 184 or 187 of the CAA. Second, under the NHSDA, EPA cannot disapprove a State's SIP revision, nor apply an automatic discount to a State's SIP revision under section 182, 184 or 187 of the CAA, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called "50% credit discount" that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, and herein referred to as the I/M Rule) has been effectively replaced with a presumptive equivalency criteria, which places the emission reductions credits for decentralized networks on par with credit assumptions for centralized networks, based upon a State's good faith estimate of reductions as provided by the NHSDA and explained below in this section.

EPA's I/M Rule established many other criteria unrelated to network design or test types for states to satisfy in designing enhanced I/M programs. All other elements of the I/M Rule, and

the statutory requirements established in the CAA, continue to be required of those States submitting I/M SIP revisions under the NHSDA. The NHSDA specifically requires that I/M program submittals must otherwise comply in all respects with the I/M Rule and the CAA.

The NHSDA also requires states to swiftly develop, submit, and begin implementation of these enhanced I/M programs, since the anticipated start-up dates developed under the CAA and EPA's rules have already been delayed. In requiring states to submit these plans within 120 days of the NHSDA passage, allowing these states to submit proposed regulations for this plan (which can be finalized and submitted to EPA during the interim period) and by providing expiration of interim approval after 18 months of data collected during operation of program, it is clear that Congress intended for states to begin testing vehicles as soon as practicable.

Submission criteria described under the NHSDA allow for a state to submit proposed regulations for this interim program, provided that the state has all of the statutory authority necessary to carry out the program. Also, in proposing the interim credits for this program, states are required to make good faith estimates regarding the performance of their enhanced I/M program. Since these estimates are expected to be difficult to quantify, the state need only provide that the proposed credits claimed for the submission have a basis in fact. A good faith estimate of a state's program may be an estimate that is based on any of the following: the performance of any previous I/M program; the results of remote sensing or other roadside testing techniques; fleet and vehicle miles traveled (VMT) profiles; demographic studies; or other evidence which has relevance to the effectiveness or emissions reducing capabilities of an I/M program.

This action is being taken under the authority of both the NHSDA and section 110 of the CAA. Section 348 of the NHSDA expressly directs EPA to interim rulemaking for a period of 18 months. The Conference Report for section 348 of the NHSDA states that it is expected that the proposed credits claimed by the State in its submittal, and the emissions reductions demonstrated through the program data, may not match exactly. Therefore, the Conference Report suggests that EPA use the program data to appropriately adjust these credits on a program basis as demonstrated by the program data.

B. Interim Approvals Under the NHSDA

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under the NHSDA. The NHSDA also directs EPA and the states to review the program results at the end of 18 months, and to make a determination as to the effectiveness of the program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort to reflect the emissions reductions actually measured by the State during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA by the end of that period. Therefore, EPA believes Congress intended for these programs to start-up as soon as possible, which EPA believes should be at the latest, 12 months after the effective date of this interim rule, November 15, 1997 so that approximately 6 months of operational program data can be collected to evaluate the interim program. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of this program. For the purposes of this program, "start-up" is defined as a fully operational program which has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of a state's required areas. If a state fails to start its program on this schedule, an interim approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the state.

The program evaluation to be used by the state during the 18 month interim period must be acceptable to EPA. EPA anticipates that such a program evaluation process will be developed by the Environmental Council of States (ECOS) group that is convening now and that was organized for this purpose. EPA further anticipates that in addition to the interim, short term evaluation, the state will conduct a long term, ongoing evaluation of the I/M program as required in 40 CFR 51.353 and 51.366.

C. Process for Full Approvals of This Program Under the CAA

The District must submit a SIP revision correcting the deficiencies identified herein as described below in order for EPA to withdraw this proposed disapproval action, and to move forward to propose and finalize approval of the District's enhanced I/M SIP revision under sections 110, 182, 184 or 187 of the CAA.

II. EPA'S Analysis of The District of Columbia's Submittal

On July 13, 1995, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) submitted revisions to its State Implementation Plan (SIP) for an enhanced I/M program. On March 27, 1996, the District submitted, as a supplement to the July 13, 1995 submittal, a SIP revision requesting consideration under the NHSDA. The revision consists of: enabling legislation that will allow the District to implement a biennial I/M program (legal authorities to require the operation of the program through to the attainment year and beyond as necessary for maintenance of the standard and to dedicate funding to develop and implement the program were not provided); final regulations for portions of the program, and a brief description of the I/M program. The District's SIP narrative stated that credit assumptions were based upon a pilot demonstration conducted in the State of California and data from a remote sensing prescreen demonstration in Canada, credit for a technician training program as provided by EPA and the application of the District's own estimate of the effectiveness of its overall test only program.

A. Analysis of the NHSDA Submittal Criteria

Transmittal Letter

On March 27, 1996, the District of Columbia submittal an enhanced I/M SIP revision to EPA, requesting action under the NHSDA and the CAA. The official submittal was made by the appropriate District official, Hampton Cross, Director of the Department of Consumer and Regulatory Affairs, and was addressed to the appropriate official in the EPA Region III Office.

Enabling Legislation

The District of Columbia has legislation at "Motor Vehicle Biennial Inspection Amendment Act of 1993", D.C. Law 10-106, D.C. Code section 40.201 et seq., effective April 26, 1994. The SIP narrative provides a statement that Title 18 DCMR has no expiration date. Enabling legal authority for a registration denial enforcement system is not clearly provided in the SIP submittal although the SIP submittal cites such an enforcement mechanism. The SIP submittal is also deficient in that it lacks enabling authority to implement other requirements of the I/M program in accordance with the CAA. A detailed description of these deficiencies is provided below in the

section by section analysis of the District's submittal.

Proposed Regulations

Copies of the District of Columbia Register were provided which indicated some of the submitted regulations had gone to public notice and hearing. Public notices for amendments to Title 18 DCMR were published on April 15, 1994 and July 1, 1994. There is no evidence that the July 13, 1995 and March 27, 1996 SIP submittals were subject to public notice and hearing.

Program Description

The District program is a centralized test only network. According to the submittal's program description, light duty vehicles and trucks and heavy duty vehicles model years 1968 and newer are covered by the program. Vehicle model year 1979 and older will be subject to an idle test. Vehicles model year 1980 and newer will be subject to a short transient test (BAR31). Vehicles will be prescreened using a remote sensing device. Vehicles failing the prescreen test will undergo the appropriate test based upon model year. Passing vehicles will be waived from the emission test. All vehicles are to be tested for gas cap integrity and a randomly selected group of vehicles will be inspected with a non-intrusive evaporative test system. A state-of-the-art technician training program will be added to the District program.

Emission Reduction Claim and Basis for the Claim

The District's SIP revision assumes that BAR31 test is equivalent to IM240. No data or any basis in fact is provided in the District's submittal to support this claim. The District's proposed program provides for a prescreen using remote sensing. A reduction in emission credit for the prescreen is provided, however, the basis for the credit claim is not provided. The District's SIP submittal does not provide good faith estimates that the program meets the performance standard. Without a basis in fact, the proposed program does not provide any assurance that the necessary emission reductions will be achieved.

B. Analysis of the EPA I/M Regulation and CAA Requirements

EPA summarizes the requirements of the I/M Rule as found in 40 CFR 51.350-51.372 and its analysis to the District's submittal below. A more detailed analysis of the District's submittal is contained in a Technical Support Document (TSD) available from the Region III office, listed in the ADDRESSES section of this notice. Parties

desiring additional details on the I/M rule are referred to 40 CFR 51.350–51.372.

As previously stated, the NHSDA left those elements of the I/M Rule that do not pertain to network design or test type intact. Based upon EPA's review of the District's submittal, EPA believes the District has not complied with all aspects of the NHSDA, CAA and the I/M Rule. For those sections of the I/M Rule, or of the CAA identified below, with which the District has not fully complied, the District must submit a revision to correct said deficiency.

The District must correct these major deficiencies in order for EPA to provide approval under CAA section 110(k)(4). EPA has also identified certain minor deficiencies in the SIP, which are itemized below. EPA has determined that delayed correction of these minor deficiencies will have a de minimis impact on the District's ability to meet clean air goals. Therefore, the District need not correct these deficiencies in the short term, and EPA will not disapprove the re-submittal with respect to these deficiencies for purposes of interim approval under the NHSDA, if these are the only outstanding deficiencies. The District must correct the major deficiencies noted herein and submit a revised SIP revision for interim approval. However, even the minor deficiencies must be corrected prior to final full approval by EPA of the District's enhanced I/M SIP after the 18 month evaluation period.

Applicability—40 CFR 51.350

Sections 182(c)(3) and 184(b)(1)(A) of the CAA and 40 CFR 51.350(a) require all states in the Ozone Transport Region (OTR) which contain Metropolitan Statistical Areas (MSAs) or parts thereof with a population of 100,000 or more to implement an enhanced I/M program. The District is part of the OTR and is part of a MSA with a population of 100,000 or more. The entire District is classified as a serious ozone nonattainment area and also is required to implement an enhanced I/M program as per section 182(c)(3) of the CAA and 40 CFR 51.350(2). The District I/M regulation requires that the enhanced I/M program be implemented District wide. The District I/M legislative authority (referred to as DC Law 10–106, DC Code 40, Title 18 DCMR throughout the remainder of this notice) provides the legal authority to establish a statewide biennial vehicle emission testing program. The federal I/M regulation requires that the District's program not terminate until it is no longer necessary. A SIP revision which does not allow termination of the

program prior to the attainment deadline for each applicable area satisfies this requirement. The District's I/M enabling authority itself does not address the length of time the program will be in effect. The program must continue until the attainment dates for all applicable nonattainment areas in the District. A statement in the SIP narrative indicates that the enabling legislation has no expiration date. The SIP submittal does not provide a list of ZIP codes of all areas covered by the I/M program. Therefore, the District's SIP does not meet the applicability requirements for geographical coverage. These are minor deficiencies and must be ultimately corrected for EPA to give final full approval.

Enhanced I/M Performance Standard—40 CFR 51.351

The enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the District's submittal, the most current version was MOBILE 5a. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both nitrogen oxide (NO_x) and hydrocarbons (HC). In the case of carbon monoxide areas, the performance standard must be met for carbon monoxide (CO). The District's submittal must meet the enhanced I/M performance standard for HC, and NO_x statewide.

EPA established an alternative, low enhanced I/M performance standard to provide flexibility for nonattainment areas that are required to implement enhanced I/M but which can meet the 1990 Clean Air Act emission reduction requirements for Reasonable Further Progress and attainment from other sources without the stringency of the

high enhanced I/M performance standard (60 FR 48029). 40 CFR 51.351(g) provides that states may select the low enhanced performance standard if they have an approved SIP for reasonable further progress in 1996, commonly known as 15% plans. The District's 15% plan relies on credit from a high enhanced I/M program for 48% of the 15% reduction required. For this reason the District does not qualify for the low enhanced performance standard.

EPA also established an alternate, Ozone Transport Region (OTR) low enhanced I/M performance standard in order to provide OTR qualifying areas the flexibility to implement a broader range of I/M programs (61 FR 39039). This standard is designed for states in the OTR which are required to implement enhanced I/M in areas that are designated and classified as attainment, marginal ozone nonattainment or moderate ozone nonattainment with a population of under 200,000. The District is classified as a serious ozone nonattainment area and therefore does not qualify for the OTR low enhanced I/M performance standard.

The District's submittal includes the following program description and design parameters:

Network type—Centralized

Start date—1997

Test frequency—biennial

Model year/ vehicle type coverage—1968+ LDV, LDT, HDT

Exhaust emission test type—idle on pre-1980 vehicles; transient BAR31 on 1980 and newer vehicles; all vehicles will be prescreened with remote sensing device to determine if subject to an emission test

Emission standards—8 HC, 20 CO, 2 NO_x

Emission control device—yes

Evaporative system function checks—pressure 1983 +, purge 1977 +

Stringency (pre-1981 failure rate)—20%
Waiver rate—3%

Compliance rate—96%

Evaluation dates—2000, 2005, 2010

The emission levels achieved according to the District's submittal were modeled using MOBILE5a. The modeling demonstration is insufficient to make a determination that it reflects the proposed program. Numerous errors on the start date of various program elements were modeled. The District's program assumes the BAR31 test as equivalent to IM240. No test specification and procedures are provided for the BAR31 test. No data to support the credit claim of equivalency for BAR31 is provided. The District's

submittal claims it uses data provided from a California pilot study. This data is not provided in the submittal. The remote sensing device (RSD) prescreen feature of the District's program is not accounted for by the current MOBILE model. Hand calculations are provided by the District for the RSD portion of the program. However, the reductions from using RSD and the credit claims are not supported by any data. The District's submittal's demonstration uses credit from a mechanics training program to make up the reduction loss from the use of RSD as a prescreen. The credit assumed for mechanics training is inconsistent with EPA policy. Furthermore, the modeling demonstration does not provide headings or labels identifying the MOBILE5a runs making it extremely difficult to perform a definitive review of the demonstration. The summary sheets in the District's submittal are inconsistent with the MOBILE5a runs. Another summary sheet lists all the evaluated cutpoints but does not indicate which cutpoints the District plans to use. The discrepancies with the program description and regulations render the modeling insufficient to make a demonstration that the District's proposed program meets the high enhanced performance standard. The District's submittal does not meet the enhanced I/M performance standards requirements of the federal I/M rule. This major deficiency is in part the basis for EPA's proposed disapproval of the District's I/M SIP.

Network Type and Program Evaluation—40 CFR 51.353

The enhanced program must include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the CAA and the federal I/M regulation. The SIP must include details on the program evaluation and must include a schedule for submittal of biennial evaluation reports, data from a state monitored or administered mass emission test of at least 0.1% of the vehicles subject to inspection each year, a description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program.

The District has not committed to meet the program evaluation requirements of 40 CFR 51.353 and no detailed description of the biennial program evaluation, including the schedule and methodology is provided in the submittal. The Environmental Council of States (ECOS) has formed a committee to develop an evaluation

protocol to be used by states in order to evaluate program effectiveness. ECOS has recommended that the states follow the long term program evaluation found in 40 CFR 51.353. 40 CFR 51.353 requires that a mass emission transient testing (METT) be performed on 0.1% of the subject fleet each year. The District's submittal includes a commitment to provide EPA with a report two years after the program begins. However, in addition to the requirements of program evaluation under 40 CFR 51.353, the NHSDA provides that a state must submit a data analysis and revised SIP by the end of the 18 month period. The District does not commit to or provide any reference to this submittal. The District claims that data will be collected by conducting random procurement of subject vehicles and remote sensing for in-use vehicles, 2% random effectiveness of repairs on failing vehicles, RSD on minimum 10,000 vehicles per year, and covert inspections to evaluate inspectors. These methods are not consistent with the federal enhanced I/M rule and the ECOS agreement for the long term evaluation.

Although the submittal describes a test-only network type, there is no regulation in the District that specifies that the program be operated in a centralized, test-only format. Furthermore, the District's SIP submittal includes regulations at section 605 of 18 DCMR that allow for re-inspection at repair stations. It is EPA's understanding that more recent regulations have been adopted for a full test-only network (initial test and re-test). The narrative of the District's submittal describes a test-only network with no mention of re-tests at repair stations. The District must address this discrepancy by submitting the revised versions of the regulations or providing a basis in fact and effectiveness analysis for the test and repair portion of the program. No regulations have been provided in the District's submittal which prohibit owners and/or employees of official I/M stations from referring vehicle owners to particular repair service providers. A regulation must be adopted that provides for this. This is a major deficiency and in part, is the basis for proposed disapproval of the District's I/M program.

Adequate Tools and Resources—40 CFR 51.354

The federal regulation requires the District to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund

and used to finance the program. Alternative funding approaches are acceptable if it is demonstrated that the funding can be maintained. Reliance on funding from the District's general fund is not acceptable unless doing otherwise would be a violation of its constitution. The SIP submittal must include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP must also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The District's submittal pending before EPA does not provide for enabling legal authority establishing a dedicated fund. No demonstration has been made that this would violate the District's authorities. Currently, the District government is undergoing a financial and administrative reorganization and many uncertainties exist. In relation to consumer protection, the SIP must provide assurance that adequate funding is available to develop and implement the program as proposed. Furthermore, funds need to be secured to implement and maintain the program through attainment. Lack of secured funding dedicated to the I/M program jeopardizes the ability of the program to meet the necessary emission reduction goals. The SIP needs to describe how the emission targets will be met, describe the resources to be used for all program operations (e.g. RSD prescreen, quality assurance checks, etc.), and include a final budget plan including description of equipment resources. The budget plan needs to provide a demonstration that the District has adequate resources to perform all program functions and insure future funding through operation of program until attainment is achieved. Therefore, the District submittal does not meet the adequate tools and resources requirements set forth in the federal I/M rule. This major deficiency in part is the basis for EPA's proposed disapproval of the District's I/M SIP.

Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall

include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The District's submittal provides for a program of biennial testing in a centralized network. Many of the details related to this section must still be developed by the District before EPA can determine if the requirements are satisfied. Although the District expects sufficient testing facilities using RSD as a prescreen, to provide adequate convenience, there are no provisions for additional testing if participation is lower than expected. The SIP fails to provide an evaluation of how the RSD prescreen will ensure short wait times. Furthermore, the SIP does not provide a description of the test frequency, or regulations that ensure vehicles are tested at an assumed frequency, including sufficient safeguards in the enforcement system to ensure that vehicles are tested according to schedule. These are minor deficiencies which the District must ultimately correct for EPA to give final full approval.

Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks and heavy duty trucks up to 26,000 pounds GVWR, and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in the same type of test network as other vehicles in the state, according to the requirements of 40 CFR 51.353(a). Vehicles which are operated on Federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The federal I/M regulation requires that the SIP must include the legal authority or rule necessary to

implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption. Such exemptions shall be accounted for in the emissions reduction analysis.

The District's SIP submittal does not provide a description of the number and types (broken down by model year, fuel type, vehicle class, a weight class) of vehicles the program will cover. The regulations provide that vehicles model year 1968 and newer, up to a weight of 26,000 gross vehicle weight, must undergo an emissions test. The District states in the SIP narrative text that it will provide self testing for fleets, (testing at the fleets facilities, or during special hours at the District stations), but no regulatory or legally enforceable provisions are established to provide for this testing. Although Federal fleets are subject to meet the same requirements as all District registered vehicles, the District plan does not provide a plan for testing of Federal vehicles. The SIP needs to provide a description of the Federal fleet inspection program area. The District's SIP submittal does not account for vehicles registered or required to be registered in the programs. The SIP needs to provide an estimate of unregistered vehicles. The District's SIP submittal claims that number of vehicles that operate in the District but are not registered in the District is insignificant. The District offers no plan to inspect and certify these vehicles. Data to support the District's claim of insignificance needs to be provided. In light of the fact that the District of Columbia is a major commuting community center for vehicles from suburban Maryland and Virginia, EPA questions whether such vehicles are truly insignificant. Furthermore, the program needs to provide provisions to account for these vehicles, whether or not they are insignificant. The SIP submittal and modeling do not provide a description and accounting of vehicles registered in the District but operating primarily outside the District. These are minor deficiencies that must ultimately be corrected for EPA final full approval.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and

followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA document entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", EPA-AA-EPDS-IM-93-1, dated April 1994. The federal I/M rule also requires vehicles that have been altered from their original certified configuration (i.e. engine or fuel switching) to be subject to the requirements of § 51.357(d).

The District regulation Title 18 DCMR provides one set of standards for all subject vehicles model years. The standards are in a grams per mile (gpm) format, achieved with a transient test. The District proposes to use an idle test on a certain percentage of the vehicle fleet. Standards will need to be adopted in a parts per million (ppm) format to accommodate the idle test. The District's program proposes to utilize a BAR31 test, remote sensing prescreen and evaporative test. No standards exist for remote sensing or the evaporative tests. Nor does the District provide standards for switched engines. Furthermore, full test procedures for all tests need to be provided.

The District's SIP states that tests are not to be performed without prior repair, however, no regulations providing for such a requirement are provided. No provisions are provided to ensure that the vehicle owner has access to the test area to observe the entire inspection. No provision ensures that when a failure on one part of a test leads to failure on another part, the test procedure for a retest is done on the originally failed component and the second component as well. No provision is included which requires that an exhaust emission retest be required along with a retest of the evaporative system following an evaporative system failure and repair. No provisions are provided that require all criteria pollutants be measured on a retest after failure of a given pollutant. The District's submittal does not meet the Test Procedures and Standards requirements of the federal I/M rule. This major deficiency in part is the basis for EPA proposed disapproval of the District's I/M SIP.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The federal I/M regulation requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the

emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures. The District provides a draft Request for Bid (RFB) that details the test equipment specifications. Appendix 8 of the District's submittal, the draft RFB, provides for IM240 test equipment which the District proposes to use with a BAR31 test. The evaporative purge system specifications are not consistent with the requirements of EPA approved specifications for a purge system. Furthermore, no specifications exist for equipment used for the remote sensing prescreen. The District's submittal does not contain the written technical specifications for test equipment to be used in the program. These are minor deficiencies and must ultimately be corrected for EPA to give final full approval.

Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

The District's submittal includes provisions which describe and establish quality control measures for the emission measurement equipment. However, the quality control procedures in Appendix 10 of the District's SIP submittal are incomplete. Specifically in section 5.1.1 several blanks need to be filled in, figure 5-1 is missing, no RSD specifications are provided. For the idle test being conducted on pre-1980 vehicles no equipment specifications are provided (e.g. housing construction requirements to protect analyzer bench and electrical components from ambient temperature and humidity fluctuations, automatic purge of system after each test). These are minor deficiencies and must be ultimately corrected for EPA final full approval.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least \$450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs

before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

Although the District provides for the CAA waiver rate of \$450.00 plus CPI adjustment, the regulations as adopted by the District do not preclude the Mayor from changing the minimum waiver amount. At no time, can the minimum waiver amount be lowered. The District will need to amend its regulations to correct this deficiency. Time extensions are provided for in the District program; however, no criteria or procedures for issuance of these hardship waivers is provided. The District needs to provide provisions to address hardship waiver issuance criteria to support these waivers. These are minor deficiencies that ultimately must be corrected for EPA to give final full approval.

Motorist Compliance Enforcement—40 CFR 51.361

The federal rule requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. An enhanced I/M area may use either sticker-based enforcement programs or computer-matching programs if either of these programs were used in the existing program, which was operating prior to passage of the 1990 Clean Air Act Amendments, and it can be demonstrated that the alternative has been more effective than registration denial. The SIP must provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

Although the District makes a statement in its SIP submittal that a registration denial system will be used, the full text of its legislative authority is not provided. No enforcement regulations or procedures are provided in the SIP submittal. The District needs to identify all agencies responsible for implementing the motorist compliance

program. A description of and accounting for all classes of exempt vehicles needs to be provided. The SIP needs to include a description of the plan for testing vehicles, rental car fleets, leased vehicles, federal fleet vehicles, state and local government vehicles, and other subject vehicles. Section 3.5 of the District's SIP claims the current compliance rate and the effect of noncompliance due to loopholes, counterfeiting, and unregistered vehicles is insignificant. The District needs to explain why this is insignificant and the rationale for such statement. The District claims a 96% compliance rate, however, no commitment is provided that the District will maintain this enforcement level, at a minimum, in practice. No penalty schedule for noncompliance is provided. There is no requirement that noncompliance cases are not to be closed until compliance is demonstrated. No procedures are provided that prevent owners or lessors of vehicles from avoiding the testing program through the manipulation of the registration or titling requirements. No mechanism is provided for certifying vehicles that have met the testing requirements and have been passed or waived. Although the District requires that license tags and window stickers be used, linkage of sticker issuance and registration denial is not provided. Procedures must be established that clearly determine when a vehicle is tested under the biennial testing schedule. These are major deficiencies. The District's submittal does not meet the Motorist Compliance Enforcement requirements of the federal I/M rules. This in part the basis for EPA's proposed disapproval of the District's I/M SIP.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program. The submittal provides enforcement procedures to oversee the program to meet the requirements of this section.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program must be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program must include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP. The District provides some quality assurance procedures. However, the procedures on covert audits are not provided. In addition, the quality assurance procedures for equipment audits do not include the remote sensing equipment. Equipment audits on the RSD equipment need to be performed. This is a minor deficiency. In addition, the procedures manual states the District will establish a training program for auditors and a program to audit, independently, the auditors performance. The federal I/M rule requires that auditors to be audited at least once a year. Appendix 10.7.3 of the District SIP submittal provides that auditors will be audited periodically, as needed. These are minor deficiencies and must be ultimately corrected for final full EPA approval.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations, contractors and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP must describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the

resources and sources of those resources which will support this function.

The District provides a citation of its legislative authority to enforce against contractors, inspectors and stations. However, a copy of such legal authority is not provided. The District SIP does not contain a penalty schedule for noncompliance and list the offenses. The first offense must be no less than \$100 or 5 times the inspection fee. The judicial procedures and the responsibilities of each person in the judicial process are not provided. No description of resources allocated to the judicial and enforcement process are provided. No legal authority and/or regulation exists that provides for the immediate suspension of station/inspector for a violation. The District needs regulations that (1) require inspectors to receive training or retraining where a violation or discovery of incompetence has occurred; (2) bar certified inspectors from any involvement in inspection while on penalty suspension; and, (3) provide auditors the authority to temporarily suspend station and inspectors licenses or certificates immediately upon finding a violation or equipment failure. The District SIP provides a commitment to report to EPA statistics on enforcement activities. The reports must at a minimum include all warnings, civil fines, suspensions, revocations, and violations. These are minor deficiencies and must be ultimately corrected before final full approval.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

The District provides a commitment to meet all of the data collection requirements of the federal I/M regulations. The District will need to provide these procedures upon completion to EPA as an official SIP revision. The District's SIP meets the requirements of the federal I/M rule for Data Collection.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities

performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July of each year and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The District's SIP commits to conform to the federal I/M regulations for data analysis and reporting procedures. The District's SIP meets the requirements of the federal I/M rule for data analysis and reporting.

Inspector Training and Licensing or Certification—40 CFR 51.367

The federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections. The District's narrative indicates that the requirements for inspector training and licensing or certification meet the federal I/M regulations. The District commits to maintain an inspector training program and to ensure it meets or exceeds the standards of 40 CFR 51.367 (a). The training program will cover the materials specified in the federal I/M rule and are located in the District's regulation at 18 DCMR 617.6. An adequate description of the program must be included. This is a minor deficiency and must be ultimately corrected for final full approval.

Public Information and Consumer Protection—40 CFR 51.368

The federal I/M regulation requires the SIP to include public information and consumer protection programs. The District's SIP submittal contains a public awareness plan to meet the requirements of this section.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of the federal regulation and a description of the repair technician training resources available in the community. The District's submittal claims an enhanced I/M

training center will be administered to meet the requirements of diagnostic and repair technician assistance. However, the lack of funding to support the development of the District's proposed enhanced state-of-the-art training center, remains a concern to EPA. The District's SIP submittal does not identify when the facility will be established and fully operational. The SIP submittal does not address the requirement for a technician hotline service. These are minor deficiencies and must be ultimately corrected for final full approval.

Compliance With Recall Notices—40 CFR 51.370

The federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test and/or renewing the vehicle registration.

The District's submittal does not provide any recall provisions, including authority to require owners to show proof of compliance with recalls in order to complete inspections and receive registration. No commitment to submit to EPA annual reports on recall compliance is provided by the District. No quality control procedures are provided to track recall repairs. In light of EPA final regulations for recall notices, the District can commit to adopt the EPA approved recall rules upon promulgation. These are minor deficiencies and must be ultimately addressed for final full approval.

On-road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test but are found to be high emitters as a result of an on-road test shall be required to pass an out-of-cycle test. The District's SIP submittal commits to test 0.5% of fleet, however no regulations/procedures are provided. The District's submittal needs to provide an adequate description of the on-road testing program. This is a minor deficiency and must be ultimately corrected for final full approval.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–373

The submittal contains a schedule which is dependent on action by the Financial Control Board to secure funds. The general schedule has 3 Phases: Design/Build/Operate Contract, Construction of SW Inspection Station, and Program Effectiveness Evaluation. In Phase 1 which begins in March 1996 and runs through to February 1997, the District plans to issue a request for proposal (RFP), evaluate the technical content of RFP and award a contract. In Phase 2 which begins in February 1997 and ends January 1998, the District plans to transfer District inspectors from the SE inspection station to the NE inspection station to continue basic I/M and safety inspection, build and renovate a new SW inspection station, train contractor inspectors and implement contractor control/audit mechanisms. In Phase 3 which begins July 1996 and ends January 1998, the District plans to design effectiveness evaluation criteria, test vehicles on IM240 and DC36 test procedures, evaluate test procedure effectiveness and evaluate repair effectiveness. The District needs to provide a schedule of testing of vehicles (phase-in and full), explanation of what vehicles will be tested (model years/number thereof), what test will be used, and when each test and program element goes into effect (e.g. RSD prescreen, evaporative test, technician training, full stringency cutpoints, etc.). The schedule provides that phase-in of new inspection equipment will begin by September 1997. The program must be fully implemented with all enhanced program features by November 15, 1997. The performance standard modeling start years are not consistent with the schedule provided by the District in this section. These are minor deficiencies and must be ultimately corrected for final full approval.

III. Discussion for Rulemaking Action

EPA's review of the District's I/M SIP revision, which was submitted on July 13, 1995 and supplemented on March 27, 1996, finds that it does not meet all of the relevant requirements of the NHTSA or Clean Air Act, and EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office

listed in the *Addresses* section of this notice.

Proposed Action

EPA is proposing to disapprove this revision to the District SIP for an enhanced I/M program. EPA is proposing to disapprove this action because the District's I/M program does not meet all of the requirements of the NHTSA, the Clean Air Act and the federal I/M rule.

Today's notice proposes to disapprove the District's I/M SIP until such time as the District corrects the major elements of the SIP that EPA considers deficient.

These major elements are:

(1) The proposed I/M program does not provide for a dedicated funding mechanism to develop, implement and maintain the program through attainment of the ozone standard. The Clean Air Act requires that a dedicated fund be established. The District must demonstrate that adequate funding of the program is available. Alternative funding approaches are acceptable if it is demonstrated that the funding can be maintained. The District does not provide for enabling legislation establishing such secured funding.

(2) The District uses unapproved test types and claims credit equivalency without a clear basis for those claims. The deficiencies in the credit claims of the District's I/M program include the following:

(a) Assumes full IM240 emission reduction credit for BAR31 test without data to support this claim.

(b) Uses remote sensing as a testing prescreen without providing data to support emission reductions and credit calculation.

(c) Assumes full credit for a non-intrusive evaporative test with no data to support this assumption.

(3) The submittal contains insufficiently demonstrates that the District's program meets the high enhanced performance standard, which is necessary for the District's air quality attainment plan. The demonstration is insufficient due to the test equivalency stated in (2) above and inaccurate calculation of emission reductions detailed in the section by section analysis.

(4) The District's SIP submittal provides a citation for registration denial but the full text of the legislation is not provided. The District's program lacks regulatory requirements for a registration denial system.

(5) The District's SIP is deficient in meeting the requirements of Network Type and Program Evaluation because it contains no commitment to evaluate the program using mass emission transient

testing on 0.1% of the subject fleet each year.

(6) The SIP submittal is deficient in providing adopted regulations and procedures for each test type.

Major deficiencies must be corrected with regard to sections, 51.351, Enhanced I/M Performance Standard, 51.353, Network Type and Program Evaluation, 51.354, Adequate Tools and Resources, 51.357, Test Procedures and Standards, and 51.360, Motorist Compliance Enforcement.

In addition, the District's submittal does not meet a number of miscellaneous requirements of the I/M rule. Specifically sections: 51.350, Applicability, 51.355, Testing Frequency and Convenience, 51.356, Vehicle Coverage, 51.358, Test Equipment, 51.359, Quality Control, 51.360 Waivers and Compliance via Diagnostic Inspection, 51.362 Motorist Compliance Enforcement Program Oversight, 51.363, Quality Assurance, 51.364 Enforcement against Contractors, Stations and Inspectors, 51.365 Data Collection, 51.366, Data Analysis and Reporting, 51.367 Inspection Training and Licensing or Certification, 51.368, Public Information and Consumer Protection, 51.369, Improving Repair Technician Effectiveness, 51.370, Compliance with Recall Notices, 51.371, On-Road Testing, and 51.372, State Implementation Plan Transmittals. These deficiencies, described in more detail above in the section by section analysis, must be corrected before EPA could provide full approval for the District's I/M SIP revision.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. Sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's disapproval of the District's request under Section 110 and subchapter I, part D of the CAA does not affect any existing requirements

applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability.

Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

Under Section 202 of the Unfunded Mandate Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local or tribal governments in aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the disapproval action proposed does not include a Federal mandate that may result in estimated cost of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action maintains pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional cost to State, local, or tribal governments, or to the private sector, result from this action.

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule [is/ is not] a "major rule" as defined by section 804(2) of the APA as amended.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation.

The Administrator's decision to approve or disapprove the District's enhanced I/M SIP revision will be based on whether it meets the requirements of section 110(a)(2) (A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: September 19, 1996.

Michael M. McCabe,

Regional Administrator, Region III.

[FR Doc. 96-25983 Filed 10-9-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[PA036-4016, PA036-4017; FRL-5633-6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation Request, Maintenance Plan, and Emissions Inventory for the Reading Ozone Nonattainment Area; Policy Change for Ozone Redesignations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request for the Reading ozone nonattainment area, and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania, contingent upon Pennsylvania's correction of all deficiencies contained in the request and SIP revision. The revisions consist of a maintenance plan and 1990 base year inventories for the Reading ozone nonattainment area. EPA is also proposing to disapprove the redesignation request and SIP revisions for the Reading area, if Pennsylvania does not correct the deficiencies. In addition, for the purposes of redesignation, EPA is proposing to approve Pennsylvania's legislative authority to adopt and implement a vehicle inspection and maintenance program. These actions are being taken under sections 107 and 110 of the Clean Air Act. Furthermore, EPA is proposing a change in its policy on redesignation requirements for ozone nonattainment areas in the Ozone Transport Region (OTR). The proposed policy change makes redesignation requirements for areas in the OTR consistent with

requirements for areas outside the OTR by interpreting meeting the requirements under section 184 of the Clean Air Act as not being a prerequisite for the purpose of redesignation. The policy does not affect duplicate requirements under other sections of the Act.

DATES: Comments must be received on or before November 12, 1996.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 566-2181, at the EPA Region III office address listed above, or via e-mail at pino.maria@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On November 12, 1993, the Commonwealth of Pennsylvania formally submitted a redesignation request for the Reading ozone nonattainment area. At the same time, the Commonwealth submitted a maintenance plan for the Reading area as a SIP revision. The maintenance plan was subsequently amended on January 13, 1994 and, again, on May 12, 1995. On November 12, 1992, Pennsylvania submitted its 1990 base year VOC, NO_x, and CO inventories for all areas in the Commonwealth. On November 12, 1993, Pennsylvania included revisions to its 1990 base year inventories for the Reading area as part of the SIP revision submittal, along with the maintenance plan.

Background

The Reading area, which includes Berks County, is designated nonattainment for ozone and is classified as moderate (56 FR 56694). Monitored air quality data recorded in the Reading area first met the ozone National Ambient Air Quality Standard (NAAQS) during the three-year period 1989-1991, and continues to meet the NAAQS.

On July 19, 1995, EPA published a final rule (1) determining that the

Reading area and the Pittsburgh-Beaver Valley area (the Pittsburgh area) had attained the ozone standard, and (2) waiving the Clean Air Act requirements for a 15% plan, an attainment demonstration, and contingency measures for these areas (60 FR 37015). This action also lifted sanctions imposed on the areas for failure to submit these requirements. EPA took this action pursuant to a May 10, 1995 policy that allows a waiver of these requirements for areas that show, through air quality monitoring data, that they meet the ozone standard.

Subsequently, a lawsuit was filed against EPA on the application of this waiver policy.

A settlement agreement between EPA and the petitioners in the lawsuit (the Delaware Valley Citizens' Council for Clean Air, also known as the Clean Air Council) was signed on May 20, 1996, and a notice regarding it was published in the Federal Register on May 29, 1996 (61 FR 26903). By agreement with the petitioners, the Regional Administrator is to sign a Notice of Proposed Rulemaking on the Reading redesignation request and maintenance plan by September 30, 1996. In addition, the Regional Administrator is to sign the Final Rulemaking Notice by March 3, 1997.

Under section 107(d)(3)(E) of the Clean Air Act (the Act), the following five criteria must be met for an ozone nonattainment area to be redesignated to attainment:

1. The area must meet the ozone NAAQS.
2. The area must meet applicable requirements of section 110 and Part D.
3. The area must have a fully approved SIP under section 110(k) of the Act.
4. The area must show that its experienced improvement in air quality is due to permanent and enforceable measures.
5. The area must have a fully approved maintenance plan under section 175A of the Act, including contingency measures.

Policy Change for Redesignations—Section 184 Requirements

All areas in the Ozone Transport Region (OTR), both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements are reasonably available control technology (RACT) for sources of volatile organic compounds (VOCs) with the potential to emit 50 tons per

year (TPY) or more, RACT for sources of oxides of Nitrogen (NO_x) with the potential to emit 100 TPY or more, Part D new source review (NSR) for major sources of VOC and NO_x, enhanced vehicle inspection and maintenance (I/M), Stage II vapor recovery or a comparable measure, and any measures that are mandated by EPA under section 184(c) based on a petition by the Ozone Transport Commission (OTC). To date, only the OTC Low Emission Vehicle program (or acceptable equivalent) has been required under section 184(c) [60 FR 4712; December 19, 1994].

Some of the section 184 requirements duplicate requirements under other sections of the Act for certain classifications of nonattainment areas. For example, as a moderate nonattainment area, Reading is also subject to VOC RACT under section 182(b)(2) for sources with the potential to emit 100 TPY or more, Part D NSR for major sources of NO_x and NO_x RACT for sources with the potential to emit 100 TPY or more under section 182(f), and Part D NSR for major sources of VOC under sections 173 and 182(b)(5). Reading is also subject to basic I/M for moderate areas under section 182(b)(4). The EPA believes that, for purposes of redesignation, it is appropriate to consider the section 184 requirements separately from the requirements under other sections because the express purpose of the section 184 requirements is different. Section 184 requirements are region-wide requirements intended for the control of interstate transport of ozone pollution, whereas the similar moderate area requirements are linked with the particular nonattainment area designation and classification to address local air quality problems. These latter requirements for Reading are discussed below. (See "Status of Moderate Area Requirements—Sections 173 and 182.")

Although this redesignation request was submitted after the due date for several of the section 184 requirements, including NSR for sources of both VOCs and NO_x, RACT for sources of VOCs with the potential to emit between 50 and 100 TPY, and enhanced I/M, EPA believes it is reasonable and appropriate to interpret the section 184 requirements as not being applicable requirements for purposes of evaluating a redesignation request. The rationale is based on two factors. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to adopt NSR, RACT, and I/M even after redesignation and would risk sanctions

for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with the requirements of section 110 and part D that are linked with an area's nonattainment status, the section 184 requirements apply to both nonattainment and maintenance (attainment) areas. Second, the section 184 control measures are region-wide requirements and do not apply to Reading by virtue of the area's designation and classification. Rather, the section 184 measures are required in Reading because Reading is located in the OTR. The purpose of these measures is not to address air quality in the designated Reading nonattainment area, but to reduce regional emissions in the OTR. Where the Act has deemed the same controls needed as part of a strategy to reduce emissions in certain nonattainment areas, those control measures are specifically required for those areas under different sections of the Act. It is these latter requirements that are linked with a particular nonattainment area's designation and classification that EPA believes are the relevant measures to evaluate in reviewing a redesignation request.

Therefore, with this notice, EPA is proposing to modify its policy regarding the interpretation of section 107(d)(3)(E) concerning the applicable requirements for purposes of reviewing an ozone redesignation request. Under this new policy, for the reasons just discussed, EPA believes that the ozone redesignation requests for areas in the OTR may be approved notwithstanding the lack of fully approved section 184 requirements. Based on this interpretation, EPA is proceeding to propose approval of the Reading redesignation request despite the lack of SIP approved NSR, enhanced I/M, and RACT for VOC sources with the potential to emit between 50 and 100 TPY. Redesignation to attainment will not remove the requirement for Pennsylvania to adopt and implement all of these section 184 measures in the Reading area. It should be noted that Pennsylvania has submitted its NSR and I/M programs for the Reading area. These submittals are the subject of separate rulemaking actions.

This new policy is consistent with, and an extension of, EPA's existing redesignation policies regarding conformity and oxygenated fuels requirements. Transportation and general conformity rules, required under section 176, apply to both nonattainment and maintenance areas. Just as with the section 184 requirements, States remain obligated to adopt and implement conformity rules

even after redesignation to attainment. Primarily for this reason, EPA has previously interpreted the conformity requirements as not being applicable requirements for purposes of evaluating redesignation requests (60 FR 62748; December 7, 1995).

Under section 211(m), oxygenated fuels programs are required in moderate and serious carbon monoxide nonattainment areas with design values of 9.5 parts per million (ppm) or greater. The oxygenated fuels program must be applied throughout a consolidated metropolitan statistical area (CMSA) or metropolitan statistical area (MSA), even if the nonattainment area boundaries do not encompass the entire CMSA. Previously, a situation occurred where several not-classified carbon monoxide (CO) nonattainment areas were located in the CMSA of a moderate CO area whose design value triggered the oxygenated fuels requirement. Therefore, the not-classified areas were required to sell oxygenated fuels although it was not a requirement linked specifically with the not-classified areas' designation, classification and design value. In this case, for purposes of evaluating a redesignation request, EPA interpreted the oxygenated fuels program as not being an applicable requirement for the not-classified areas because the State would still be obligated to adopt and implement the oxygenated fuels program in the areas after redesignation (due to the continuing moderate area requirement) and because the areas were only required to implement an oxygenated fuels program by virtue of their location in the CMSA of a moderate CO area (60 FR 62741; December 7, 1995).

Status of OTR Requirements—Section 184

RACT: Under section 184, and excluding the requirements of section 182, RACT is required for VOC sources with the potential to emit between 50 and 100 TPY. On February 4, 1994, Pennsylvania submitted a "generic" RACT rule for NO_x sources and for VOC sources not covered by a control techniques guidelines (CTG) document, so-called non-CTG sources. This rule was effective in the Commonwealth on January 15, 1994. On February 28, 1994, EPA determined that the submittal was complete. This generic RACT rule does not contain any specific requirements for VOC sources, and contains only a control technology requirement for a class of NO_x sources and operation and maintenance requirements for several NO_x source categories. All other VOC and NO_x sources are required to submit

case-by-case RACT determinations. Pennsylvania is in the process of submitting the case-by-case RACT determinations to EPA for approval into the Pennsylvania SIP.

NSR: On February 4, 1994, Pennsylvania submitted its final NSR regulations to EPA. On February 28, 1994, EPA determined that the submittal was complete. That submittal is the subject of a separate rulemaking action, currently being prepared by EP.

I/M: Under the November 28, 1995 National Highway System Designation Act, Pennsylvania submitted an OTR low-enhanced program on March 22, 1996. On September 13, 1996, Regional Administrator W. Michael McCabe signed a Notice of Proposed Rulemaking, proposing conditional interim approval of Pennsylvania's enhanced I/M SIP.

EPA's Evaluation of Pennsylvania's Redesignation Request and Maintenance Plan for the Reading Area

Criterion 1: The area must meet the ozone NAAQS.

EPA's Evaluation: The area has met the ozone standard since 1991, considering data for the three-year period 1989–1991. The area continues to meet the ozone standard.

Criterion 2: The area must meet applicable requirements of section 110 and Part D.

EPA's Evaluation: EPA's redesignation policy requires an area to meet all requirements in section 110 and Part D of the Clean Air Act that were due prior to the state's submittal of the redesignation request. Pennsylvania submitted the redesignation request for the Reading area on 11/12/93. Therefore, all section 110 and Part D requirements that were due before 11/12/93, other than those required under sections 176 and 184, are applicable requirements for the purposes of evaluating the redesignation request for the Reading area. As explained above, EPA is proposing, in this notice, to modify its previous policy regarding whether the requirements of section 184 of the Act are applicable requirements for the purposes of evaluating a redesignation request.

Status of Moderate Area Requirements—Sections 173 and 182

RACT: Under section 182 RACT is required for sources of VOC and NO_x with the potential to emit 100 TPY or more. As stated above, Pennsylvania submitted a "generic" RACT rule to EPA as a SIP revision on February 4, 1994. This rule applies to NO_x sources and non-CTG VOC sources. This generic RACT rule does not contain any specific

emission limitation. All VOC and NO_x sources are required to submit case-by-case RACT proposals to Pennsylvania, which, in turn, submits its RACT determinations to EPA as SIP revisions. Pennsylvania is in the process of submitting the case-by-case RACT determinations to EPA for approval into the Pennsylvania SIP.

In order for the Reading area to meet this criterion, Pennsylvania must submit complete and approvable RACT determinations for all applicable sources (all VOC and NO_x sources with the potential to emit 100 TPY or more in the Reading area) to EPA as SIP revisions, and EPA must approve these RACT determinations into the SIP before, or at the same time as, EPA completes final rulemaking on the redesignation request. Pennsylvania is in the process of submitting the required RACTs to EPA as SIP revisions.

NSR: On February 4, 1994, Pennsylvania submitted its final NSR regulations to EPA. EPA determined that the submittal was complete on February 28, 1994, but has not completed rulemaking on the NSR SIP. However, according to EPA's October 14, 1994 policy memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, entitled *Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment*, areas may be redesignated to attainment without a fully approved part D NSR program, as long as the area does not rely on NSR for maintenance. The Reading redesignation request does not rely on NSR for maintenance.

I/M: Under section 182, moderate areas are required to adopt and implement a basic I/M program. However, according to EPA's September 17, 1993 policy memorandum from Michael H. Shapiro, Assistant Administrator for Air and Radiation, entitled *State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standard (NAAQS) on or after November 15, 1992*, areas may be redesignated to attainment without a fully adopted I/M program, as long as (1) the area does not rely on I/M for maintenance, (2) the area has legislative authority for a basic I/M program, (3) basic I/M is included in the maintenance plan as a contingency measure, and (4) the maintenance plan includes an enforceable schedule and commitment for adopting a basic I/M program upon a specific and appropriate trigger.

As stated above, Pennsylvania submitted an OTR low-enhanced program on March 22, 1996, under the National Highway Act. On September 13, 1996, Regional Administrator W. Michael McCabe signed a Notice of Proposed Rulemaking, proposing conditional interim approval of Pennsylvania's enhanced I/M SIP. This submittal contains legislative authority for an OTR low-enhanced I/M program, as well as a schedule for implementation of the program.

Pursuant to the so called I/M redesignation rule, EPA's January 5, 1995 Federal Register action, *Inspection/Maintenance Program Requirements—Provisions for Redesignation* (60 FR 1735), Pennsylvania's list of contingency measures for the Reading area must include basic I/M, in the event that the enhanced I/M requirement under section 184 is not implemented. The contingency plan must also contain a schedule for implementation of a basic I/M program that complies with 40 CFR 51.372(c)(4). This schedule must be triggered when Pennsylvania chooses to implement basic I/M as a contingency measure.

Base Year Emission Inventories: On November 12, 1992, Pennsylvania submitted 1990 VOC, NO_x, and carbon monoxide (CO) base year inventories for all areas in the Commonwealth. With the redesignation request, Pennsylvania submitted summary updates to its 1990 base year inventories for the Reading area, which supersede Pennsylvania's 1992 submittal. The 1990 base year emissions summaries included in the redesignation request are different from those in the 1990 base year inventories submitted by Pennsylvania on November 12, 1992.

Pennsylvania must submit adequate technical justification to support the changes in the inventories, including sample calculations for point, area, and mobile sources, and mobile source emissions modeling sample runs.

Criterion 3: The area must have a fully approved SIP under section 110(k) of the Act.

EPA's Evaluation: In order to meet this criterion, all applicable SIP elements must be approved into Pennsylvania's SIP for the Reading area. All applicable requirements, other than RACT and the 1990 VOC, NO_x, and CO base year inventories, have been approved into the Pennsylvania SIP.

RACT: As stated above, in EPA's evaluation of criterion 2, Pennsylvania must submit complete and approvable RACT determinations for all applicable sources (all NO_x and non-CTG VOC sources with the potential to emit 100

TPY or more in the Reading area) to EPA as SIP revisions, and EPA must approve these RACT determinations into the SIP before, or at the same time as, EPA completes final rulemaking on the redesignation request. As stated above, Pennsylvania is in the process of submitting RACT SIP revisions for applicable NO_x and VOC sources, and must complete these submissions for final approval of this redesignation request.

1990 Base Year Emission Inventories: As stated above, in EPA's evaluation of criterion 2, Pennsylvania must provide adequate technical justification to support the 1990 VOC, NO_x, and CO base year inventories for Reading, submitted on November 12, 1992, and updated on November 12, 1993.

Other Moderate Area Requirements: SIP revisions for VOC RACT Fix-ups, VOC RACT Catch-ups (excluding non-CTG VOC RACT), and emission statements have been approved into the Pennsylvania SIP. As stated above, in EPA's evaluation of criterion 2, basic I/M and NSR are no longer applicable for redesignation purposes. Furthermore, EPA has previously interpreted the transportation and general conformity requirements as not being applicable for purposes of evaluating redesignation requests (60 FR 62748; December 7, 1995). Finally, because Pennsylvania submitted the Reading redesignation request prior to the due date for the 15% plan, attainment demonstration, and contingency measure requirements, these requirements are not applicable for the purpose of evaluating this redesignation request. Moreover, pursuant to EPA's May 10, 1995 waiver policy, EPA's July 19, 1995 action (60 FR 37015) waived these requirements for the Reading area.

Criterion 4: The area must show that its experienced improvement in air quality is due to permanent and enforceable measures.

EPA's Evaluation: The redesignation request has shown that, through fully adopted and implemented, permanent and enforceable state and federal measures, the area's air quality has improved.

Criterion 5: The area must have a fully approved maintenance plan under section 175A of the Act, including contingency measures.

EPA's Evaluation: The submitted maintenance plan has several deficiencies.

(1) The maintenance plan must show continued maintenance of the standard for at least ten years after the area is redesignated. To that end, EPA requires states to include emission inventories in their maintenance plans for a year that

is 10 years after the state anticipates EPA will approve their redesignation request. Furthermore, EPA requires that states project emissions for an interim year, between the year the area is redesignated and the end year (10 years after redesignation). Pennsylvania must project emissions out to at least 2007.

The maintenance plan that Pennsylvania submitted on November 12, 1993, and amended on January 13, 1994 and, again, on May 12, 1995 projects maintenance up to the year 2004, and includes interim year emission projection for 1996. However, on September 27, 1996, Pennsylvania supplemented the Reading maintenance plan with preliminary inventories for 2007. Pennsylvania must submit adequate technical support to justify these new inventories. Additionally, Pennsylvania can no longer use 1996 as the interim year, because EPA will not complete final rulemaking on this redesignation request and maintenance plan until 1997. However, Pennsylvania can use the 2004 inventories, which have already been submitted, as the interim year inventories.

(2) More technical support is needed in order for EPA to evaluate the projected emissions inventories, for 2004 and 2007, submitted with the maintenance plan. The maintenance plan must show that only credible measures (fully adopted and SIP approved state measures, and certain federal measures) are used to demonstrate maintenance. Mobile source emissions modeling must be provided in order to determine if those inventories were projected correctly, taking emission reduction credit only for measures that are fully adopted and approved into the SIP. In addition, Pennsylvania must provide growth factors (not surrogates), sample calculations for point, area, and mobile sources.

(3) The contingency measure provided in the maintenance plan is inadequate. The maintenance plan must provide for contingency measures to promptly correct any violation of the ozone NAAQS that occurs after the area is redesignated. The plan must contain a list of measures to be adopted and a schedule and procedures for adoption and implementation. The plan must also identify specific triggers used to determine when the contingency measures need to be implemented. Pennsylvania is in the process of revising the maintenance plan for the Reading area to meet this criterion.

EPA's Evaluation of Pennsylvania's 1990 Base Year Inventory for the Reading Area

On November 12, 1992, Pennsylvania submitted the 1990 base year inventories for VOC, NO_x and CO for all areas in the Commonwealth, including the Reading area. Pennsylvania amended these inventories for the Reading area when it submitted its redesignation request and maintenance plan for the area, on November 12, 1993. However, only summaries of the updated inventory were submitted with the redesignation request.

The 1990 base year emissions summaries included in the redesignation request are different from those in the 1990 base year inventory submitted by Pennsylvania on November 12, 1992. Pennsylvania must submit adequate technical justification to support the changes in the inventories, including sample calculations for point, area, and mobile sources, and mobile source emissions modeling sample runs.

A more detailed evaluation of Pennsylvania's redesignation request, maintenance plan, and 1990 base year emission inventories for the Reading area can be found in the Technical Support Document (TSD) prepared by EPA for this rulemaking action. The TSD and other materials related to this action are available for public inspection at the EPA Regional office listed in the **ADDRESSES** section of this notice.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to approve Pennsylvania's request for redesignation of the Reading area, and the accompanying maintenance plan, which was originally submitted on November 12, 1993, and amended on January 13, 1994 and May 12, 1995, contingent upon Pennsylvania's correction of all deficiencies contained in the request and maintenance plan. EPA is also proposing to approve the 1990 base year VOC, NO_x, and CO inventories for the Reading ozone nonattainment area, which were originally submitted on November 12, 1992, and revised on November 12, 1993, contingent upon Pennsylvania's correction of all

deficiencies contained in those inventories. At the same time, EPA is proposing to disapprove the redesignation request, maintenance plan, and 1990 base year emission inventories for the Reading area if Pennsylvania does not correct the deficiencies. In addition, for purposes of satisfying the I/M redesignation rule of January 1995, EPA is proposing approval of Pennsylvania's legislative authority to adopt and implement an I/M program. Finally, EPA is proposing to change its policy on redesignation requirements for ozone nonattainment areas in the Ozone Transport Region (OTR). The policy change makes redesignation requirements for areas in the OTR consistent with requirements for areas outside the OTR by interpreting requirements under section 184 of the Clean Air Act as not being applicable for the purpose of redesignation.

In order to correct the deficiencies that exist in the redesignation request, maintenance plan, and 1990 base year emission inventories, Pennsylvania must submit the following to EPA:

- (1) Adequate technical support to justify the projected emission inventories (2007 and 2004), including growth factors (not surrogates), sample calculations for point, area, and mobile sources, and mobile source emissions modeling sample runs;
- (2) Complete and approvable RACT SIP revisions for all applicable sources (all VOC and NO_x sources with the potential to emit 100 TPY or more in the Reading area);
- (3) A declaration that all required RACTs have been submitted;
- (4) SIP revisions to the Reading area maintenance plan so that it provides adequate contingency measures. The plan must contain a list of measures to be adopted and a schedule and procedures for adoption and implementation. The plan must also identify specific triggers used to determine when the contingency measures need to be implemented and a schedule for implementation of the contingencies in the event that they are implemented. The list of contingency measures must include basic I/M, in the event that enhanced I/M requirement under section 184 is not implemented. The plan must contain a schedule for implementation of a basic I/M program that complies with 40 CFR 51.372(c)(4). This schedule will be triggered when Pennsylvania chooses to implement basic I/M as a contingency measure; and
- (5) Technical support to justify the 1990 base year emission inventories submitted in the redesignation request. This support must include sample

calculations for point, area, and mobile sources, a list of all point sources, and mobile source emissions modeling.

As stated above, the Regional Administrator is to sign a final rulemaking action on the Reading redesignation request and maintenance plan by March 3, 1997, according to an agreement between EPA and the Clean Air Council. The revisions listed above must be submitted to EPA in enough time for EPA to evaluate their adequacy and, where necessary, complete separate rulemaking actions on the submittals before March 1997. Therefore, EPA has determined that Pennsylvania needs to submit the required revisions by February 3, 1997, in time for EPA to take final action by March 3, 1997.

Pennsylvania is in the process of addressing all of the deficiencies listed above. EPA believes that Pennsylvania will be able to meet the February 3, 1997 deadline stated above. In addition, EPA believes that it will be able to complete rulemaking on Pennsylvania's submittals, as long as Pennsylvania works closely with EPA to develop the required revisions.

If EPA were to take final action to disapprove the maintenance plan, the Reading area will no longer be able to demonstrate conformity to the submitted maintenance plan pursuant to the transportation conformity requirements in 40 CFR Part 51, section 51.448(i). Since the submitted maintenance plan budget will no longer apply for transportation conformity purposes, the build/no-build and less-than-90 tests will apply.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this proposed Federal SIP approval does not impose any new requirements, the Regional Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

EPA's proposed disapproval of the State request under Section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's proposed disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Regional Administrator certifies that, in the event that EPA approves Pennsylvania's redesignation request for the Reading area, the approval will not affect a substantial number of small entities.

In the event that EPA denies Pennsylvania's redesignation request

under section 107(d)(3)(E) of the CAA, this denial would not affect any existing requirements applicable to small entities nor does it impose new requirements. The area would retain its current designation status and would continue to be subject to the same statutory requirements. To the extent that the area must adopt regulations, based on its nonattainment status, EPA will review the effect of those actions on small entities at the time the State submits those regulations. Therefore, the Regional Administrator certifies that the disapproval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed approval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

EPA has also determined that the proposed alternative disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Regional Administrator's decision to approve or disapprove Pennsylvania's redesignation request for the Reading ozone nonattainment area, the associated maintenance plan, and the 1990 VOC, NO_x, and CO base year

inventories for the area will be based on whether they meet the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401-7671q.

Dated: September 30, 1996.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 96-25894 Filed 10-9-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[UT-NHA-01; FRL-5629-1]

Approval and Promulgation of Air Quality Implementation Plans; Utah: Vehicle Inspection and Maintenance Program for Utah County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim rule.

SUMMARY: EPA is proposing interim approval of a State Implementation Plan (SIP) revision submitted by the State of Utah. This revision establishes and requires the implementation of an improved inspection and maintenance (I/M) program in the Provo-Orem Metropolitan Statistical Area (Utah County) which claims "full credit" for a test-and-repair network. The intended effect of this action is to propose interim approval of an I/M program proposed by the State, based upon the State/County's good faith estimate, which asserts that the State/County's network design credits are appropriate and the revision is otherwise in compliance with the Clean Air Act (CAA). This action is being taken under section 348 of the National Highway System Designation Act of 1995 (NHSDA) and section 110 of the CAA.

EPA proposes that the State/County's program must start no later than November 15, 1997. EPA also proposes that if the State/County fails to start its program as defined in this notice on this schedule, the approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the State.

DATES: Comments must be received on or before November 12, 1996.

ADDRESSES: Comments may be mailed to Richard R. Long, Director, Air Programs, USEPA Region VIII (P2-A), 999 18th Street—Suite 500, Denver, Colorado

80202-2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT:

Scott P. Lee, at (303) 312-6736 or via e-mail at lee.scott@epamail.epa.gov.

While information may be requested via e-mail, comments must be submitted in writing to the EPA Region VIII address above.

I. Background

A. Impact of the National Highway System Designation Act on the Design and Implementation of Inspection and Maintenance Programs Under the Clean Air Act

The National Highway System Designation Act of 1995 (NHSDA) establishes two key changes to the I/M rule requirements previously developed by EPA. Under the NHSDA, EPA cannot require states to adopt or implement centralized, test-only IM240 enhanced vehicle inspection and maintenance programs as a means of compliance with section 182, 184 or 187 of the CAA. Also under the NHSDA, EPA cannot disapprove a State SIP revision, nor apply an automatic discount to a State SIP revision under section 182, 184 or 187 of the CAA, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called "50% credit discount" that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, and herein referred to as the I/M Rule) has been effectively replaced with a presumptive equivalency criteria, which places the emission reductions credits for decentralized networks on par with credit assumptions for centralized networks, based upon a state's good faith estimate of reductions as provided by the NHSDA and explained below in this section.

EPA's I/M Rule established many other criteria for states unrelated to network design or test type to use in designing I/M programs. All other elements of the I/M Rule, and the statutory requirements established in the CAA continue to be required of those states submitting I/M SIP revisions under the NHSDA, and the NHSDA specifically requires that these submittals must otherwise comply in all respects with the I/M Rule and the CAA.

The NHSDA also requires states to swiftly develop, submit, and begin

implementation of these I/M programs, since the anticipated start-up dates developed under the CAA and EPA's rules have already been delayed. In requiring states to submit these plans within 120 days of the NHSDA passage, and in allowing these states to submit proposed regulations for this plan (which can be finalized and submitted to EPA during the interim period) it is clear that Congress intended for states to begin testing vehicles as soon as practicable, now that the decentralized credit issue has been clarified and directly addressed by the NHSDA.

Submission criteria described under the NHSDA allows for a State to submit proposed regulations for this interim program, provided that the State has all of the statutory authority necessary to carry out the program. Also, in proposing the interim credits for this program, states are required to make good faith estimates regarding the performance of their I/M program. Since these estimates are expected to be difficult to quantify, the state need only provide that the proposed credits claimed for the submission have a basis in fact. A good faith estimate of a State's program may be an estimate that is based on any of the following: the performance of any previous I/M program; the results of remote sensing or other roadside testing techniques; fleet and vehicle miles traveled (VMT) profiles; demographic studies; or other evidence which has relevance to the effectiveness or emissions reducing capabilities of an I/M program.

This action is being taken under the authority of both the NHSDA and section 110 of the CAA. Section 348 of the NHSDA expressly directs EPA to issue this interim approval. At that time, the Conference Report on section 348 of the NHSDA states that it is expected that the proposed credits claimed by the State in its submittal, and the emissions reductions demonstrated through the program data may not match exactly. Therefore, the Conference Report suggests that EPA use the program data to appropriately adjust these credits on a program basis as demonstrated by the program data.

B. Interim Approvals Under the NHSDA

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. This Act also directs EPA and the states to review the interim program results at the end of 18 months, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort to reflect the

emissions reductions actually measured by the state during the program evaluation period.

The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for these programs to start up as soon as possible, which EPA believes should be on or before November 15, 1997, so that at least 6 months of operational program data can be collected to evaluate the interim program. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of this program.

For the purposes of this program, "start-up" is defined as a fully operational program which has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of a state's required areas. EPA proposes that if the State/Utah County fails to start its program on this schedule, the approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the State.

The program evaluation to be used by the State/Utah County during the 18 month interim period must be acceptable to EPA. EPA anticipates that such a program evaluation process will be developed by the Environmental Council of States (ECOS) group that is convening now and that was organized for this purpose. In addition to this interim evaluation, EPA further encourages the State/County to conduct a longer term, ongoing evaluation of its I/M program.

C. Process for Full Approvals of This Program Under the CAA

Per the NHSDA requirements, this interim rulemaking will expire 18 months after the final interim approval, or on the date of final full approval. A full approval of the State's final I/M SIP revision for Utah County (which will include the State/County's program evaluation and final adopted State/County regulations) is still necessary under section 110 and under section 182, 184 or 187 of the CAA. After EPA reviews the State's submitted program evaluation, final rulemaking on the State's SIP revision will occur.

II. EPA's Analysis of Utah's Submittal

On March 15, 1996, Governor Michael O. Leavitt submitted a revision to its State Implementation Plan (SIP) for an I/M program for Utah County to qualify under the NHSDA. The revision consists

of enabling legislation that allows Utah County to implement the I/M program, proposed State/County regulations, a description of the I/M program (including a modeling analysis and detailed description of program features), and a good faith estimate that includes the state's basis in fact for emission reductions claims for the program. The State/County's credit assumptions are based upon the removal of the 50% credit discount for all portions of the program that are based on a test-and-repair network, and the application of the State/County's estimate of the effectiveness of its decentralized test and repair program.

A. Analysis of the NHSDA Submittal Criteria

Transmittal Letter

On March 15, 1996, Utah submitted an I/M SIP revision to EPA, requesting action under the NHSDA of 1995 and the CAA of 1990. The official submittal was made by the appropriate state official, Governor Michael O. Leavitt, and was addressed to the appropriate EPA official in the Region.

Enabling Legislation

Utah's enabling legislation, as submitted, delegates authority for the implementation of a motor vehicle inspection and maintenance program in the Provo-Orem nonattainment area to Utah County pursuant to Section 41-6-163.6, Utah Annotated Code, 1953, as amended.

Proposed Regulations

On March 6, 1996, the State of Utah proposed regulations in accordance with 40 CFR Part 51, establishing a revised I/M program following the Utah County Commission's adoption of the County's I/M Ordinance for public hearing on February 28, 1996. The State and County anticipate fully adopting regulations during the interim period.

Program Description

Utah County's program consists of a decentralized test-and-repair network requiring two-speed idle testing of all vehicles registered in Utah County, excluding construction equipment, farm vehicles and motorcycles; a technician training program; certified I/M repair stations; aggressive investigation of illegal registrations; recall of a statistically significant number of vehicles that were repaired to ensure repair effectiveness; tighter waiver requirements; and a remote sensing program. Additionally, Utah County has implemented a diesel I/M program which ensures all vehicles independent of fuel type are tested.

Emission Reduction Claim and Basis for the Claim

The State/County's emissions reduction claims are based on modeling performed using EPA's MOBILE5ah emission factor model, claiming "full" credit (no 50% discount) for a test-and-repair program. The State/County bases its claim of "full credit" on past performance as preliminarily demonstrated using the Analytical Protocol Assessment of the Credit Discount(s) to the Test-and-Repair I/M Programs in Salt Lake, Davis, and Utah Counties (Utah Protocol), dated June 26, 1995. This protocol was developed jointly by EPA, Utah Division of Air Quality, and County I/M program staff. Utah County claims 100% of the technician training credit modeled using the MOBILE5ah model, based on its technician training program, the certification of I/M repair facilities, and a repair effectiveness program.

B. Analysis of the EPA I/M Regulation and CAA Requirements

As previously stated, the NHSDA left those elements of the I/M Rule that do not pertain to the network design or test type intact. Based upon EPA's review of Utah County's submittal, EPA believes the State/County has complied with all aspects of the NHSDA as detailed above. Additionally, EPA believes the State/County has fulfilled the requirements of the CAA and the I/M Rule as follows:

Applicability—40 CFR Part 51.350

The SIP needs to describe the applicable areas in detail and, consistent with 40 CFR 51.372, needs to include the legal authority or rules necessary to establish program boundaries. Utah County's I/M program, as authorized by Sections 41-6-163.6 thru 41-6-163.7 of Utah Code Unannotated, is to be implemented county-wide in Utah County, as described in Utah State Implementation Plan, Section X, Basic Automotive Inspection and Maintenance (I/M).

Basic I/M Performance Standard—40 CFR Part 51.352

The I/M program provided for in the SIP is required to meet a performance standard for basic I/M for the pollutants that caused the affected area to come under I/M requirements. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met. As part of this SIP revision,

the State/County submitted a modeling demonstration using the EPA computer model, MOBILE 5ah, showing that the basic performance standard is exceeded for the affected Metropolitan Statistical Area (MSA).

Network Type—40 CFR Part 51.353

The SIP needs to include a description of the network to be employed, and the required legal authority. Utah has chosen to implement a decentralized, test-and-repair I/M program which is comprised of independently operated facilities. The Utah County I/M program allows fleet self-testing programs with oversight by County Health Department employees. Legal authority which is contained in Sections 41-6-163.6 thru 41-6-163.7, Utah Code Unannotated, authorizes the Counties to implement these programs.

Adequate Tools and Resources—40 CFR Part 51.354

The SIP needs to include a description of the resources that will be used for program operation, which include: (1) A detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment, and any other requirements discussed in 40 CFR 51.354; and (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

The SIP narrative and County Ordinance contained in the submittal describe the budget, staffing support, and equipment and resources dedicated to the program meeting the requirements of 40 CFR 51.354.

Test Frequency and Convenience—40 CFR Part 51.355

The SIP needs to describe the test schedule in detail, including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process.

The Utah I/M program requires annual inspections for all subject motor vehicles. For new vehicles, the first test is required for re-registration two years after initial registration. In addition, all motor vehicles registered as government-owned vehicles, diesel vehicles, and gasoline powered heavy-

duty trucks are required to be certified annually.

Vehicle Coverage—40 CFR Part 51.356

The SIP needs to include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area, but which may not be registered in the area. Also, the SIP needs to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

The County-run program's vehicle coverage includes all light-duty cars and trucks, and heavy-duty gasoline powered trucks, registered or required to be registered within the MSA and fleets primarily operated within the I/M program areas, including government-owned and operated vehicles. Vehicles are identified through the State of Utah's Tax Commission Division of Motor Vehicles (DMV) database.

Vehicles exempted from the program include: motorcycles, farm trucks, and diesel vehicles. The latter are required to be inspected in County-run diesel I/M lanes.

Test Procedures and Standards—40 CFR Part 51.357

The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance or law describing and establishing the test procedures.

Utah's I/M programs use EPA's Preconditioned two-speed idle test as specified in EPA-AA-TSA-I/M-90-3 March 1990, Technical Report, "Recommended I/M Short Test Procedures for the 1990's: Six Alternatives." The UTAH91 Analyzer calibration specifications and emissions test procedures meet the minimum standard established in Appendix A of 40 CFR Part 51 Subpart S. Test procedures are established in the proposed Utah County I/M Ordinance as incorporated in the SIP.

Test Equipment—40 CFR Part 51.358

The SIP needs to include written technical specifications for all test equipment used in the program and shall address each of the requirements in 40 CFR 51.358. The specifications need to describe the emission analysis process, the necessary test equipment,

the required features, and written acceptance testing criteria and procedures.

The Utah I/M SIP commits to meeting the California BAR 90 accuracy standards at a minimum. The Utah SIP addresses the requirements in 40 CFR 51.358 and includes descriptions of performance features and functional characteristics of the UTAH91 computerized test systems. The necessary test equipment, required features, and acceptance testing criteria are also contained in the SIP.

Quality Control—40 CFR Part 51.359

The SIP needs to include a description of quality control and record keeping procedures. The SIP also needs to include the procedures manual, rule, and ordinance or law describing and establishing the quality control procedures and requirements. The Utah I/M SIP narrative contains descriptions and requirements establishing the quality control procedures in accordance with 40 CFR 51.359. These requirements will help ensure that equipment calibrations are properly performed and recorded, as well as maintaining compliance document security. Additional requirements are documented in the proposed Utah County I/M Ordinance, which is part of the SIP.

Waivers and Compliance Via Diagnostic Inspection—40 CFR Part 51.360

The SIP needs to include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate needs to be used for estimating emission reduction benefits in the modeling analysis. Also, the State needs to take corrective action if the waiver rate exceeds that estimated in the SIP or revise the SIP and the emission reductions claimed accordingly. In addition, the SIP needs to describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP shall include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions. The Utah I/M program commits to a waiver rate of 1 percent or less. Waiver procedures are incorporated into the SIP. Legal authority for waivers is delegated to the County in section 41-6-163 Utah Code Unannotated.

Motorist Compliance Enforcement—40 CFR Part 51.361

The SIP needs to provide information concerning the enforcement process, including: (1) A description of the existing compliance mechanism if it is to be used in the future and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, e.g. those operated in (but not necessarily registered in) the program area. Also, the SIP needs to include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism need to be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP needs to include a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

The motorist compliance enforcement program will be implemented, in part, by the Utah Tax Commission Division of Motor Vehicles (DMV), which will take the lead in ensuring that owners of all subject vehicles are denied registration unless they provide valid proof of having received a certificate indicating they passed an emissions test or were granted a compliance waiver. State and local police agencies have the authority to cite motorists with expired registration tags.

Current compliance rates are estimated at greater than 97 percent in the County. The SIP commits to a level of motorist enforcement necessary to ensure a compliance rate of no less than 97 percent among subject vehicles.

Motorist Compliance Enforcement Program Oversight—40 CFR Part 51.362

The SIP needs to include a description of enforcement program oversight and information management activities. The SIP commits the State/County to periodically review the compliance rate of the Utah County I/M program to ensure the 97 percent commitment is being met. The DMV, Utah Division of Air Quality, Utah highway patrol, and County I/M

program staff meet twice a month to ensure on-going high quality oversight of a joint motorist compliance program.

Quality Assurance—40 CFR Part 51.363

The SIP needs to include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits. This requirement does not include materials or discussion of details of enforcement strategies that would ultimately hamper the enforcement process.

The Utah I/M SIP includes a description of its quality assurance program. The program includes operation and progress reports and overt and covert audits of emission inspectors and emission inspections. Overt and covert audits will be conducted by the County I/M staff. Remote inspector audits will be performed by the County I/M personnel. Procedures and techniques for overt and covert performance, record keeping, and equipment audits are given to auditors and updated as needed. Current auditor procedures are contained in the County Ordinance Appendices.

Enforcement Against Contractors, Stations and Inspectors—40 CFR Part 51.364

The SIP needs to include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of state constitutional impediments to immediate suspension authority, the state Attorney General shall furnish an official opinion for the SIP explaining the constitutional impediment, as well as relevant case law. Also, the SIP needs to describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In states without immediate suspension authority, the SIP needs to demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

Utah County staff are responsible for enforcement actions against incompetent or dishonest stations and inspectors. The County I/M ordinance includes a penalty schedule. For repeat or serious offenses, auditors are authorized to immediately suspend the

station or inspector by locking out the UTAH91 analyzer(s). A station permit may be suspended or revoked even if the owner/operator had no direct knowledge of the violation. In the case of incompetence, re-training is required before a permit is restored.

Data Analysis and Reporting—40 CFR Part 51.366

The SIP needs to describe the types of data to be collected. The Utah I/M SIP provides for the reporting of summary data based upon program activities taking place in the previous year. The report will provide statistics for the testing program, the quality control program, the quality assurance program, and the enforcement program. At a minimum, Utah commits to address all of the data elements listed in 40 CFR 51.366.

Inspector Training and Licensing or Certification—40 CFR Part 51.367

The SIP needs to include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The Utah I/M SIP provides for the implementation of training, certification, and refresher programs for emission inspectors. Training will include all elements required by 51.367(a) of the EPA I/M rule. All inspectors will be required to be certified to inspect vehicles in the Utah I/M program.

Improving Repair Effectiveness—40 CFR Part 51.369

The SIP needs to include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for enhanced I/M programs, and a description of the repair technician training resources available in the community.

The Utah SIP commits the program technical and supervisory staff to continue to work with both motor vehicle owners and the automotive service industry regarding vehicles failing to meet the exhaust emission levels. These direct contacts are normally either by telephone or person-to-person. Customers with vehicles that present unusual testing problems or situations will be referred to a County-run Technical Center for further testing and diagnostics.

III. Discussion for Rulemaking Action

Today's notice proposes interim approval of the Utah SIP revision for the Provo-Orem MSA motor vehicle I/M

program. If the State/County does not implement the interim program by November 15, 1997, EPA is proposing in this notice that the interim approval will convert to a disapproval after a finding letter is sent to the state.

A. Explanation of the Interim Approval

At the end of the 18 month interim period, the approval status for this program will automatically lapse pursuant to the NHSDA. It is expected that the state will at that time be able to make a demonstration of the program's effectiveness using an appropriate evaluation criteria. As EPA expects that these programs will have started no later than November 15, 1997, in order for the State/County to collect at least 6 months of program data that can be used for the demonstration. If the state fails to provide a demonstration of the program's effectiveness to EPA within 18 months of the final interim rulemaking, the interim approval will lapse, and EPA will be forced to disapprove the state's permanent I/M SIP revision. If the state's program evaluation demonstrates a lesser amount of emission reductions actually realized than were claimed in the state's previous submittal, EPA will adjust the state's credits accordingly, and use this information to act on the state's permanent I/M program.

B. Further Requirements for Permanent I/M SIP Approval

At the end of the 18 month period, final approval of the state's plan will be granted based upon the following criteria:

1. EPA's review of the State's program evaluation confirms that the appropriate amount of program credit was claimed by the State and achieved with the interim program,

2. Final State and County program regulations are submitted to EPA.

C. EPA's Evaluation of the Interim Submittal

EPA's review of this material indicates Utah has met the requirement of the NHSDA, the CAA and the I/M Rule. EPA is proposing interim approval of the Utah SIP revision for the Utah County I/M program, which was submitted on March 15, 1996. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written

comments to the EPA Regional office listed in the ADDRESSES section of this notice.

IV. Proposed Action

EPA is proposing interim approval of the SIP revision submitted by the State of Utah for the purpose of implementing an improved I/M program in Utah County. EPA has reviewed this revision to the Utah SIP and is proposing interim approval of the revision as submitted. The State's I/M program revisions for Utah County meet requirements pursuant to sections 182 and 187 of the Act and 40 CFR part 51, Subpart S and section 348 of the NHSDA for interim approval.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does

not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: September 19, 1996.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.
[FR Doc. 96-25982 Filed 10-9-96; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF ENERGY**48 CFR Parts 917, 950, 952 and 970**

RIN 1991-AB-28

Acquisition Regulation; Department of Energy Management and Operating Contracts**AGENCY:** Department of Energy.**ACTION:** Notice of limited reopening of the comment period.

SUMMARY: On June 24, 1996, the Department of Energy (DOE or Department) published a notice of proposed rulemaking (61 FR 32588) (DOE-NOPR) to amend the Department of Energy Acquisition Regulation (DEAR) to incorporate certain contract reform initiatives. Among the contract reform initiatives contained in the DOE-NOPR was a proposal to amend 48 CFR (DEAR) 970.5204-2, Environment, Safety and Health. The purpose of this notice is to publish additional proposed changes to that clause and invite comments on those revisions.

DATES: Written comments (1 copy) on the revisions presented in this notice must be submitted by October 25, 1996.

ADDRESSES: All comments are to be submitted to Connie P. Fournier, Office of Policy (HR-51), Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-8245; (202) 586-0545 (facsimile); connie.fournier@hq.doe.gov (Internet).

The administrative record regarding this rulemaking is on file for public inspection and is located in the Department's Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-6020.

FOR FURTHER INFORMATION CONTACT: Connie P. Fournier, Office of Policy (HR-51), Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-8245.

SUPPLEMENTARY INFORMATION: On June 24, 1996, DOE published a NOPR to amend the Department of Energy Acquisition Regulation (DEAR) to incorporate certain contract reform initiatives. Among the Department-wide contract reform initiatives contained in the DOE-NOPR was a proposal to amend 48 CFR (DEAR) 970.5204-2, Environment, Safety and Health (ES&H). The Department is revising its proposal to amend that clause in this notice.

One commenter on the ES&H clause published in the NOPR pointed out that the proposed ES&H clause should be consistent with the Defense Nuclear Facilities Safety Board (DNFSB)

Recommendation 95-2, "Integrated Safety Management." The proposed clause was developed and published prior to the issuance of the DNFSB's 95-2 recommendation. DOE realizes that the clause needs to incorporate the concepts of that recommendation and the revised proposed clause is intended to reflect those concepts. Additional information regarding the DNFSB's recommendation is included with the administrative record available in the Public Reading Room.

Three commenters requested the Department describe the specific laws, regulations, and directives applicable to contractors in the ES&H clause. A separate clause, "970.5204-XX Laws, Regulations, and DOE Directives" (Directives clause) published in the NOPR (61 FR 32603), would define the scope of requirements that are applicable to DOE contractors. The Directives clause outlines flexible processes that could be used to determine which DOE Directives are required and will be specifically referenced in the provisions of the ES&H clause.

One commenter stated that the use of the terms "workers" and "employees" in the ES&H clause could cause confusion by implying two different sets of personnel. The revised proposed clause would use only the term "employees."

Additional comments were received concerning the original proposed clause and will be addressed in the notice of final rulemaking. The revisions to the proposed clause contained in this Notice include: (1) A change in the title of the clause; (2) the addition of guiding principles for contractors to follow in the performance of work as outlined in the Department's implementation plan dated April 18, 1996, for DNFSB recommendation 95-2; and (3) the modification of the requirement for contractors to submit an ES&H Management Plan to a requirement for submission of a Safety Management System (System).

(Note: "safety" includes environment, safety and health.)

The submission of a System will not conflict with, or create a greater burden than, the submission of the ES&H Management Plan described in the ES&H clause published in the NOPR. Instead, it will simply provide a broader context within which the Department can fulfill its commitments to the DNFSB.

The revised proposed ES&H clause is intended to expand and modify the original language to assure contractors understand DOE expectations regarding

integrated safety management. Specifically, the proposed clause requires documentation of the contractor's System for approval by DOE. This establishes an agreement between the contractor and DOE on how the contractor will ensure the protection of the public, employees and the environment as well as implement the Department's Safety Management System Policy (DOE P 450.4).

The submission and approval of a System would likely be done on a one-time basis, assuming the contractor's System proves satisfactory in practice; however, the revised proposed clause would require that the System provide for annual updates and mutual agreement between the contractor and DOE regarding ES&H performance objectives, performance measures tied to rewards/penalties, and performance commitments. Such commitments are intended to highlight the contractor's most significant ES&H vulnerabilities, specific work to be accomplished to address those vulnerabilities, as well as assure major obligations to external ES&H oversight and regulatory bodies are met within budget constraints. Accordingly, the annual updates would identify the resources needed to conduct work safely in terms of ES&H support and assure appropriate skill mix and numbers of personnel in the ES&H area.

The Department thanks the commenters for their participation in this rulemaking already and urges interested members of the public to comment on this revised approach. Additional changes may be contained in the final rule.

Issued in Washington, D.C. on October 7, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) sec. 644 of the Department of Energy Organization Act, Public Law 95-91 (42 U.S.C. 7254).

2. Subsection 970.5204-2 revised to read as follows:

970.5204-2 Integration of Environment, Safety and Health into Work Planning and Execution.

As prescribed in 48 CFR (DEAR) 970.2303-2(a), insert the following clause.

Integration of Environment, Safety and Health into Work Planning and Execution (Month and Year TBE)

(a) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. Employees include subcontractor employees. In accomplishment of this requirement, the contractor shall implement programs to prevent accidents, releases, and exposures. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral and discernible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are clearly established and agreed-upon. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in the Safety Management System (System).

(b) The contractor shall manage and perform work in accordance with a documented System that fulfills all conditions in paragraph (a) of this clause at a minimum. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. Documentation

of the System shall describe how the contractor will:

(1) Define the scope of work.

(2) Identify and analyze hazards associated with the work.

(3) Develop and implement hazard controls.

(4) Perform work within controls, and

(5) Provide feedback on adequacy of controls and continue to improve safety management.

(c) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.

(d) The contractor shall comply with, and assist the Department of Energy in complying with (where identified by the Department),

(i) All applicable Federal and non-Federal ES&H laws, regulations, and

(ii) All applicable directives identified in the clause of this contract on Laws, Regulations, and DOE Directives. The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System addressing all aspects of ES&H is provided in DOE Guide G 450.4, "Integrated Safety Management," and successor documents. Additional guidance regarding the System may be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued under this clause (including a stop work order issued by the contractor to a subcontractor in accordance with paragraph (g) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. Thereafter, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The

contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(g) The contractor shall provide in its purchasing system, required under the clause of this contract entitled, Contractor Purchasing System, policies, practices, and procedures for the flowdown of requirements of this clause, as appropriate, to subcontract performance of work on-site at a DOE-owned or-leased facility. Such subcontracts shall require the submittal of a documented description of the subcontractor's Safety Management System to the contractor for review and approval. Dates for initial submittal, discussions, and revisions to the subcontractor's System will be established by the contractor. Guidance on the preparation, content, review, and approval of the subcontractor's System will be provided by the contractor. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (f) of this clause.

(h) The contractor shall be responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.

(i) For the purposes of this clause, safety encompasses environment, safety and health, including pollution prevention and waste minimization.

[FR Doc. 96-26083 Filed 10-9-96; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status in Arizona and Threatened Status in Texas for the Cactus Ferruginous Pygmy-Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period will be reopened on the proposed rule to list the cactus ferruginous pygmy-owl (*Glaucomys brasilianum cactorum*) as an endangered species in Arizona with critical habitat and as threatened in Texas. The reopening of the comment period will allow all interested parties to submit written comments on the proposal.

DATES: The comment period for this proposal will be reopened on October 10, 1996 and will close on November

12, 1996. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on the proposal.

ADDRESSES: Written comments should be sent to the Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021-4951. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Mary Richardson, Phoenix Ecological Services Field Office (see **ADDRESSES** section) (telephone 602/640-2720; facsimile 602/640-2730).

SUPPLEMENTARY INFORMATION:

Background

The breeding range of the cactus ferruginous pygmy-owl extends from south-central Arizona south through western Mexico, and from southern Texas south through northeastern Mexico. Within these regions, the species occurs in riverbottom woodlands, coastal plain oak associations, thornscrub, and Sonoran

desert scrub. The cactus ferruginous pygmy-owl is threatened to varying degrees across its range by loss and modification of habitat, lack of adequate protective regulations, and other factors. A proposed rule to list this species as endangered with critical habitat in Arizona and as threatened in Texas was published in the Federal Register (59 FR 63975) on December 12, 1994. The proposed rule includes additional information on the species, its habitat requirements, and causes of decline.

Pursuant to 50 CFR 424.16(c)(2), the Service may extend or reopen a comment period upon finding that there is good cause to do so. Full participation of the affected public in the species listing process and allowing the Service to consider the best scientific and commercial data available in making a final determination on the proposed action, are deemed as sufficient cause. This comment period is being reopened to allow for the identification and consideration of data that may have been collected since the passage of Public Law 104-6 and the resulting moratorium on final listings of endangered or threatened wildlife and plants which suspended efforts to

finalize the listing determination for the cactus ferruginous pygmy-owl.

The comment period on the proposal was originally opened December 12, 1994, through April 11, 1995, and was reopened May 1, through May 30, 1995. Public hearings were held in Tucson, Arizona, on May 8, 1995, and Weslaco, Texas, on May 10, 1995. Legal notices announcing this comment period reopening will be published in newspapers concurrently with the Federal Register notice. Written comments must be submitted on or before November 12, 1996 to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Jeffrey A. Humphrey (see **ADDRESSES** section).

Authority

The authority for this action is 16 U.S.C. 1531-1544.

Dated: October 4, 1996.

Lynn B. Starnes,
*Acting Regional Director, Southwest Region,
Fish and Wildlife Service.*

[FR Doc. 96-26044 Filed 10-9-96; 8:45 am]

BILLING CODE 4310-55-P

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

October 4, 1996.

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 these information collections are best assured of having their full effect if received within 30 days of this notification. Comments 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 Department Clearance Officer, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7630. Copies of the submission(s) may be obtained by calling (202) 720-6204 or (202) 720-6746.

- Agricultural Marketing Service

Title: Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, Marketing Order No. 956.

Summary: The market order sets provisions regulating the handling of Walla Walla sweet onions. Handlers provide information on shipments of onions.

Need and Use of the Information: The purpose is to provide orderly marketing conditions in interstate commerce and to improve returns to growers. The information provides a mechanism to collect assessments.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 82.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 25.

- Agricultural Marketing Service

Title: Oranges and Grapefruits Grown in the Lower Rio Grande Valley in Texas, Marketing No. 906.

Summary: The market order sets provisions regulating the handling of oranges and grapefruits grown in the lower Rio Grande Valley in Texas. Information is collected on production, handling and disposition of the crop.

Need and Use of the Information: The information is used to develop a marketing policy each year, to recommend seasonal quality regulations, to determine handler compliance, and to prepare annual reports.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 428.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Annually.

Total Burden Hours: 345.

Emergency Processing of This Submission Has Been Requested by October 11, 1996.

- National Agricultural Statistics Service

Title: Agricultural Resources Management Study and Chemical Use Survey.

Summary: Information is collected on farm production expenditures for selected crop and livestock commodities as well as chemical use.

Need and Use of the Information: The information will be used to: assess the economic implications of various programs and policies as they relate to water quality/food safety and the impact on agricultural procedures and consumers; and to provide data to compute Parity Prices which are based on the Index of Prices Paid by Farmers and Index of Prices Received by Farmers.

Description of Respondents: Farms.

Number of Respondents: 76,462.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 32,764.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 96-26079 Filed 10-9-96; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Revised Forest Legacy Program Guidelines

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Cooperative Forestry Assistance Act of 1978 (CFAA) authorizes a Forest Legacy Program, the purpose of which is to identify and protect environmentally important private forest lands that may be threatened by conversion to non-forest uses. The Federal Agricultural Improvement and Reform Act of 1996 amended the CFAA to provide for optional grants for States to carry out the program. The States may request a grant to conduct acquisition procedures and purchase lands and interests in lands in Forest Legacy Areas. Title may vest in the State or a unit of State or local government. Other procedures for the Forest Legacy Program essentially remain the same as described in the Forest Legacy Program Guidelines dated June 4, 1992. The Forest Service hereby gives notice of the availability of revised guidelines for implementing the revisions to the Forest Legacy Program in fiscal year 1996 and beyond.

DATES: The guidelines apply to the remainder of fiscal year 1996 as well as to fiscal year 1997 and subsequent programs.

ADDRESSES: Copies of the revised guidelines for implementing the Forest Legacy Program are available by contacting the Director, Cooperative Forestry Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090-6090; via FAX at (202) 205-1271; via INTERNET at /s=cf/oul=w01c@mhs-fswa.attmail.com, or by calling (202) 205-1190.

FOR FURTHER INFORMATION CONTACT: For information contact Ted Beauvais, Cooperative Forestry, (202) 205-1190 or by writing, faxing, or sending an E-Mail message to the addresses listed in the preceding section.

SUPPLEMENTARY INFORMATION: The Cooperative Forestry Assistance Act was amended by Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2101 et seq.) and the Federal Agricultural Improvement and Reform Act of 1996 (7 U.S.C. 7201) to authorize the Secretary of Agriculture to provide a Federal grant

to a State for carrying out the Forest Legacy Program. The purpose of the Federal grant is to provide funding to States electing this option to help in the acquisition of environmentally important private lands and interests in lands with title vested in the State or a unit of State or local government. Under section 6 of the Act of March 1, 1911, (16 U.S.C. 515), and section 11(a) of the Department of Agriculture Organic Act of 1956 (7 U.S.C. 428(a)), the Secretary of Agriculture continues to have authority to acquire, from willing landowners, environmentally important forest lands and interests therein for Federal acquisition, including conservation easements and rights of public access, with title vested in the U.S. Government.

The revised Forest Legacy Program guidelines are divided into three parts:

Part 1—General Program Guidelines: Program direction applicable to all aspects of the Forest Legacy Program.

Part 2—Federal Acquisition Program Guidelines: Program direction applicable to States and Forest Service units selecting the Federal acquisition and ownership process, where ownership of lands or interests in lands is vested in the United States.

Part 3—State Grant Program Guidelines: This is the new part which provides program direction applicable to States and Forest Service units where the State has elected the new State grant option and title in lands or interests in lands is vested in the State or a unit of State or local government.

Summary of Comments Received

The agency received 32 replies containing over 170 comments in response to a Notice of Availability of the Forest Legacy Program Guidelines changes published in the Federal Register May 21, 1996, (61 FR 25478) and to letters notifying over 300 interested parties. Fourteen responses were received from State government lead agencies. Three responses were received from land trust organizations. The rest of the responses were from conservation organizations, university/extension organizations, citizens, legislative offices, Indian Tribes, and industry.

Of the 170 comments, 25 percent focused on funding, 12 percent on grants administration, 8 percent on cost-sharing, 8 percent on State program administration, 7 percent on Federal program administration, 7 percent on the acquisition process, 5 percent on public involvement, 5 percent on conservation easements, and 11 percent were of a general nature. In addition, other comments related to Assessment

of Need/identification of Forest Legacy Areas (1 percent), land trust participation (2 percent), National Environmental Policy Act (2 percent), the Forest Stewardship Program (2 percent), eligibility criteria (1 percent), cooperative agreements (1 percent), and conversion/disposition of Forest Legacy tracts (3 percent).

All comments were fully considered and the agency adopted a number of changes in the final guidelines in response to comments received. Summarized comments and the agency's response follow:

1. *Comment:* Several respondents felt the fund allocation process was unclear, that funds should not remain at the Forest Service's Washington Office, and that a more predictable process should be established.

Response: Section VIII of Part 1 was rewritten to improve clarity. Funds will remain at the Washington Office until the participating Forest Service field units consult with active States and develop recommendations regarding: base level funding (at least 50 percent of the project funds); the portion of project funds distributed based on considerations, such as equity among States, forested areas in greatest need of protection, and lands that can be effectively protected and managed; and to which Forest Service field unit the funds should be allocated.

All funds are allocated from the Washington Office to Forest Service field units. These units can award grants to States or transfer funds to Forest Service field subunits for Forest Legacy Program implementation. A minimum of 50 percent of project funds are to be distributed in equal shares among all participating States. To allow for maximum flexibility, Forest Service field units consult with States to determine where the other project funds should be allocated.

2. *Comment:* Several respondents raised questions about the grant process and allowable cost-sharing and requested flexibility in the use of funds and cost-share matching.

Response: The guidelines to the States in Section I of Part 3 provide the maximum flexibility possible consistent with grant law and practice. Grants may extend for up to 5 years, but the funds must be used during the first 2 years to ensure that appropriated funds are used in a timely fashion. The remaining grant period may be used to accumulate cost-share matching contributions from non-Federal partners. Also in response to comments, the agency added a definition of eligible cost-sharing and the specific requirements for donations.

3. *Comment:* One respondent sought greater participation in the program by American Indian Tribes.

Response: The final guidelines encourage collaboration between Indian Tribes and States to consider tribal lands and reservations for designation as, or inclusion within, Forest Legacy Areas during the Assessment of Need planning process.

4. *Comment:* Several respondents wanted clarification of the Federal acquisition process and when it would apply.

Response: A definition of Federal acquisition procedures, as they relate to the Forest Legacy Program, were added in Section II of Part 1.

Summary

The Forest Legacy Program Guidelines are used to implement the Forest Legacy Program. The Revised Forest Legacy Program Guidelines were mailed to interested parties, Forest Service field offices, and State Foresters.

Dated: October 1, 1996.

Mark A. Reimers,
Acting Chief.

[FR Doc. 96-26038 Filed 10-9-96; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104-13.

Agency: Bureau of Export Administration.

Title: Offsets in Military Exports.

Agency Number: None.

OMB Control Number: 0694-0084.

Type of Request: Extension of a currently approved collection.

Burden: 1,000 hours.

Number of Respondents: 100.

Avg. Hours Per Response: 10.

Needs and Uses: The Defense Production Act Amendments of 1992 requires U.S. firms to furnish information regarding "offset" agreements exceeding \$5,000,000 in value associated with the sales of weapon systems or defense-related items to foreign countries. The information collected is used to assess the cumulative effect of offset compensation practices of U.S. trade and competitiveness, as required by the statute.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Victoria Baecher-Wassmer, (202) 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: October 3, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96-26027 Filed 10-9-96; 8:45 am]

BILLING CODE 3510-DT-P

International Trade Administration

[A-570-845, A-570-846]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors From the People's Republic of China

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

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Michelle A. Frederick, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-1766 or (202) 482-0186, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA).

Preliminary Determinations

We determine preliminarily that brake drums and brake rotors from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value

(LTFV), as provided in section 733 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations (61 FR 14740, April 3, 1996), the following events have occurred:

On April 4, 1996, the Department sent a survey to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and to the China Chamber of Commerce for Import & Export of Machinery & Electronics Products (China Chamber) requesting the identification of producers and exporters, and information on production and sales of brake drums and brake rotors exported to the United States. We received a facsimile from the China Chamber identifying three brake drum exporters and six brake rotor exporters to the United States on April 25, 1996.

On April 29, 1996, the United States International Trade Commission (ITC) issued affirmative preliminary injury determinations in these cases (see ITC Investigation No. 731-TA-744). The ITC found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of brake drums, and that there is a reasonable indication that an industry is materially injured by reason of imports from the PRC of brake rotors.

The Department issued antidumping questionnaires¹ to the China Chamber and MOFTEC, on May 8, 1996, with instructions to forward the document to all producers/exporters of brake drums and brake rotors and to inform these companies that they must respond by the due dates. We also sent courtesy copies of the antidumping duty questionnaire to all identified companies. In May, June, and July, 1996, 18 PRC companies submitted their section A, C, and D responses.

On June 1, 1996, we postponed both preliminary determinations until not later than October 3, 1996 (61 FR 29073, June 7, 1996) because we determined these investigations to be extraordinarily complicated within the

¹ The questionnaire is divided into four sections. Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively (section B does not normally apply in antidumping proceedings involving the PRC). Section D requests information on the factors of production of the subject merchandise.

meaning of section 733(c)(1)(B)(i) of the Act.

On June 7, 1996, we received a fax from Zhejiang Asia-Pacific Machine & Electric Group Co., stating that it did not export brake rotors or brake drums to the United States during the period of these investigations.

On July 15, 1996, the Department requested that interested parties provide published information (PI) for valuing the factors of production and for surrogate country selection. We received comments from the interested parties in August 1996.

After receiving complete questionnaire responses from the 18 PRC companies, we determined that, due to limited resources, we would only be able to analyze the responses of the seven largest brake rotor PRC exporters and the five largest brake drum PRC exporters to the United States (a total of 10 PRC companies, two of which export both brake drums and brake rotors). (See *Respondent Selection* section below.)

In July and August, we issued supplemental questionnaires to the 10 selected respondents only. We received responses to these questionnaires during August and September 1996. On September 18, 1996, less than 20 days before the preliminary determinations, the petitioner alleged that critical circumstances exist with respect to imports of brake drums and brake rotors from the PRC. The Department will make its determination as to whether it finds critical circumstances not later than 30 days after the date of the petitioner's submission in accordance with section 353.16(b)(2)(ii).

Also, on September 13, the petitioner submitted additional PI which we were not able to consider for the preliminary determinations. However, we will consider this information for the final determinations.

On September 18, 1996, counsel for Shenyang/Laizhou submitted additional comments on PI. We have considered Shenyang/Laizhou's submission, and we have rejected the claims made therein for these preliminary determinations.

On September 20, 1996, counsel for Southwest Technical Import & Export Corporation (Southwest) submitted revised sales and factors of production databases, explaining that the only change to its previous databases was what it had reported as a factor amount for plastic tarpaulins. For these preliminary determinations, we have incorporated the most recently submitted factor information Southwest reported for plastic tarpaulins into our analysis but we have not used the databases Southwest most recently

submitted due to time constraints. We will consider using these databases in our final determinations.

On September 30, 1996, we requested shipment data from the respondents in order to examine the petitioner's critical circumstances allegation.

Postponement of Final Determinations

From September 13 through 16, 1996, all participating respondents requested that, pursuant to section 735(a)(2)(A) of the Act, in the event of affirmative preliminary determinations in these investigations, the Department postpone its final determinations until not later than 135 days after the publication of the affirmative preliminary determinations in the Federal Register. In accordance with 19 CFR 353.20(b), because our preliminary determinations are affirmative, these respondents account for a significant proportion of exports of brake drums and brake rotors, and we are not aware of the existence of any compelling reasons for denying the request, we are granting respondents' request and are postponing the final determinations until 135 days after the publication of this notice in the Federal Register.

Scope of the Investigations

The products covered by these two investigations are (1) certain brake drums and (2) certain brake rotors.

Brake Drums

Brake drums are made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake drums limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake drums are those that are ready for sale and installation without any further operations. Semi-finished drums are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished drums are those which have undergone some grinding or turning.

These brake drums are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (e.g., General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake drums covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes

composite brake drums that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria.

Brake drums are classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Brake Rotors

Brake rotors are made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (e.g., General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria.

Brake rotors are classifiable under subheading 8708.39.5010 of the HTSUS. Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Periods of Investigations

The periods of these investigations (POI) comprise each exporter's two most recent fiscal quarters prior to the filing of the petition.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country (NME) in all past antidumping investigations (see, e.g., *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59

FR 22585 (May 2, 1994) (*Silicon Carbide*) and *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*). Neither respondents nor petitioners have challenged such treatment. Therefore, in accordance with section 771(18)(C) of the Act, we will continue to treat the PRC as an NME in these investigations.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producers' factors of production, valued, to the extent possible, in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the NV section below.

Surrogate Country

The Department has determined that India, Nigeria, Pakistan, Sri Lanka, Egypt and Indonesia are countries comparable to the PRC in terms of overall economic development (see Memorandum from David Mueller to Gary Taverman, dated May 21, 1996).

According to the available information on the record, we have determined that India is a significant producer of comparable merchandise. Accordingly, we have calculated NV using Indian prices to value the PRC producers' factors of production, when available and where appropriate. We have obtained and relied upon PI wherever possible. In cases where we have not used Indian data because they involved prices considered aberrational, we have used Indonesian import prices as surrogate values.

Respondent Selection

In NME cases, we presume a single rate is applicable to all exporters and we attempt to examine the sales of all exporters during the POI. We sent a survey to MOFTEC and the China Chamber to determine the identity of producers and exporters of brake drums and brake rotors. We sent the antidumping questionnaire to MOFTEC and to the China Chamber with a list of the names of possible exporters and/or producers of the brake rotors and brake drums. We also sent courtesy copies to the named exporters and producers. The following PRC companies submitted full questionnaire responses in a timely manner:

China North Industries Dalian Corporation
China National Automotive Industry Import & Export Corp. and its affiliates Shandong Laizhou CAPCO Industry Corporation and CAPCO USA

Shenyang Honbase Machinery Corporation, Ltd.
 Yantai Import & Export Corporation
 China North Industries Guangzhou Corporation
 Southwest Technical Import & Export Corporation and its affiliates Yangtze Machinery Company and MMB International, Inc.
 China National Machinery & Equipment Import & Export (Xinjiang) Corporation, Ltd.
 Qingdao Metals & Machinery Import & Export Corporation
 Beijing Xinchangyuan Automobile Fittings Corporation, Ltd.
 China National Machinery Import & Export Corporation
 Laizhou Luyuan Automobile Fittings Corporation, Ltd.
 Xianghe Zichen Casting Corporation
 Jiuyang Enterprise Corporation
 Hebei Metals and Machinery Import & Export Corporation
 Yenhere Corporation
 Longjing Walking Tractor Works Foreign Trade Import & Export Corporation
 Jilin Provincial Machinery and Equipment Import & Export Corporation, Ltd.
 Shanxi Machinery and Equipment Import & Export Corporation.

Given that we did not have the administrative resources to analyze the responses of all participating exporters, we determined that our investigations would be limited to the analysis of the sales of the seven largest PRC brake rotor exporters and the five largest brake drum exporters to the United States. As two PRC companies exported both brake drums and brake rotors, this constituted a total of ten companies. The identification of the largest exporters of each like product was based on the data supplied by those PRC companies which submitted a full questionnaire response. (See, Memorandum from the team to Barbara R. Stafford for a discussion on selection of respondents (*Respondent Selection Memorandum*), dated July 19, 1996.) For the brake drums investigation, we selected (1) China National Machinery Import & Export Corporation (CMC); (2) China North Industries Guangzhou Corporation (Guangzhou Norinco); (3) Qingdao Metals & Machinery Import & Export Corporation (Qingdao); (4) Yantai Import & Export Corporation (Yantai); and (5) Beijing Xinchangyuan Automobile Fittings Corporation, Ltd. (Xinchangyuan).

For the brake rotors investigation, we selected (1) China National Automotive Industry Import & Export Corp. and its affiliates Shandong Laizhou CAPCO Industry Corporation, CAPCO USA (CAIEC/CAPCO); (2) China North Industries Dalian Corporation (Dalian Norinco); (3) Shenyang Honbase Machinery Corporation, Ltd.,

(Shenyang); (4) Guangzhou Norinco; (5) Southwest; (6) China National Machinery & Equipment Import & Export (Xinjiang) Corporation, Ltd., (a.k.a. Xinjiang); and (7) Yantai.

On July 23, 1996, counsel for Shenyang (one of the 10 respondents selected by the Department) requested that Laizhou Luyuan Automobile Fittings Corporation, Ltd., (Laizhou), also be included in the group of selected respondents. Laizhou is, in fact, included among the selected respondents because the Department determined that Shenyang and Laizhou are affiliated parties within the meaning of section 771(33) of the Act, and the two producers were collapsed and treated as one respondent in the investigation of brake rotors. (See August 8, 1996, Memorandum from the team to Barbara R. Stafford (*Affiliated Parties Memorandum*.)

Separate Rates

Each of the selected respondents has requested a separate, company-specific rate. The following respondents are companies owned by all the people: (1) CAIEC/CAPCO; (2) CMC; (3) Dalian Norinco; (4) Guangzhou Norinco; (5) Qingdao; (6) Xinjiang; (7) Yantai; and (8) Southwest.

The ownership structure of the remaining respondents is as follows:

(1) Shenyang and Laizhou are affiliated parties (hereinafter Shenyang/Laizhou). Shenyang is owned entirely by GRI Honbase, a Hong Kong company which is U.S. owned. Laizhou is a joint venture between GRI Honbase and "all the people." The share in Laizhou owned by "all the people" is a minority share; and

(2) Xinchangyuan is a joint venture between a U.S. company and a PRC company, Beijing Changyuan Automotive Parts Factory. The PRC company is the majority shareholder and is owned by "all the people."

As stated in *Silicon Carbide* and *Furfuryl Alcohol*, ownership of a company by all the people does not require the application of a single rate. Accordingly, each of these respondents is eligible for consideration for a separate rate.

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) (*Sparklers*) and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in nonmarket

economy 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 administrative record a number of documents to demonstrate absence of de jure control, including laws, regulations and provisions enacted by the State Council of the central government of the PRC. They have also submitted documents which establish that brake drums and brake rotors are not included on the list of products that may be subject to central government export constraints. In addition, respondents Xinchangyuan and Laizhou each submitted the "Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures" (April 13, 1988). The articles of this law authorize joint venture companies to make their own operational and managerial decisions.

In prior cases, the Department has analyzed the laws which the respondents have submitted in this record and found that they establish an absence of de jure control. See *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 these proceedings which would cause us to reconsider this determination.

However, as in previous cases, there is some evidence that the PRC central government enactments 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.

2. Absence of De Facto Control

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 negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of 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*).

CAIEC/CAPCO, CMC, Qingdao, Shenyang/Laizhou, Southwest, Xinchangyuan, Xinjiang, and Yantai have asserted the following: (1) They establish their own export prices; (2) they negotiate contracts, without guidance from any governmental entities or organizations; (3) they make their own personnel decisions and; (4) they retain the proceeds of their export sales, use profits according to their business needs and have the authority to sell their assets and to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is a de facto absence of governmental control of the export functions of these companies.

Consequently, we determine preliminarily that these exporters have met the criteria for the application of separate rates. We will examine this matter further at verification.

Dalian Norinco and Guangzhou Norinco also claimed separate rates and provided documentation in support of their claims. However, we have denied these entities separate rates in these preliminary determinations for the following reasons.

On August 19, 1996, the petitioner argued that Dalian Norinco and Guangzhou Norinco are not eligible for separate rates. Based on an article appearing in *Business Week*, the petitioner alleged that these two companies are still part of NORINCO, which it claims is owned and controlled by the People's Liberation Army (PLA). Subsequently, the Department conducted additional research on this issue. Based on additional information and articles found by the Department, and placed on the record of these investigations, we have concluded preliminarily that Guangzhou Norinco and Dalian Norinco are still branches of the national corporation, NORINCO, which is controlled by the PLA. (See *Concurrence Memorandum*.) Therefore, the record does not support a preliminary finding of an absence of de facto control of export functions by the government. Accordingly, we determine preliminarily that Dalian Norinco is ineligible for a separate rate in the investigation of brake rotors and that Guangzhou Norinco is ineligible for separate rates for the investigations of brake drums and brake rotors.

China-Wide Rate

U.S. import statistics indicate that the total quantity and value of U.S. imports of brake drums and brake rotors from the PRC is substantially greater than the total quantity and value of brake drums and brake rotors reported by all PRC companies that submitted responses in both the brake drums and brake rotors cases. Given these significant discrepancies, we have no choice but to conclude that not all exporters of PRC brake drums and brake rotors responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the China-Wide rate—to all exporters in the PRC (other than the eight named above as receiving separate rates), based on our presumption that Dalian Norinco, Guangzhou Norinco, and those respondents who failed to constitute a single enterprise, are under common control by the PRC government. See, e.g., *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996) (*Bicycles*).

This China-Wide antidumping rate is based on adverse facts available. 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; (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 * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

When multiple companies are treated as a single enterprise, the enterprise must submit a complete, consolidated response. If it fails to do so, the Department may base the margin calculation for the enterprise on the facts available. As discussed above, all

PRC exporters that have not qualified for a separate rate (except those uninvestigated respondents that fully cooperated in the investigations) have been treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. Accordingly, consistent with section 776(b)(1) of the Act, we have applied in each case, as total facts available, the higher of the applicable margin from the petition or the highest rate calculated for a respondent in that proceeding. In the present cases, based on our comparison of the calculated margins for the other respondents in these proceedings to the estimated margins in the petitions, we have concluded that the petition is the most appropriate record information on which to form the basis for dumping calculations in the brake drums investigation. We have concluded that the highest calculated rate among the selected respondents in the brake rotors case is the most appropriate record information on which to form the basis for dumping calculations in the brake rotors investigation. Accordingly, the Department has based the margin for brake drums on information in the petition and has based the margin for brake rotors on the highest calculated margin among the selected brake rotors respondents. In these cases, the highest petition rate for brake drums is 105.56 percent. The highest calculated margin for brake rotors 64.56 percent.

Section 776(c) of the Act provides that where the Department 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), accompanying the URAA clarifies that the petition is "secondary information." See SAA at 870. The SAA also clarifies that "corroborate" means to determine that the information used has probative value. *Id.* However, where corroboration is not practicable, the Department may use uncorroborated information.

In accordance with section 776(c) of the Act, we corroborated the margins in the petition to the extent practicable. The petitioners based export prices on prices charged by U.S. distributors of brake drums and deducted from these prices a distributor mark-up. We compared the starting prices used by petitioner to prices derived from U.S. import statistics and found that the similarity to the import statistics corroborated the starting prices in the petition. See,

Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from South Africa, 61 FR 94, 24271 (May 14, 1996). We also find that the deduction for the distributor mark-up is sufficiently documented for purposes of corroboration by examining affidavits submitted by industry experts. The normal value was based on factors of production employed by the petitioner to produce brake drums, and to the extent possible, surrogate factor values which were obtained from Indian PI. When analyzing the petition, the Department examined and confirmed the accuracy of the normal value data as provided in the petition by comparing the values used in the petition with values obtained from PI collected in these and previous NME investigations.

Accordingly, we have corroborated, to the extent practicable, the data contained in the petition.

Rate for Respondents Not Selected

As stated above, several PRC companies which submitted full questionnaire responses in a timely manner and which claimed eligibility for separate rates were not chosen by the Department respondents in either investigation. It would be inappropriate to assign these fully cooperative respondents a rate based on "facts available," that would also apply PRC exporters of brake drums or brake rotors who refused to cooperate in these investigations. Therefore, we have assigned the cooperative respondents in the brake drums case a weighted-average dumping margin based on the calculated margins, which were not *de minimis*, of the selected brake drum respondents, and we have assigned the cooperative respondents in the brake rotors case a weighted-average dumping margin based on the calculated margins, which were not *de minimis*, of the selected brake rotors respondents.

Fair Value Comparisons

To determine if the brake drums and brake rotors from the PRC sold to the United States by the eight PRC exporters receiving separate rates were made at less than fair value, we compared the "United States Price" (USP) to the NV, as specified in the "United States Price" and "Normal Value" sections of this notice.

United States Price

We based USP on export price (EP) in accordance with section 772(a) of the Act, when the brake drums or brake rotors were sold directly to the first unaffiliated purchaser in the United States prior to importation and when

constructed export price (CEP) methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average export prices (EPs) to the factors of production.

We have determined preliminarily that certain PRC entities and certain U.S. entities are affiliated parties within the meaning of section 771(33) of the Act:

(1) As discussed above, GRI Honbase owns a controlling interest in Sheyang/Laizhou. GRI Honbase is, in turn, owned by a U.S. party that also owns a majority interest in Midwest Air Technologies, Inc. (MAT), and MAT Automotive, Inc., the parties in the U.S. which first purchase the brake rotors produced by Sheyang/Laizhou. Thus, we determine preliminarily that Sheyang/Laizhou, MAT and MAT Automotive are affiliated parties.

(2) Southwest wholly owns MMB International, Inc., the U.S. importer. Thus, we determine preliminarily that Southwest and MMB International, Inc., are affiliated parties.

While the merchandise produced by Sheyang/Laizhou and Southwest was shipped directly from the manufacturer to the unaffiliated U.S. customer, the terms of all sales made through U.S. affiliates were negotiated in the United States by the affiliates. Therefore, we find that the responsibilities of the U.S. affiliates go well beyond those of "a processor of sales related documentation" or a "communications link," and have redesignated the sales in question as CEP. (See *Concurrence Memorandum*.)

Therefore, for all sales of brake rotors made by Sheyang/Laizhou and those sales of brake rotors by Southwest made in the United States, before or after importation, we have redesignated these sales as CEP sales in accordance with section 772(b) of the Act. (See *Concurrence Memorandum*.)

For CAIEC/CAPCO, whose sales to the first unaffiliated purchaser took place after importation into the United States, we based USP on CEP, in accordance with section 772(b) of the Act.

In accordance with section 772(d)(1) of the Act, we deducted from CEP the following expenses that related to economic activity in the United States: direct selling expenses, including credit expenses, and indirect selling expenses. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. We deducted an amount from CEP for profit by applying the surrogate value profit rate for brake drums and brake rotors to the sum of

selling expenses incurred in the U.S. See *Bicycles*, 61 FR 19031.

We made company-specific adjustments as follows:

1. CAIEC/CAPCO

We calculated EP and CEP based on packed, FOB Qingdao port or CIF U.S. port prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for the following services which were provided by market economy suppliers: U.S. inland freight and U.S. duty expenses (which also included harbor maintenance fees and merchandise processing fees). We also deducted from the starting price, where appropriate, an amount for foreign inland freight, foreign brokerage and handling, marine insurance and U.S. inland insurance. However, when these movement services were provided by nonmarket economy suppliers, we valued them using Indian rates. In some cases international freight and marine insurance were provided by nonmarket economy suppliers, and in others by market economy suppliers. For the former, the deduction was based on Indian surrogate values. For the latter, we deducted the market economy value for the services from the starting price. We have also recalculated credit expenses using an interest rate that is an average of the interest rates of all U.S. dollar fixed and variable loans with a maturity of over one month and under one year as reflected in Federal Reserve statistics (see *Final Results of Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Sweden* (61 FR 15772, 15780) (*Steel Plate*)).

2. CMC

We calculated EP based on packed, CIF U.S. port prices to unaffiliated purchasers in the United States. We made deductions from the CIF U.S. port price, where appropriate, for foreign inland freight and foreign brokerage and handling, marine insurance and international freight. As all foreign inland freight and handling fees were provided by nonmarket economy suppliers and or paid for in a non-market economy currency, we valued these services using Indian rates.

3. Qingdao

We calculated EP based on packed, CNF U.S. port prices to unaffiliated purchasers in the United States. We made deductions from the CNF U.S. price, where appropriate, for foreign inland freight, brokerage & handling and international freight. As all these expenses were provided by nonmarket

economy suppliers, we valued these services using Indian rates.

4. Shenyang/Laizhou

We calculated CEP based on packed, CIF U.S. port prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for international freight (which includes ocean freight and U.S. inland freight), and marine insurance (which includes U.S. inland insurance). In some cases international freight and marine insurance were provided by nonmarket economy suppliers, and in others by market economy suppliers. For the former, the deduction was based on Indian surrogate values. For the latter, we deducted the market economy value for the services from the starting price. We also deducted from the starting price, where appropriate, an amount for foreign inland freight. Because these movement services were provided by nonmarket economy suppliers, these services were valued using Indian rates.

We have also deducted from CEP credit expenses incurred on behalf of U.S. sales. We note that our practice is to calculate a credit period from the date that the merchandise is shipped to the unaffiliated U.S. customer to the date that payment from that customer is received. In CEP cases where the merchandise is shipped to the U.S. customer from the inventory of a U.S. affiliate, the credit period begins from the point of shipment from U.S. inventory. However, in the case of Laizhou/Shenyang, merchandise is shipped to the U.S. customer directly from the foreign port. Therefore, we have relied on a credit period beginning with the date of the bill of lading at the foreign port. Thus, we have recalculated credit expenses and have also used an interest rate based on the method used in *Steel Plate*.

5. Southwest

We calculated EP and CEP based on packed, CIF customer's warehouse, CIF Hong Kong, or CIF U.S. port prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for the following: foreign inland freight, marine insurance (which includes domestic inland insurance), foreign brokerage and handling, international freight, transloading charges in Hong Kong, U.S. customs duty, and U.S. customs brokerage (which includes U.S. inland freight). International freight and transloading charges were provided for certain transactions by non-market economy carriers and for other

transactions by market economy carriers. For the former, the deduction was based on Indian surrogate values. For the latter, we deducted the market economy value for the services from the starting price. The foreign inland freight, marine insurance, and foreign brokerage and handling expenses were valued using Indian rates because these services were provided by a nonmarket economy supplier.

We have also deducted from CEP credit expenses incurred on behalf of U.S. sales. As with Shenyang/Laizhou (noted above), Southwest's merchandise is shipped to the U.S. customer directly from the factory. Southwest reported its credit expenses based on the shipment date from the U.S. port. Therefore, we have recalculated credit expenses to reflect the date of shipment from the factory and have also used an interest rate based on the method used in *Steel Plate*.

6. Xinjiang

We calculated EP based on packed, FOB Qingdao port prices to unaffiliated purchasers in the United States. We made deductions from the FOB Qingdao price for foreign inland freight. As all foreign inland freight charges were provided by nonmarket economy suppliers, we valued this service at an Indian rate.

7. Xinchangyuan

We calculated EP based on packed, C&F or CIF U.S. port prices to unaffiliated purchasers in the United States. We made deductions from the C&F or CIF U.S. price, where appropriate, for foreign inland freight and brokerage and handling, and marine insurance. As all foreign inland freight, brokerage and handling, and marine insurance were provided by nonmarket economy suppliers, these services were valued using Indian rates. We also deducted ocean freight which was provided by market economy suppliers and paid for in market-economy currencies.

8. Yantai

We calculated EP based on packed, CIF U.S. port prices to unaffiliated purchasers in the United States. We made deductions from the CIF U.S. price, where appropriate, for foreign inland freight, foreign brokerage and handling and marine insurance. As all these expense were provided by nonmarket economy suppliers, these services were valued in India. In addition, we deducted international freight which was provided by market economy suppliers and paid for in market economy currencies.

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the factories in the PRC which produced brake drums and/or brake rotors for the eight exporters. Where an input was sourced from a market economy and paid for in market economy currency (*i.e.*, bolts), we used the actual price paid for the input to calculate the factors-based NV in accordance with our practice. See *Lasko Metal Products v. United States*, 437 F. 3d 1442, 1443 (Fed. Cir. 1994) ("*Lasko*"). We valued the remaining factors using PI from India where possible. Where appropriate Indian values were not available, we used PI from Indonesia.

Factor Valuations

The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices. Where we were not able to rely on domestic prices, we used import prices to value factors. We did not remove from the import data import prices that respondents alleged were dumped and/or subsidized because they did not demonstrate that inclusion of these values caused depressive distortions in the import prices (see *Concurrence Memorandum*). As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices or, in the case of labor rates, consumer price indices, published in the International Monetary Fund's *International Financial Statistics*. For a complete analysis of surrogate values, see the Factors Calculation Memorandum from the team to Barbara R. Stafford, (*Factors Memorandum*) dated October 3, 1996.

To value calcium carbonate, we used public information from POI issues of the Indian publication *Chemical Weekly*. For dextrin, copper, copper powder, ferromanganese, ferrosilicon of greater than 55% purity, other ferrosilicon, and manganese metal, we relied on import prices contained in the April through July 1995 issues of *Monthly Statistics of the Foreign Trade of India (Monthly Statistics)*.

To value ferrochromium, we used Indian import price data from the April through June 1995 issues of *Monthly Statistics*. To value iron scrap, steel scrap, and pig iron, we used domestic prices from public information contained in the annual report of Shivaji Works Ltd., an Indian producer of brake

drums, because these prices best represent the cost of those incurred by an Indian producer of brake drums and brake rotors.

To value lead-based rust inhibitor, non-lead-based rust inhibitor, shot and angular grit (if used for sand cores), turnings and shavings (if used for sand cores), lubrication oil, ball bearing cups, steel angles, steel plate, and steel stamp, we used Indian import price data from the April through July 1995 issues of *Monthly Statistics*. To value parting spray, we used Indian import price data from the April and May 1995 issues of *Monthly Statistics*. Shenyang/Laizhou purchased castings for rotors from an unaffiliated nonmarket economy supplier. Shenyang/Laizhou provided the financial statements of two Indian producers, Shivaji and Bhagwati, as a source for surrogate values for castings. To value this input, we used the cast iron casting price noted in Shivaji's financial statement only. Although the other financial statement submitted by Shenyang/Laizhou listed a price for castings, there was no indication that such castings were used to produce merchandise comparable to the merchandise subject to these investigations.

We note that Shenyang/Laizhou claimed that the Indian surrogate values for castings purchased by Shenyang in China are significantly higher than the production experience of Laizhou, and that the Indian values may include products other than brake rotor castings. Based on this claim, Shenyang/Laizhou requested that the Department value the purchased castings using the factors of production of respondent Laizhou. We have rejected respondent's request for this preliminary determination. It is the Department's practice to value inputs purchased in NME countries using surrogate values for the input, rather than to construct a value for the input based on factors of production for that input. (See *Final Determination of Sales At Less Than Fair Value Coumarin from People's Republic of China*, 59 FR 66895, (Comments 4 and 5) (December 28, 1994)). In the instant case, we are relying on Indian castings values (which we note were placed on the record by Shenyang/Laizhou themselves), and rejecting Shenyang/Laizhou's proposed methodology because the respondent has provided no evidentiary support for their claim that the surrogate values may reflect the prices of products other than (or substantially different from) brake rotor castings, and because the Department is required, under section 1677b(a)(4) of the Act, to value factors of production in a surrogate market economy.

Regarding lug bolts, we could not obtain a product-specific price from India. Therefore, we used Indonesian import data covering January through November 1995 from the November 1995 issue of *Statistical Bulletin* (see *Concurrence Memorandum and Bicycles*). For PRC companies which purchased lug bolts from market economy sources and paid in market economy currency, we used the data supplied in their submissions. To value steel sheet, steel strip, and steel wire rod, we relied upon public information from the SAIL publication.

To value coking coal and wood, we used import prices covering April through July 1995 from *Monthly Statistics*. For liquid petroleum gas we used domestic prices from an Indian periodical, *Financial Times of India*. For electricity, we relied upon public information from *Confederation of Indian Industries Handbook of Statistics 1995* to obtain an average price for electricity provided to medium-size industries.

To value adhesive tape, corrugated cartons, corrugated paper, fiberboard, labels, nails, steel straps, wood brackets, wood cases and boxes, and wood pallets, we relied upon Indian import data from the April through July 1995 issues of *Monthly Statistics*.

Regarding plastic bags and sheets, we utilized Indian import price data for polyethylene from the April 1994 through February 1995 issues of *Monthly Statistics*. For plastic tarpaulin, we used the Indian import price for other plastic sheets from the April through July 1995 issues of *Monthly Statistics*. For bags and sheets of other plastics, we used Indian import price data from the same issues of *Monthly Statistics*.

To value labor, we used data from the United Nations' publication *Yearbook of Labor Statistics (YLS)*. Information for Indian labor rates from *Investing, Licensing & Trading Conditions Abroad* was found to represent statutory minimum Indian labor rates and not actual labor rates (see *Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the PRC*, 60 FR 52647 (October 10, 1995) (PVA)). The original source does not name or document the skill level represented by the YLS surrogate value, nor do we have agreement among parties regarding use of this labor rate for skilled and unskilled labor rate assumptions. Thus, following the method established in PVA and in relying on YLS data, we applied a single labor value to all reported labor factors, including indirect labor.

To value truck freight rates, we used public information from the periodical *The Times of India*. For train rates, we relied upon POI public information from the *Indian Railway Conference Association*, which provides published distance-specific fees. For Indian barge rates, we relied upon public information contained in the August 3, 1993 cable from the U.S. consulate in Bombay, originally utilized in *Final Determination of Sales at Less Than Fair Value: Helical Spring Lock Washers from the PRC*, 58 FR 48833 (September 28, 1993), adjusted for inflation. To value ocean freight rates, we used public information from the Federal Maritime Commission common rates tariff.

To value foreign brokerage and handling, we relied on public information reported in the antidumping investigation of *Stainless Steel Bar from India*. For marine insurance, we used public information reported in the antidumping investigation of *Sulfur Dyes, Including Sulfur Vat Dyes, from India* (which is attached to the factors valuation memorandum).

To value factory overhead, SG&A, and profit, we calculated a simple average using the financial statements of Rico and Shivaji. Of the five financial statements of Indian producers submitted by interested parties, only the statements of these two companies indicated production comparable to the merchandise subject to these investigations.

Where appropriate, we have removed from the surrogate overhead and SG&A calculations, the excise duty amount listed in the financial statements (see *Bicycles*, 61 FR 19039). We also made certain adjustments to the percentages calculated as a result of reclassifying expenses contained in the financial statements.

For both companies, we treated the line item labelled "stores and spares consumed" as part of factory overhead and not part of materials consumed because stores and spares are not direct materials consumed in the production process. We have considered stores and spares to include items such as filter screens, flux covering, drill bits and similar items which are not direct inputs into the production process. In addition, information in one of these companies' financial statements indicates that Indian accounting practices require Indian companies to record molding inputs (*i.e.*, all types of sand, bentonite, lead powder, steel pellets (if used for sand cores or moulding), coal powder and waste oil) under "stores and spares consumed."

Therefore, we are considering these molding inputs as indirect materials and a part of factory overhead, and we are not valuing them as materials.

We have considered the line item labelled "raw materials consumed" to include direct materials such as pig iron, steel scrap, and steel inputs, and non-steel direct inputs and not included them in factory overhead. The designation of these items is consistent with standard accounting procedures and recent determinations (see PVA and Bicycles). We also based our factory overhead calculation on the cost of goods manufactured rather than on the cost of goods sold. In addition, we included interest and/or financial expenses in the SG&A calculation.

For Shivaji, we removed rent expenses from manufacturing costs and reclassified the expense as SG&A, and kept write-offs of development expenses in manufacturing costs. To avoid double counting, we removed the amount for miscellaneous expenses from the SG&A calculation to account for packing expenses. (For a further discussion of other adjustments made, see Concurrence Memorandum).

For Rico, we have considered technical know-how expenses as engineering expenses and kept them in factory overhead. To avoid double counting, we removed the amount for

other expenses from the SG&A calculation to account for packing expenses. (For a further discussion of other adjustments made, see Concurrence Memorandum).

Southwest reported additional factors such as filter screens, fluxing covering, and grinding wheels which it uses to produce brake rotors. For these preliminary determinations, we have treated these types of inputs as part of factory overhead because they do not appear to be direct material inputs.

Verification

As provided in section 782(i) of the Act, we will verify the information used in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of brake drums and rotors from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service will require a cash deposit or posting of a bond equal to the estimated dumping margins by which the normal value exceeds the USP, as shown below. These suspension of liquidation instructions will remain in effect until further notice. CMC will be

excepted from the suspension of liquidation instructions for brake drums because its sales of brake drums were not found to have been sold below fair value. CMC's sales of brake drums, which were manufactured by the producer whose factors formed the basis for the *de minimis* margin, will be excluded from an antidumping duty order on brake drums should one be issued. Brake drums that are sold by CMC but manufactured by other producers will be subject to the order, if one is issued. (See *Final Determination of Sales At Less Than Fair Value: Case Pencils from the People's Republic of China*, 59 FR 55625, (November 8, 1994)(*Pencils*)). CAIEC/CAPCO will be excepted from the suspension of liquidation instructions for brake rotors because its sales of brake rotors were not found to have been sold below fair value. CAIEC/CAPCO's sales of brake rotors, which were manufactured by the producer whose factors formed the basis for the *de minimis* margin, will be excluded from an antidumping duty order on brake rotors should one be issued. Brake rotors that are sold by CAIEC/CAPCO but manufactured by other producers will be subject to the order, if one is issued. (See *Pencils*).

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Brake Drums	
China National Automotive Industry Import & Export Corporation, Shandong Laizhou CAPCO Industry Corporation, and CAPCO International USA	13.97
Yantai Import & Export Corporation	19.07
Qingdao Metal & Machinery Import & Export Corporation	9.70
Beijing Xinchangyuan Automobile Fittings Corporation, Ltd.	11.29
China National Machinery Import & Export Corporation	0.08
Jiuyang Enterprise Corporation	13.97
Hebei Metals and Machinery Import & Export Corporation	13.97
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation	13.97
Shanxi Machinery and Equipment Import & Export Corporation	13.97
China-Wide Rate	105.56
Brake Rotors	
China National Automotive Industry Import & Export Corporation, Shandong Laizhou CAPCO Industry Corporation, and CAPCO International USA	0.12
Shenyang Honbase Machinery Corporation, Ltd., and Laizhou Luyuan Automobile Fittings Corporation, Ltd., MAT Automotive, Inc., and Midwest Air Technologies, Inc.	64.56
Yantai Import & Export Corporation	11.81
Southwest Technical Import & Export Corporation, Yangtze Machinery Corporation, and MMB International, Inc.	45.08
China National Machinery and Equipment Import & Export (Xinjiang) Corporation, Ltd.	13.04
Qingdao Metal & Machinery Import & Export Corporation	42.69
Xianghe Zichen Casting Corporation	42.69
Jiuyang Enterprise Corporation	42.69
Hebei Metals and Machinery Import & Export Corporation	42.69
Yenhere Corporation	42.69
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation	42.69
Jilin Provincial Machinery & Equipment Import & Export Corporation	42.69
Shanxi Machinery and Equipment Import & Export Corporation	42.69
China-Wide Rate	64.56

China-Wide Rate

A China-Wide Rate has been assigned to brake drums based on the highest margin calculated in the brake drums case and a China-Wide Rate has been assigned to brake rotors based on the highest margin calculated in the brake rotors case. The China-Wide rate assigned to each product applies to all entries of that product except for entries from exporters/factories that are identified individually above under each product type.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final determinations are affirmative, the ITC will determine before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations whether these imports are materially injuring, or threaten material injury to, the corresponding U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than January 8, 1997, and rebuttal briefs, no later than January 15, 1997. A list of authorities used and a summary of arguments made in the briefs should accompany these briefs. Such summary should be limited to five pages total, including footnotes. We will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. At this time, the hearing is scheduled for January 17, 1997, at 10:00–2:00 Room 1414, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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, U.S. Department of Commerce, Room B–099, within ten days of the 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 the issues to be discussed. In accordance with 19 CFR 353.38(b) oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by January 16, 1996.

This determination is published pursuant to section 733(f) of the Act.

Dated: October 3, 1996.

Robert S. LaRussa,
Acting Assistant Secretary for Import Administration.

[FR Doc. 96–26085 Filed 10–9–96; 8:45 am]
BILLING CODE 3510–DS–P

[C–475–819]

Notice of Initiation of Expedited Countervailing Duty Administrative Review: Certain Pasta From Italy

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

ACTION: Notice of initiation of expedited countervailing duty administrative review.

SUMMARY: In response to requests from two exporters, the Department of Commerce (the “Department”) is initiating an expedited administrative review of the countervailing duty order issued in July 1996 covering imports of certain pasta from Italy.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Todd Hansen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0189 and 1276, respectively.

SUPPLEMENTARY INFORMATION:

Background

We have received requests from two exporters of pasta from Italy, Pastificio Nuova Bettini S.p.A. and Pastificio Oleficio Mangimificio Bianconi S.p.A. for an expedited review of the countervailing duty order on certain pasta from Italy, which was published in the Federal Register on July 24, 1996 (61 FR 38544). These requests are consistent with 19 CFR 351.214(k), found in *Antidumping Duties; Countervailing Duties; Proposed Rule* published in the Federal Register on February 27, 1996 (61 FR 7308, 7367–68) (“*Proposed Regulations*”).

Initiation of Review

We are initiating an expedited review of the countervailing duty order on pasta from Italy as contemplated by 19 CFR 351.214(k) of the *Proposed Regulations*. We intend to issue the preliminary results of review not later than 180 days from the date of publication of this notice, and the final

results of review within 90 days of the issuance of our preliminary determination.

Countervailing duty proceeding	Period to be reviewed
Italy: Certain Pasta C–475–819 Pastificio Nuova Bettini S.p.A.	1/1/94–12/31/94
Pastificio Oleficio Mangimificio Bianconi S.p.A.	1/1/94–12/31/94

Scope

The scope of the order for merchandise under review consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricoltura Biologica (“AMAB”) or by Bioagricoop scrl.

The merchandise under order is currently classifiable under items 1902.19.20 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 the order remains dispositive.

Interested parties must submit applications for disclosure under administrative protective orders not later than the deadlines set forth in 19 CFR 355.34(b)(1) (i) and (iii).

This initiation and this notice are pursuant to section 751 of the Tariff Act of 1930 as amended.

Dated: October 4, 1996.

Robert S. LaRussa,
Acting Assistant Secretary for Import Administration.

[FR Doc. 96–26087 Filed 10–9–96; 8:45 am]
BILLING CODE 3510–DS–P

[A-427-811]

Certain Stainless Steel Wire Rods From France: Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by Imphy S.A. and Ugine-Savoie (respondents), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel wire rods from France. This review covers the above manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is January 1, 1995 through December 31, 1995.

We have preliminarily determined that respondents sold subject merchandise at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the export price ("EP") or constructed export price ("CEP") and the NV.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding should also submit with the argument (1) a statement of the issue, and (2) a brief (no longer than five pages, including footnotes) summary of the argument.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or Jean Kemp, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-3434 or (202) 482-4037, respectively.

SUPPLEMENTARY INFORMATION:

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 (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the

Federal Register on May 11, 1995 (60 FR 25130).

Background

On December 29, 1993, the Department published in the Federal Register (58 FR 68865) the final affirmative antidumping duty determination on certain stainless steel wire rods from France, and published an amended final determination and antidumping duty order on January 28, 1994. On January 26, 1996, the Department published the Opportunity to Request an Administrative Review of this order for the period January 1, 1995-December 31, 1995 (61 FR 2488). The Department received a request for an administrative review from Imphy, S.A. ("Imphy") and Ugine-Savoie ("Ugine"), related producers/exporters of the subject merchandise, on January 22, 1996. We initiated the review on February 20, 1996 (61 FR 6347).

The Department is now conducting this review in accordance with section 751 of the Act. The review covers sales of certain stainless steel wire rods by Imphy, Ugine, and their affiliated companies, Metalimphy Alloys Corp. ("MAC"), and Techalloy Company, Inc. ("Techalloy").

Scope of the Review

The products covered by this administrative review are certain stainless steel wire rods (SSWR) products which are hot-rolled or hot-rolled annealed, and/or pickled rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 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 the order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by the respondents by using

standard verification procedures, including onsite inspection of the manufacturer's facilities, 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.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the *Scope of the Review* section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix III of the Department's March 21, 1996 antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents and verified by the Department.

Fair Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Transactions Reviewed

As we stated in our final results of the first administrative review, sales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation, and in the absence of an affirmative critical circumstances finding, are not subject merchandise and therefore are not subject to review by the Department (see *Certain Stainless Steel Wire Rods from France; Final Results of Antidumping Duty Administrative Review*, 61 FR 47874-6 (September 11, 1996)).

In this review, as in the first administrative review, respondents claimed that sales of certain merchandise were not subject to review because the merchandise entered prior to the suspension of liquidation pursuant to the preliminary determination of sales at less-than-fair-

value. In the first administrative review, we verified respondents' ability to link these pre-suspension entries with individual period-of-review sales (see *Certain Stainless Steel Wire Rods from France; Final Results of Antidumping Duty Administrative Review*, 61 FR 47874, 47875 (September 11, 1996)). At verification in France during this review, we examined documentation, including inventory records, invoices and packing lists for U.S. sales, that we tied to respondents' questionnaire response. We found no evidence in this review that called into question respondents' ability to link particular sales during the period of review to entries of merchandise prior to the suspension of liquidation. Because respondents have demonstrated that this merchandise entered prior to the suspension of liquidation, we excluded the sales of this merchandise from our analysis.

Export Price and Constructed Export Price

We used EP, in accordance with subsections 772 (a) and (c) of the Act, where the subject merchandise was sold directly or indirectly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. In addition, we used CEP in accordance with subsections 772(b), (c) and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States.

We made adjustments as follows:

We calculated EP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for discounts, foreign inland freight, foreign brokerage and handling, international freight, U.S. inland freight, U.S. brokerage and handling, marine insurance and U.S. Customs duties. We also adjusted the starting price for billing adjustments to the invoice price.

We calculated CEP sales based on packed prices to unaffiliated customers. Where appropriate, we made deductions for early payment discounts, credit expenses, warranty expenses, other direct selling expenses and commissions. We deducted those indirect selling expenses, including inventory carrying costs and product liability premiums, that related to commercial activity in the United States. We also made deductions for foreign brokerage and handling, foreign inland freight, international freight, U.S. inland freight, U.S. brokerage and handling, marine insurance, U.S. repacking expenses and U.S. Customs

duties. We also adjusted the starting price for billing adjustments to the invoice price and for interest revenue. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

Further Manufacturing

For products that were further manufactured after importation, we adjusted for all value added in the United States, including the proportional amount of profit attributable to the value added. We computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity (including further manufacturing costs), based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales.

Where appropriate, we deducted discounts, credit expenses, warranty expenses, inland freight and inland insurance. We also adjusted the starting price for billing adjustments to the invoice price and interest revenue. We did not adjust the starting price for commissions in the home market (please see the Concurrence Memorandum for a discussion of this issue).

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In accordance with the Department's practice, where the difference in merchandise adjustment for any product comparison exceeded 20 percent, we based normal value on CV. In addition, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S.

commissions in EP and CEP comparisons.

Price to CV Comparisons

Where we compared CV to EP, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses.

Cost of Production Analysis

As of the initiation of this review, the Department had not completed the first administrative review. Therefore, for purposes of the COP initiation, pursuant to section 773(b)(2)(A)(ii), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP because the Department disregarded sales below the cost of production (COP) in the LTFV investigation (see *Final Determination of Sales at Less than Fair Value: Certain Stainless Steel Wire Rods from France*, 58 FR 68865 (December 29, 1993)). Therefore, pursuant to section 773(b)(1) of the Act, we initiated COP investigations of sales by respondents in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition packed ready for shipment. In our COP analysis, we used the home market sales and COP information provided by respondents in their questionnaire responses.

After calculating COP, we tested whether home market sales of SSWR were made at prices below COP within an extended period of time in substantial quantities and whether such prices permit 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, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondents' sales of a given product were at prices less than COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of respondents' sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they (1) were made within an extended period of time in

substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POR, were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded certain below-cost sales in these preliminary results.

Respondents claimed that the prices they paid to an affiliated party for subcontracted work for remelting were on an arm's-length basis. The respondents paid the affiliated party a price that was at the affiliated party's budgeted rate multiplied by the actual quantities. The affiliated party only performed remelting services for respondents and respondents (Imphy) had no other remelter other than the affiliated party. Consequently, we were unable to compare data on remelting prices between respondents and an unaffiliated party. During verification, we found that the prices that respondents paid for the subcontracted remelting did not include any of the affiliated party's cost variance expenses nor the affiliated party's selling, general and administrative expenses and, therefore, the prices were not above cost. We are able to identify these sales by the control number and product code. In order to take into account the cost variances and SG&A that were not included, we increased the cost of manufacture for these remelted sales by the sum of the affiliated party's actual cost variances and SG&A (for a more detailed discussion of this issue, please see the public version of the Concurrence Memorandum).

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondents 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.

Arm's-Length Sales

Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's

length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where the price to the related party was 99.5 percent or more of the price to the unrelated party, we determined that the sale made to the related party was at arm's-length. Where no related customer ratio could be constructed because identical merchandise was not sold to unrelated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, (58 FR 37062, 37077 (July 9, 1993)). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparison to the next most similar model.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a 'fluctuation.' For these preliminary results of review, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. Therefore, when we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Level of Trade ("LOT")

As set forth in section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action ("SAA") accompanying the URAA at 829-31, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the U.S. sales. When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the U.S. sale, the Department may compare the U.S. sale to sales at a different LOT in the comparison market.

In accordance with section 773(a)(7)(A) of the Act, if sales at different LOTs are compared, the Department will adjust the NV to account for the difference in level of trade if two conditions are met. First, there must be differences between the

actual selling activities performed by the exporter at the LOT of the U.S. sale and the LOT of the comparison market sales used to determine NV. Second, the differences in the LOTs must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different LOTs in the country in which NV is determined.

Section 773(a)(7)(B) of the Act establishes that a CEP "offset" may be made when two conditions exist: (1) NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

In order to determine that there is a difference in level of trade, the Department must find that two sales have been made at different phases of marketing, or the equivalent. Different phases of marketing necessarily involve differences in selling functions, but differences in selling functions (even substantial ones) are not alone sufficient to establish a difference in the level of trade. Similarly, seller and customer descriptions (such as "distributor" and "wholesaler") are useful in identifying different levels of trade, but are insufficient to establish that there is a difference in the level of trade.

Pursuant to section 773(a)(7)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the constructed price, i.e., after the expenses and profit were deducted under section 772(d) of the Act. Whenever sales were made by or through an affiliated company or agent, we considered all selling activities of both affiliated parties, except for those selling activities related to the expenses deducted under section 772(d) of the Act in CEP situations.

In implementing these principles in this review, we obtained information about the selling activities of the producers/exporters associated with each phase of marketing or the equivalent. We asked respondents to identify the specific differences and similarities there were in selling functions and/or support services between all phases of marketing in the home market and the United States.

In reviewing the selling functions reported by the respondents, we examined all types of selling functions and activities reported in respondents' questionnaire response on level of trade. In analyzing whether separate levels of trade existed in this review, we found

that no single selling function was sufficient to warrant a separate level of trade in the home market (see *Antidumping Duties; Countervailing Duties; Proposed Rule, (Proposed Regulations)*, 61 FR 7308, 7348).

In determining whether separate levels of trade existed in or between the U.S. and home market, the Department considered the level-of trade claims of respondents. To test the claimed levels of trade, we analyzed, *inter alia*, the selling activities associated with the phases of marketing respondents reported. We determined that fewer and different selling functions were performed for CEP sales to MAC than for home market sales to end-users. We also found the selling functions were sufficiently different in customer sales contacts, technical services, inventory maintenance, computer systems and administrative functions to warrant treating U.S. sales to distributors and the home market sales as different levels of trade. In addition, we found that the home market sales involved a more advanced stage of distribution (to end-users) as compared to respondents' CEP sales in the United States (distributor). In this review there were no sales of the foreign like product in the home market at the same level of trade as that of the CEP sales. Therefore, we examined whether a level-of-trade adjustment was appropriate.

For the U.S. market, respondents reported two levels of trade: 1) sales to end users through MAC (EP sales); and 2) distributors, *e.g.*, MAC, Techalloy and US&A (CEP sales). The Department examined and verified the selling functions performed for both levels of trade. We found that the selling functions were sufficiently different in customer sales contacts (*i.e.*, visiting customers/potential customers, receiving orders, promotion of new products and following-up on unpaid invoices), technical services, inventory maintenance, computer systems and administrative functions to warrant two levels of trade in the United States.

To the extent practicable, we compared normal value at the same level of trade as the U.S. sale. Because we compared these CEP sales to home market sales at a different level of trade, we examined whether a level of trade adjustment was appropriate. In this case, respondents only sold at one level of trade in the home market; therefore, there is no basis upon which respondents can demonstrate a consistent pattern of price differences between levels of trade with respect to the foreign like product. Further, we do not have information which would allow us to examine pricing patterns

based on respondents' sales of other products and there are no other respondents or other record information on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a level of trade adjustment, but the level of trade in the HM is at a more advanced stage of distribution than the LOT of the CEP sale, a CEP offset is appropriate. Respondents claimed a CEP offset for those U.S. CEP and CEP/FM (CEP/Further Manufactured) sales compared to sales in France through Ugine Service. We included a CEP offset for all sales in France which are compared with CEP and CEP/FM sales in the United States since the comparison of home market sales to CEP sales is at a different level of trade. We applied the CEP offset to normal value or constructed value, as appropriate.

To calculate the CEP offset, we took the home market indirect selling expenses and deducted this amount from normal value, on home market sales which were compared to U.S. CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses incurred in the United States.

Preliminary Results of Reviews

As a result of our review, we preliminarily determine the weighted-average dumping margins (in percent) for the period January 1, 1995, through December 31, 1995 to be as follows:

Manufacturer/exporter	Margin (percent)
Impphy/Ugine-Savoie	6.29

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 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 180 days after the date of publication of this notice.

The Department shall determine, and the U.S. Customs Service shall assess,

antidumping duties on all appropriate entries. We have calculated an inter-specific ad valorem duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to 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. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP or CEP, by the total statutory ED or CEP value of the sales compared, and adjusting the result by the average difference between EP or CEP and customs value for all merchandise examined during the POR).

Furthermore, the following 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 reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.51 percent, the "All Others" rate made effective by the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 353.26 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.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22(c)(5).

Dated: October 2, 1996.

Robert S. LaRussa,

Assistant Secretary for Import Administration
[FR Doc. 96-26086 Filed 10-9-96; 8:45 am]

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[A-489-807]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Steel Concrete Reinforcing Bars From Turkey

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

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Cameron Werker, Fabian Rivelis, or Shawn Thompson, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3874, (202) 482-3853, or (202) 482-1776, 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 Rounds Agreements Act (URAA).

Preliminary Determination

We preliminarily determine that certain steel concrete reinforcing bars (rebar) from Turkey are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation of this investigation on March 28, 1996 (61 FR 15039, April 4, 1996), the following events have occurred:

On April 22, 1996, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On May 9, 1996, the Department presented its questionnaire concerning Sections A, B, and C to all known Turkish exporters of rebar, in

accordance with 19 CFR § 353.42(b). These companies are Cebitas Demir Celik Endustrisi A.S. (Cebitas), Colakoglu Metalurji A.S. (Colakoglu), Cukurova Celik Endustrisi A.S. (Cukurova), Diler Demir Celik Endustrisi ve Ticaret A.S. (DDC), Diler Dis Ticaret A.S. (Diler), Ekinciler Demir Celik A.S. (Ekinciler), Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas), Icdas Istanbul Celik ve Demir Izabe Sanayii A.S. (Icdas), Izmir Demir Celik Sanayi A.S. (IDC), Izmir Metalurji Fabrikasi Turk A. S. (Metas), and Yazici Demir Celik Sanayi ve Ticaret A.S. (Yazici).

In May and June 1996, we received a response to Section A of the questionnaire from each of the companies identified above. Based on our analysis of this information, we determined that Cebitas, Cukurova, DDC, Diler, Icdas, and Yazici did not export rebar to the United States during the period of investigation (POI). Accordingly, we instructed these companies not to submit responses to the remaining sections of the questionnaire.

In its Section A response, Habas informed the Department that, although it had a viable home market, it would be unable to provide complete information on the physical characteristics for a significant portion of its home market sales. Consequently, Habas requested guidance from the Department as to the appropriate basis for normal value (NV). On June 5, 1996, we notified Habas that we had insufficient data to conclude that its home market sales could not be used in price-to-price comparisons. Accordingly, we instructed Habas to report home market sales as required in Section B of questionnaire. For further discussion, see the "Fair Value Comparisons" section of this notice.

In June 1996, we received responses to Sections B and C of the questionnaire from Colakoglu, Ekinciler, Habas, IDC, and Metas (hereinafter "respondents"). The Department issued supplemental questionnaires to respondents in July 1996.

On July 12, 1996, petitioners submitted a timely allegation pursuant to section 773(b) of the Act that respondents had made sales in the home market below the cost of production (COP). On July 19, 1996, we initiated a COP investigation and issued COP questionnaires to all respondents.

On July 22, 1996, pursuant to section 733(c)(1)(A) of the Act, petitioners made a timely request to postpone the preliminary determination. We granted this request, and on July 29, 1996, we postponed the preliminary

determination until no later than October 4, 1996 (61 FR 40194, August 1, 1996).

In August 1996, we received responses to the supplemental sales questionnaires from Colakoglu, Ekinciler, Habas, and Metas. IDC, however, informed the Department on August 12, 1996, that it would not be able to respond to the supplemental questionnaire in a timely manner. Although we afforded IDC an opportunity to request additional time for completion of its response, IDC neither requested an extension nor submitted any additional information. For further discussion, see the "Facts Available" section of this notice, below.

All respondents except IDC submitted COP responses in August 1996. In September 1996, we issued supplemental COP questionnaires to all respondents except IDC. Responses to these questionnaires were also received in September 1996.

Pursuant to section 735(a)(2)(A) of the Act, on September 11, 1996, three of the four respondents, Colakoglu, Ekinciler, and Habas, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until no later than 135 days after the publication of this notice in the Federal Register. For further discussion, see the "Postponement of Final Determination" section of this notice.

On October 2, 1996, Colakoglu submitted updated information on its 1996 shipments to the United States. However, because we are making our preliminary determination on October 4, 1996, we have been unable to use this data in our critical circumstances analysis. Nonetheless, we will verify this information and use it for purposes of the final determination.

Facts Available

One of the respondents in this case, IDC, failed to respond completely to the Department's requests for information. Specifically, IDC submitted a response to the May 9 questionnaire, but did not provide any subsequent information, including a response to the supplemental sales questionnaire and the COP questionnaire.

On August 12, 1996, IDC informed the Department that it would not be able to provide any additional information in a timely manner and requested that the Department use the information already on the record in its analysis. However, we were unable to perform any analysis for IDC without a COP response because COP data is an essential component in our margin calculations. Accordingly,

we afforded IDC, a *pro se* respondent (*i.e.*, without legal representation), an opportunity to request additional time for completion of its responses. However, IDC neither requested an extension nor submitted any additional data.

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 or manner requested (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(c)(1) and (e), use facts otherwise available in reaching the applicable determination. Because IDC failed to respond to the Department's supplemental and cost questionnaires and because that failure is not overcome by the application of subsections (c)(1) and (e), we must use facts otherwise available with regard to IDC.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA). IDC's failure to reply to the Department's questionnaires demonstrates that IDC has failed to act to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to IDC, an adverse inference is warranted. As facts otherwise available, we are assigning to IDC the highest margin stated in the notice of initiation, 41.8 percent.

Section 776(c) provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. When analyzing the petition, the Department reviewed all of the data the petitioners relied upon in calculating the estimated dumping margins, and adjusted those calculations where necessary. *See* Memorandum to the File from Case Analysts, dated March 26, 1996. These estimated dumping margins were based on a comparison of a home market price list to (1) a contracted price to a U.S. customer and (2) an offer of sale to a U.S. customer. The estimated dumping margins, as recalculated by the Department, ranged from 27.4 to 41.8

percent. The Department corroborated all of the secondary information from which the margin was calculated during our pre-initiation analysis of the petition to the extent appropriate information was available for this purpose at that time. For purposes of the preliminary determination, the Department re-examined the price information provided in the petition in light of information developed during the investigation and found that it continued to be of probative value.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on September 11, 1996, three of the four respondents, Colakoglu, Ekinciler, and Habas, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until no later than 135 days after the publication of the preliminary determination in the Federal Register. In accordance with 19 CFR § 353.20(b), because (1) our preliminary determination is affirmative, (2) the respondents account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the Federal Register.

Scope of Investigation

The product covered by this investigation is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is January 1, 1995, through December 31, 1995.

Level of Trade

As set forth in section 773(a)(7)(A) of the Act and in the SAA at 829-831, to the extent practicable, the Department will calculate NV's based on sales at the same level of trade as the U.S. sales. When the Department is unable to find

sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at a different level of trade.

In accordance with section 773(a)(7)(A) of the Act, if sales at different levels of trade are compared, the Department will adjust the NV to account for differences in levels of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and at the level of trade of the NV sale. Second, the difference in level of trade must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined. When constructed export price (CEP) is applicable, section 773(a)(7)(B) of the Act establishes the procedures for making a CEP offset when: (1) NV is at a different level of trade and (2) the data available do not provide an appropriate basis for a level of trade adjustment.

In order to identify levels of trade, the Department must review information concerning the selling activities of the exporter, as well as whether different marketing stages exist. In addition, a respondent seeking to establish a level of trade adjustment must demonstrate the appropriateness of such an adjustment. Therefore, in addition to the questions related to level of trade in our May 9, 1996, questionnaire, we sent each respondent supplemental questions related to level of trade comparisons and adjustments in June 1996.

Only one respondent, Metas, claimed what it purported to be different levels of trade in the home market and that an adjustment was warranted¹. Metas classified its U.S. customers as trading companies. As part of our level of trade analysis, we examined the selling activities at each reported home market and U.S. marketing stage. Because we found that there was no substantive difference in the selling activities performed by Metas at any of its marketing stages either in the home market or in the United States, we

¹ Metas also claimed that we should compare sales to trading companies in the United States to sales to Metas distributors in the home market because the quantities were similar in both types of transactions. In the alternative, Metas requested that we compare U.S. trading company sales to all home market sales after adjusting the price of home market sales to reflect volume-related discounts. However, Metas failed to provide us with quantitative support for these claims, and our own analysis indicates that such comparisons and adjustments are unwarranted. *See* the Concurrence Memorandum dated October 4, 1996.

determine that there was only one level of trade. Because U.S. sales are at the same level as home market sales, no adjustment to NV is warranted. See the Concurrence Memorandum dated October 4, 1996.

Fair Value Comparisons

Petitioners have requested that the Department and the ITC adopt a regional industry² analysis, in accordance with section 771(4)(C) of the Act. In our notice of initiation we indicated that the petition had met the requirements of sections 771(4)(C) and 732(c)(4)(C) of the Act. Section 736(d)(1) of the Act directs the Department to assess duties only on the subject merchandise of the specific exporters and producers that exported the subject merchandise for sale into the region concerned during the POI. However, because respondents were not able to provide requested information on sales which were ultimately made in the region, we have not limited our analysis in the LTFV investigation to only shipments entering ports located in the region. We will again attempt to collect this information during any subsequent administrative reviews, in the event that an antidumping duty order is issued in this case.

To determine whether sales of rebar from Turkey to the United States were made at less than fair value, we compared the Export Price (EP) to NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

In making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the "Scope of Investigation" section above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Regarding Colakoglu and Ekinciler, where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix III of the Department's antidumping questionnaire. Regarding Habas and Metas, because we found no home

market sales at prices above COP, we made no price-to-price comparisons. See the "Normal Value" section of this notice, below, for further discussion.

In order to determine the appropriate price-averaging groups used in our product comparisons, we examined the reported marketing stages in light of the characteristics commonly associated with each of these categories (e.g., wholesaler vs. distributor). We then compared the average price reported in the home market sales listing for each marketing stage in order to identify any consistent pattern of pricing. We found that, for the sale of rebar, no consistent pattern of pricing existed for any of the respondents. Accordingly, for purposes of the preliminary determination, we based our price-averaging groups solely on the physical characteristics of the merchandise. See Memorandum to the File from Rebar Team, dated October 4, 1996.

Finally, Turkey experienced significant inflation during the POI, as measured by the Wholesale Price Index, published in *International Financial Statistics*. Accordingly, to avoid the distortions caused by the effects of significant inflation on prices, we calculated EPs and NVs on a monthly average basis, rather than on a POI average basis.

Export Price

For all of the Turkish respondents, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of this investigation.

Affiliated Port Services

Each of the respondents owns or is affiliated, either through a shipping or sales agent, to a port from which it ships merchandise to export destinations. During the POI, these ports provided a variety of services incident to moving the merchandise to the United States. Respondents reported all movement charges associated with movement at the port (e.g., lashing expense, loading expense, etc.). In addition, Colakoglu, Ekinciler, and Habas reported certain fees charged by the affiliated port to unaffiliated vessels for use of the port. These fees are intended to defray the administrative costs of running the port. However, for purposes of our LTFV analysis, we are concerned with the costs actually incurred by the affiliated port in moving the goods, *not* the fees the port may charge to cover these costs. Accordingly, we have disallowed these

fees for purposes of the preliminary determination. Specifically, we disallowed wharfage revenue and shipping commission revenue for Colakoglu, agency fee revenue and shipping commission revenue for Ekinciler, and the profit generated by its port operations for Habas. We will collect additional information about the underlying selling, general, and administrative (SG&A) expenses incurred at these ports for purposes of the final determination.

A. Colakoglu

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions to EP for foreign inland freight, dunnage expenses, lashing expenses, loading charges, despatch expenses (which included an upward adjustment for revenue that was realized on a contractual agreement between Colakoglu and its ocean freight carrier), demurrage expenses, and ocean freight, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

B. Ekinciler

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight, warehousing expenses, loading charges, tallying expenses, forklift expenses, dunnage and demurrage expenses (which included an upward adjustment for dunnage and despatch revenues), ramneck tape expenses, customs fees, detention expenses, stevedoring expenses, wharfage expenses, overage insurance, and ocean freight, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

C. Habas

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions to EP for foreign inland freight, dunnage expenses, despatch expenses (which included an upward adjustment for revenue that was realized on a contractual agreement between Habas and its customer), brokerage and handling, demurrage expenses, customs fees, ocean freight, and marine insurance, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

D. Metas

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight, lashing expenses, brokerage and handling, demurrage expenses (which included an upward

²The region identified by the petitioners includes Maine, New Hampshire, Connecticut, Massachusetts, Rhode Island, Vermont, New Jersey, New York, Pennsylvania, Delaware, Florida, Georgia, Louisiana, Maryland, North Carolina, South Carolina, Virginia, West Virginia, Alabama, Kentucky, Mississippi, Tennessee, the District of Columbia, and Puerto Rico.

adjustment for revenue that was realized on a contractual agreement between Metas and its ocean freight carrier), and ocean freight, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for each respondent.

Because Ekinciler, Habas, and Metas reported home market sales to affiliated parties during the POI, we tested these sales to ensure that, on average, the affiliated party sales were at "arm's length." To conduct this test, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, rebates, and packing. Based on the results of that test, we discarded from each respondent's home market database all sales made to an affiliated party that failed the "arm's length" test.

Based on the cost allegation submitted by petitioners, the Department found reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of producing the merchandise. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POI at prices below their respective COP's within the meaning of section 773(b) of the Act.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act. As noted above, we determined that the Turkish economy experienced significant inflationary during the POI. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that respondents submit monthly COP figures based on the current production costs incurred during each month of the POI.

We used the respondents' monthly COP amounts, adjusted as discussed below, and the Primary Metals Index from the Turkish Government's State

Institute of Statistics, to compute an annual weighted-average COP for the POI. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined (1) whether, within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Where 20 percent or more of a respondent's sales of a given product during the POI were at prices below the COP, we found that sales of that model were made in "substantial quantities," and within an extended period of time, in accordance with section 773(b)(2) (B) and (C). To determine whether prices were such as to provide for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per unit cost of production at the time of the sale were above the weighted average per unit cost of production for the POI, in accordance with section 773(b)(2)(D). If it was, we disregarded below cost sales in determining NV.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each 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. Where respondents made no home market sales in the ordinary course of trade (*i.e.*, all sales were found to be below cost), we based profit and SG&A expenses on the weighted average of the profit and SG&A data computed for those respondents with home market sales of the foreign like product in the ordinary course of trade. We calculated each respondent's CV based on the methodology described in the calculation of COP above. Company-specific calculations are discussed below.

A. Colakoglu

We relied on the respondent's COP and CV amounts except in the following instances: We adjusted Colakoglu's submitted scrap cost to include the transfer prices it paid to an affiliated company for freight service because the transfer prices occurred at arms-length and represent the actual cost to Colakoglu. We also recalculated Colakoglu's submitted monthly SG&A and financing expenses using the Primary Metals Index from the Turkish government's State Institute of Statistics rather than the Wholesale Price Index, as this index is more product-specific. We revised the SG&A and financing expense rates for COP and CV using amounts reported in Colakoglu's 1995 audited financial statements. Colakoglu based its reported SG&A and financing expense rates on amounts contained in the company's tax return. Finally, because Colakoglu did not report costs for products which were once-folded, we assigned the COP and CV amounts calculated for the same products sold in straight lengths, based on Colakoglu's assertion that are no appreciable cost differences associated with folding.

For those comparison products for which there were sales at prices above the COP, we based NV on ex-factory prices to home market customers. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In addition, we adjusted for differences in the circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act. These adjustments included differences in imputed credit expenses (offset by the interest revenue actually received by the respondent), bank charges, testing and inspection fees, and Exporters' Association fees. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR § 353.57.

Where we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses.

B. Ekinciler

We relied on the respondent's COP and CV amounts except in the following instances: We used the Primary Metals Index in our COP and CV calculations rather than the Wholesale Price Index because it is more product-specific. We used this index to recalculate idle asset and revalued depreciation expense, SG&A, and financing expenses. We

revised the reported COP and CV to account for the costs of rebar produced by subcontractors. In addition, we included idle asset and revalued depreciation expense in the reported cost of rebar provided by subcontractors, and we disallowed Ekinciler's exclusion of foreign exchange losses from its calculation of financing expenses. Finally, we disallowed Ekinciler's exclusion of marketing and distribution expenses from its SG&A calculation because we were unable to determine the expenses included in the aggregate amount provided in Ekinciler's response. In order to avoid the potential double-counting of these expenses, we did not deduct home market movement charges when calculating the net price for COP.

In accordance with section 771(16)(B)(i) of the Act, we excluded from our analysis home market sales by Ekinciler of rebar produced entirely by other manufacturers. For those comparison products for which there were sales at prices above the COP, we based NV on ex-factory, ex-warehouse or delivered prices to home market customers. We made deductions, where appropriate, from the starting price for foreign inland freight, inland insurance, and direct warehousing expenses. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In addition, we adjusted for differences in the circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act. These adjustments included differences in imputed credit expenses, bank charges, warranty expenses, testing and inspection fees, and Exporters' Association fees. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR § 353.57.

Where we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses.

C. Habas

We relied on the respondent's COP and CV amounts except in the following instances: We used the Primary Metals Index in our COP and CV calculations rather than the Wholesale Price Index because it is more product-specific. We used this index to recalculate SG&A expenses and financing expenses. We revised the reported COP and CV to account for the cost of billets and rebar produced by subcontractors. In addition, we disallowed Habas's

deduction of foreign exchange gains in its calculation of financing expenses, and we revised the SG&A expenses included in COP and CV using Habas's corporate SG&A expenses rather than the reported iron and steel division-specific SG&A expenses. See the Concurrence Memorandum dated October 4, 1996, where Habas did not report costs for certain products (i.e., for those products for which Habas was unable to determine a specific size), we calculated COP and CV as the simple average of the costs for all other products.

Because all of Habas's home market sales were sold below COP, we compared CV to export prices. We deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses. Home market direct selling expenses were based on the weighted average of the selling expense data computed for those respondents with home market sales of the foreign like product in the ordinary course of trade. U.S. direct selling expenses included imputed credit expenses, bank charges, testing and inspection fees, and Exporters' Association fees.

D. Metas

We relied on the respondent's COP and CV amounts except in the following instance: Where Metas reported different costs of manufacture and fixed overhead amounts for the same product in its COP and CV databases, we used the higher of the reported costs in our calculations.

Because all of Metas's home market sales were sold below COP, we compared CV to export prices. We deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses. Home market direct selling expenses were based on the weighted average of the selling expense data computed for those respondents with home market sales of the foreign like product in the ordinary course of trade. U.S. direct selling expenses included imputed credit expenses (offset by the interest revenue actually received by the respondent), bank charges, testing and inspection fees, and Exporters' Association fees.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for Turkish Lira. Therefore, we made currency

conversions based on the daily exchange rates from the Dow Jones News/Retrieval Service. See 19 CFR § 353.60.

Critical Circumstances

In the petition, petitioners made a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise.

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knows or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

In this investigation, the first criterion is satisfied because the Republic of Singapore began imposing antidumping measures against rebar from Turkey in 1995. Therefore, we preliminarily determine that there is a history of dumping elsewhere of rebar by Turkish producers/exporters. Because there is a history of dumping, it is not necessary to address importer knowledge.

Because we have preliminarily found that the first statutory criterion is met, we must consider the second statutory criterion: whether imports of the merchandise have been massive over a relatively short period. According to 19 CFR § 353.16(f) and § 353.16(g), we consider the following to determine whether imports have been massive over a relatively short period of time: (1) volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR § 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been "massive."

To determine whether or not imports of subject merchandise have been massive over a relatively short period, for all respondents except IDC we

compared each respondent's export volume for the three to six months subsequent to and including the filing of the petition (depending on the available data) to that during the comparable period prior to the filing of the petition. Based on our analysis, we preliminarily find that the increase in imports of the subject merchandise from each of these respondents increased by more than 15 percent over a relatively short period. Moreover, regarding IDC, as facts available, we are making the adverse assumption that imports have been massive over a relatively short period of time in accordance with section 733(e)(1)(B) of the Act.

Therefore, because there is a history of dumping of such or similar merchandise, and because we find that imports of rebar from all respondents have been massive over a relatively short period of time, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to exports of rebar from Turkey by Colakoglu, Ekinciler, Habas, IDC, and Metas.

Regarding all other exporters, because we find that critical circumstances exist for all investigated companies, we also determine that critical circumstances exist for companies covered by the "All Others" rate.

We will make a final determination concerning critical circumstances when we make our final determination of sales at less than fair value in this investigation.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries into the United States of rebar from Turkey, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the normal value of the subject merchandise exceeds the United States Price as shown below. The suspension of liquidation will remain in effect until further notice.

Exporter/Manufacturer	Weighted-average margin percentage	Critical circumstances
Colakoglu	10.32	Yes.
Ekinciler	19.68	Yes.
Habas	16.78	Yes.
IDC	41.80	Yes.
Metas	30.22	Yes.
All Others	15.94	Yes.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR § 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than January 6, 1997, and rebuttal briefs, no later than January 13, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with 19 CFR § 353.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on January 16, 1997, time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled date.

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, U.S. Department of Commerce, Room B-099, within ten days of the 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 the issues to be discussed. In accordance with 19 CFR § 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no

later than 135 days after the publication of this notice in the Federal Register.

This determination is published pursuant to section 733(f) of the Act.

Dated: October 4, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96-26084 Filed 10-9-96; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

Groundfish Tagging Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 9, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, telephone number 907-586-7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

The groundfish tagging program provides scientists with information necessary for effective conservation, management, and scientific understanding of the groundfish fishery off Alaska and the Northwest Pacific. The program area includes the Pacific Ocean off Alaska (the Gulf of Alaska, the Bering Sea and Aleutian Islands Area, the Alexander Archipelago of Southeast Alaska), California, Oregon, and Washington. Population dynamics, non-linear optimization, likelihood function, and stock reduction analyses are used to estimate recruitment parameters and to assess stock sizes.

II. Method of Collection

This is a volunteer program requiring the actual tag from the fish to be returned, along with recovery information. All tags will be returned by fishermen to NMFS, via U.S. government mail, in self-addressed envelopes. These tags will be edited and entered into the computer data base. Each person returning a tag will receive information on the release site, growth, depth and area changes, and a reward.

III. Data

OMB Number: 0648-0276
Form Number: n/a
Type of Review: Regular Submission
Affected Public: Individuals, State and Local Governments
Estimated Number of Respondents: 1,000
Estimated Time Per Response: 5 minutes
Estimated Total Annual Burden Hours: 299
Estimated Total Annual Cost to Public: \$0

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 1, 1996.

Linda Engelmeier,
Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96-26026 Filed 10-9-96; 8:45 am]

BILLING CODE 3510-22-P

[I.D. 100296F]

North Pacific Fishery Management Council; Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council's Industry Implementation Team for the sablefish and halibut individual fishing quota (IFQ) fisheries will meet on October 17-18, 1996. The meeting will begin at 1:00 p.m. on October 17, and continue through October 18.

ADDRESSES: The meeting will be held in Room G-45 of the Old Federal Building, 605 W. 4th Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo; telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following subjects:

1. Review of IFQ amendment proposals.
2. Review of current IFQ amendments.
3. Review of reports on the first full year of the IFQ program.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907-271-2809, at least 5 working days prior to the meeting date.

Dated: October 4, 1996.

Bruce Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96-25964 Filed 10-9-96; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 091696E]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of revision.

SUMMARY: A public meeting of the Western Pacific Fishery Management Council's Crustacean Plan Team which is scheduled for October 21, 1996, was published in the Federal Register on September 23, 1996. The following change is made to the **SUMMARY**. All other information originally published remains unchanged.

Revision:

Under "**SUMMARY**" at 61 FR 49734 in the original notice, change to read:

The Western Pacific Fishery Management Council will hold a

meeting of its Crustacean Plan Team and Hawaii Advisory Panel.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, telephone: (808) 522-8220.

Dated: October 4, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96-25965 Filed 10-9-96; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 082196A]

Marine Mammals; Permit No. 898 (P772#65)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of amendment.

SUMMARY: Notice is hereby given that on September 12, 1996 permit no. 898, issued to The National Marine Fisheries Service, Southwest Fisheries Science Center, La Jolla, CA 92038, was amended.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Suite 13130 Silver Spring, MD 20910 (301/713-2289);

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (310/980-4001); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, HI 96822-2396 (808/973-2987).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the regulations governing the taking and importing of marine mammals (50 CFR Part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR Part 222).

The permittee is authorized to capture, restrain, sedate, and instrument up to 25 adult and subadult Hawaiian monk seals. Twelve of these animals (either adult or subadult males) may be instrumented with portable camcorders.

The permit has been amended to allow for flexibility in the use of currently authorized instruments (i.e., satellite-linked time-depth recorders using ARGOS technology; satellite-linked time-depth recorders using Global Positioning technology (GPS); and video cameras) on the 11 monk seals remaining to be instrumented at French Frigate Shoals. These animals may be instrumented with satellite-linked time-depth recorders, GPS units, or camcorders. This amendment involves no increase in the originally authorized take.

Issuance of this amended permit as required by the ESA was based on a finding that such amendment: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this amended permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 3, 1996.

Ann D. Terbush,

Chief, Permits & Documentation Division,
Office of Protected Resources, National
Marine Fisheries Service.

[FR Doc. 96-25824 Filed 10-9-96; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Singapore

October 4, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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 or call (202) 927-6716. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being increased, variously, for carryforward and 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 60 FR 65299, published on December 19, 1995). Also see 60 FR 62403, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1996.

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 November 30, 1995, 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 Singapore and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on October 10, 1996, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit
331	499,006 dozen pairs.
338/339	1,271,521 dozen of which not more than 756,822 dozen shall be in Category 338 and not more than 841,492 dozen shall be in Category 339.

¹The limits have not been adjusted to account for any imports exported after December 31, 1995.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96-26028 Filed 10-9-96; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations on Woven Wool Shirts and Blouses; Correction

October 4, 1996.

In the third column of the notice published in the Federal Register on May 23, 1995 (60 FR 27274), the date of the document should be corrected to "May 17, 1995" from "April 17, 1995."

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96-26029 Filed 10-09-96; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 9, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708-8196.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public

consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 4, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Performance Report for the Ronald E. McNair Postbaccalaureate Achievement Program.

Frequency: Semi-annually.

Affected Public: Not-for-Profit Institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 99.

Burden Hours: 891.

Abstract: Ronald E. McNair Postbaccalaureate Achievement Program grantees are required to submit annual performance reports. The reports are used to evaluate project accomplishments, compliance, prior experience, and collect impact data for budget submissions and Congressional hearings.

[FR Doc. 96-26036 Filed 10-9-96; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-11-000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 4, 1996.

Take notice that on October 1, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1996:

Second Revised Sheet No. 49
Original Sheet No. 49A

ANR states that the above-referenced sheets are being filed to revise Rate Schedule FSS, Firm Storage Service. The purpose of the proposed changes is to increase flexibility of FSS Storage service to allow ANR Shippers to withdraw quantities from their FSS account beyond the level injected pursuant to the overrun provision of Rate Schedule FSS, subject to interruption and ANR's system operating requirements.

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, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-25997 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER96-371-000 and ER95-1295-000]

Cleveland Electric Illuminating Company and Market Responsive Energy, Inc.; Notice of Issuance of Order

October 7, 1996.

Market Responsive Energy, Inc. (Market Energy) filed an application for

authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Market Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Market Energy. On September 27, 1996, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates And Establishing Hearing Procedures (Order), in the above-docketed proceeding.

The Commission's September 27, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (J):

(G) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Market Energy 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.

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, Market Energy is hereby authorized, pursuant to Section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Market Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(J) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Market Energy's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 28, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96-26059 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-815-000]**Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization**

October 4, 1996.

Take notice that on September 26, 1996, Columbia Gulf Transmission Company (Columbia Gulf), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314-1599, filed in Docket No. CP96-815-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point to accommodate deliveries of gas to the City of Pontotoc (Pontotoc) in Pontotoc County, Mississippi, under Columbia's blanket certificate issued in Docket No. CP83-496-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia Gulf proposes to construct and operate the new delivery point, in order to deliver up to 400 dt equivalent of natural gas per day to Pontotoc on a peak day and up to 146,000 dt equivalent on an annual basis. It is stated that the end uses of the gas will be residential, commercial and industrial. Columbia Gulf proposes to transport gas on a firm, backhaul basis, under its FTS rate schedule. The cost of the facilities is estimated at \$170,000, for which Columbia Gulf will be fully reimbursed by Pontotoc. It is asserted that because the deliveries will be the result of backhaul transportation, there will be no impact on Columbia's peak day obligations to its other customers resulting from the proposed delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96-26058 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER96-2601-000, ER96-2602-000, and ER96-2658-000 (Not consolidated)]**DPL Energy, Inc., Dayton Power & Light Company, and TPC Corporation; Notice of Issuance of Order**

October 7, 1996.

DPL Energy, Inc. (DPL Energy) and TPC Corporation (TPC), filed respective applications for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, DPL Energy and TPC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by DPL Energy and TPC. On September 30, 1996, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Tariffs And Granting And Denying Waivers And Authorizations (Order), in the above-docketed proceedings.

The Commission's September 30, 1996 Order granted the requests for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (J):

(G) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by DPL Energy or TPC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., 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).

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, DPL Energy and TPC each is hereby authorized, pursuant to Section 204 of the FPA, to issue securities and to assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of DPL Energy or TPC, respectively, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(J) The Commission reserves the right to modify this order to require a further

showing that neither public nor private interests will be adversely affected by continued Commission approval of DPL Energy's or TPC's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 30, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96-26058 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-13-000]**East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff**

October 4, 1996.

Take notice that on October 1, 1996, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective November 1, 1996:

First Revised Sheet No. 10
First Revised Sheet No. 11
First Revised Sheet No. 21
Original Sheet No. 21A
Second Revised Sheet No. 30
Original Sheet No. 30A
First Revised Sheet No. 42
First Revised Sheet No. 116
First Revised Sheet No. 130
First Revised Sheet No. 145
First Revised Sheet No. 154
First Revised Sheet No. 155

East Tennessee states that the revised tariff sheets reflect conforming changes to East Tennessee's tariff to permit East Tennessee to charge negotiated rates for its transportation and storage services in accordance with the Statement of Policy issued on January 31, 1996 in Docket No. RM95-6-000 (74 FERC ¶ 61,076).

Any person desiring to be heard or to make any protest with reference to said 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 the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission 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

must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-25985 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-20-000]

El Paso Natural Gas Company; Notice of Compliance Filing

October 4, 1996.

Take notice that on October 1, 1996, El Paso Natural Gas Company (El Paso) pursuant to Subpart C of Part 154 of the Commission's Regulations Under the Natural Gas Act and Order No. 587, Final Rule and Order Establishing Compliance Schedule, issued July 17, 1996 at Docket No. RM96-1-000, (Final Rule), tendered for filing as part of its FERC Gas Tariff, the following pro forma tariff sheets, to be effective April 1, 1997.

Pro Forma Third Revised Volume No. 1

First Revised Sheet Nos. 301-302
First Revised Sheet No. 309
First Revised Sheet No. 313
Second Revised Sheet No. 314
First Revised Sheet Nos. 315-317

Pro Forma Second Revised Volume No. 1-A

Tenth Revised Sheet No. 24
First Revised Sheet No. 201
Second Revised Sheet No. 202
First Revised Sheet No. 206
Second Revised Sheet No. 210
Original Sheet No. 210A
First Revised Sheet No. 211
Second Revised Sheet No. 212
Third Revised Sheet No. 214
Second Revised Sheet Nos. 215-217
Original Sheet No. 217A
Second Revised Sheet No. 237
First Revised Sheet Nos. 238-240
Second Revised Sheet No. 271
First Revised Sheet No. 285
First Revised Sheet Nos. 289-290
Second Revised Sheet No. 294
Second Revised Sheet Nos. 303-304
Second Revised Sheet No. 309
Second Revised Sheet No. 335
First Revised Sheet Nos. 336-337
Third Revised Sheet Nos. 338-339
Original Sheet No. 339A
Third Revised Sheet No. 340
First Revised Sheet No. 341
First Revised Sheet No. 343
Second Revised Sheet No. 344
Third Revised Sheet No. 345
Original Sheet No. 345A
First Revised Sheet Nos. 346-347
Second Revised Sheet No. 348
Original Sheet No. 348A
First Revised Sheet Nos. 350-352

Pro Forma Third Revised Volume No. 2

Fifth Revised Sheet No. 1-G

Eighth Revised Sheet No. 1-H

El Paso states that in the Final Rule, the Commission adopted the Gas Industry Standards Board (GISB) standards and amended its Regulations. El Paso states that it is filing to revise its Tariff to conform to the GISB.

El Paso also requested waiver of the Commission's Regulations, as necessary, to allow El Paso and its shippers to defer implementation of GISB Standard 1.3.1 until April 6, 1997. El Paso states that without grant of this waiver, El Paso and its shippers would be required to adjust the gas on April 1, 1997 and again five days later on April 6, 1997 to reflect the springtime adjustment to Daylight Savings Time.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system sales and transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations on or before October 22, 1996. Protests will be considered by the Commission in determining 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.

Lois D. Cashell,
Secretary.

[FR Doc. 96-25990 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-21-000]

Florida Gas Transmission Company; Notice of Filing of Pro Forma Tariff Sheets

October 4, 1996.

Take notice that on October 1, 1996, Florida Gas Transmission Company (FGT) tendered for filing the pro forma tariff sheets listed on Attachment A to the filing.

FGT states that the instant filing is in compliance with the provisions of Order No. 587 issued July 17, 1996 in Docket No. RM96-1-000 and sets forth the proposed changes to FGT's tariff required to implement the Standards of

the Gas Industry Standards Board (GISB). FGT states that, in compliance with Order No. 587, it will file the final tariff sheets implementing the GISB standards to become effective on April 1, 1997.

Any person desiring to be heard or to protest said 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 the Commission's Rules and Regulations and Order No. 587. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations on or before October 22, 1996. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 96-25999 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-23-000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 4, 1996.

Take notice that on October 2, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, to become effective November 1, 1996:

First Revised Sheet No. 720

Koch states that the proposed sheet is being filed to modify the boundaries of Koch's Pooling Areas on Koch's Pooling map to reflect actual operating conditions. The physical pooling locations will remain intact. The map revision will simplify the management of pooling transactions for both Customers and Koch.

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, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's Regulations. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 96-25991 Filed 10-9-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP97-14-000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 4, 1996.

Take notice that on October 1, 1996, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective November 1, 1996:

First Revised Sheet No. 14
Original Sheet No. 14A
First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 25
First Revised Sheet No. 26
First Revised Sheet No. 64
First Revised Sheet No. 81
First Revised Sheet No. 100

Midwestern states that the revised tariff sheets reflect conforming changes to Midwestern's tariff to permit Midwestern to charge negotiated rates for its transportation and storage services in accordance with the Statement of Policy issued on January 31, 1996 in Docket No. RM95-6-000 (74 FERC ¶ 61,076).

Any person desiring to be heard or to make any protest with reference to said 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 the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission 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 must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-25986 Filed 10-9-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM97-2-25-000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 4, 1996.

Take notice that on October 1, 1996, Mississippi River Transmission Corporation (MRT) submitted for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1996:

Nineteenth Revised Sheet No. 5
Nineteenth Revised Sheet No. 6
Sixteenth Revised Sheet No. 7
Seventh Revised Sheet No. 8

MRT states that the purpose of the filing is to adjust the Fuel Use and Loss Percentages under its Rate Schedules FTS, SCT, ITS, FSS and ISS pursuant to Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1.

MRT states that a copy of its filing has been served on all of its customers and the State Commissions of Arkansas, Illinois and Missouri.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission 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 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.

Lois D. Cashell,
Secretary.

[FR Doc. 96-26001 Filed 10-9-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP97-19-000]

Mojave Pipeline Company; Notice of Compliance Filing

October 4, 1996.

Take notice that on October 1, 1996, Mojave Pipeline Company (Mojave), pursuant to Subpart C of Part 154 of the Commission's Regulations Under the Natural Gas Act and Order No. 587, Final Rule and Order Establishing Compliance Schedule, issued July 17, 1996 at Docket No. RM96-1-000, (Final Rule), tendered for filing to become part of its FERC Gas Tariff, Volume No. 1, the following pro forma tariff sheets, to be effective April 1, 1997.

Pro Forma Second Revised Volume No. 1
First Revised Sheet No. 22
First Revised Sheet Nos. 29-31
Original Sheet No. 31A
First Revised Sheet No. 32
First Revised Sheet Nos. 34-35
First Revised Sheet No. 38
Original Sheet No. 38A
First Revised Sheet No. 52
First Revised Sheet No. 58
First Revised Sheet No. 63
First Revised Sheet Nos. 102-103
First Revised Sheet Nos. 110-113
Second Revised Sheet No. 117
Original Sheet No. 117A
Second Revised Sheet No. 128
First Revised Sheet No. 133

Mojave states that in the Final Rule, the Commission adopted the Gas Industry Standards Board (GISB) standards and amended its Regulations. Mojave states that it is filing to revise its Tariff to conform to the GISB Standards.

Mojave also requested waiver of the Commission's Regulations, as necessary, to allow Mojave and its shippers to defer implementation of GISB Standard 1.3.1 until April 6, 1997. Mojave states that without grant of this waiver, Mojave and its shippers would be required to adjust the gas day on April 1, 1997 and again five days later on April 6, 1997 to reflect the springtime adjustment to Daylight Savings Time.

Mojave states that copies of the filing were served upon all of Mojave's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations on or before October 22, 1996. Protests will be considered by the Commission in

determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 96-25989 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-331-002]

**National Fuel Gas Supply Corporation;
Notice of Withdrawal of Proposed
Tariff Sheets**

October 4, 1996.

Take notice that on September 30, 1996, National Fuel Gas Supply Corporation (National) tendered for filing a Notice of Withdrawal of certain proposed tariff sheets to be part of its FERC Gas Tariff, Third Revised Volume No. 1, that National filed on September 16, 1996. National is proposing to withdraw the following proposed tariff sheets:

Second Revised Sheet No. 131GG
Second Revised Sheet No. 131HH
First Revised Sheet No. 131II
Second Revised Sheet No. 131PP

National states that these sheets were mistakenly included in the filing and the withdrawal of these sheets has no effect on its proposed changes submitted in Docket No. RP96-331, et al.

National states that it is serving copies of this filing upon its firm customers and interested state commissions.

Any person to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-26002 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-31-000]

**NorAm Gas Transmission Company;
Notice of Proposed Changes in FERC
Gas Tariff**

October 4, 1996.

Take notice that on October 1, 1996, NorAm Gas Transmission Company (NGT), tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, to be effective November 1, 1996:

Fourth Revised Sheet No. 5
Fourth Revised Sheet No. 6

NGT states that these revised tariff sheets are filed to adjust NGT's fuel percentages pursuant to Tariff Sheet No. 321A, contained in Docket No. RP94-343, as filed on February 12, 1996.

Any person desiring to be heard or protest as said 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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-26000 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-200-000]

**NorAm Gas Transmission Company;
Notice of Proposed Changes in FERC
Gas Tariff**

October 4, 1996.

Take notice that on October 1, 1996, NorAm Gas Transmission Company (NGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective October 1, 1996:

Sixth Revised Sheet No. 7

NGT states that this tariff sheet is filed herewith to reflect specific negotiated rate transactions for the month of October, 1996.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-26003 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-22-000]

**Northern Border Pipeline Company;
Notice of Proposed Changes in FERC
Gas Tariff**

October 4, 1996.

Take notice that on October 1, 1996, Northern Border Pipeline Company (Northern Border) tendered for filing proforma Second Revised Volume No. 1 of its FERC Gas Tariff, with an effective date of April 1, 1997:

Northern Border states that the purpose of this compliance filing is to conform Northern Border's tariff to the requirements of Order No. 587.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

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, N.E., Washington, DC 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations on or before October 22, 1996. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96-26005 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-17-000]**Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff**

October 4, 1996.

Take notice that on October 1, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following pro forma tariff sheets proposed to be effective April 1, 1997:

Pro Forma Sheet No. 202
 Pro Forma Sheet No. 203
 Pro Forma Sheet No. 204
 Pro Forma Sheet No. 205
 Pro Forma Sheet No. 212
 Pro Forma Sheet No. 215
 Pro Forma Sheet No. 216
 Pro Forma Sheet No. 257
 Pro Forma Sheet No. 258
 Pro Forma Sheet No. 259
 Pro Forma Sheet No. 260
 Pro Forma Sheet No. 260A
 Pro Forma Sheet No. 265
 Pro Forma Sheet No. 268
 Pro Forma Sheet No. 270
 Pro Forma Sheet No. 286
 Pro Forma Sheet No. 287
 Pro Forma Sheet No. 287A
 Pro Forma Sheet No. 288
 Pro Forma Sheet No. 289

On July 17, 1996 the Commission issued Order No. 587 in Docket No. RM96-1-000 (Final Rule). The Final Rule adopts certain standardized business practices and electronic communication practices promulgated by the Gas Industry Standards Board ("GISB") and required pipelines to comply with the requirements of the 140 GISB standards by incorporating GISB standards by reference into the Commission's regulations. The purpose of this filing is to comply with the Final Rule.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations on or before October 22, 1996. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96-25984 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-16-000]**Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff**

October 4, 1996.

Take notice that on October 1, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1996:

27 Revised Sheet No. 50

27 Revised Sheet No. 51

4 Revised 30 Revised Sheet No. 53

Northern states that this filing establishes the 1996-1997 SBA Cost Recovery surcharge rates to be effective November 1, 1996.

Northern states that copies of this filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make Protestant a party 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-25987 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-15-000]**Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff**

October 4, 1996.

Take notice that on October 1, 1996, Northern Natural Gas Company

(Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, with a proposed effective date of November 1, 1996:

Sixth Revised Sheet No. 68

Northern states that the filing, pursuant to Northern's commitment in Docket Nos. RP94-3, RP94-415 and RP95-137, and RP96-130 reconciles over and underrecovery for Reverse Auction expenses solely attributable to changes in FERC interest rates and adjusts accordingly the direct bill amounts by shipper. Northern has filed Sixth Revised Sheet No. 68 to reflect these amounts in its Tariff and will commence billing such amounts effective November 1, 1996.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said 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 Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-26004 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP94-149-006, RP94-145-005, (consolidated) and RP95-141-003 (not consolidated)]**Pacific Gas Transmission Company; Notice of Compliance Filing**

October 4, 1996.

Take notice that on September 30, 1996, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A: Second Revised Sheet No. 137, First Revised Sheet Nos. 138 and 142, and Third Revised Sheet No. 143, to become effective September 11, 1996; Eighth Revised Sheet No. 51, to become effective September 13, 1996; Fourteenth Revised Sheet No. 4, Sixth Revised Sheet No. 4A, and Fifth Revised

Sheet No. 6C, to become effective October 1, 1996; Fifteenth Revised Sheet No. 4, Seventh Revised Sheet No. 4A, Fourteenth Revised Sheet No. 5, Second Revised Sheet No. 5A, Original Sheet No. 5B, Sixth Revised Sheet No. 6C, Second Revised Sheet Nos. 12 and 13, Original Sheet No. 13A, Second Revised Sheet No. 14, Original Sheet No. 14A, First Revised Sheet Nos. 15 and 16, Second Revised Sheet Nos. 16A and 16B, Third Revised Sheet No. 17, Second Revised Sheet No. 31, First Revised Sheet No. 32, Original Sheet No. 32A, Third Revised Sheet No. 33, First Revised Sheet Nos. 38 and 41, and Third Revised Sheet No. 54, to become effective November 1, 1996.

PGT also tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1: Ninth Revised Sheet No. 5 and Third Revised Sheet No. 6, to be effective October 1, 1996; Tenth Revised Sheet No. 5, Fourth Revised Sheet No. 6, First Revised Sheet No. 8, Sheet Nos. 9-10 (Reserved Sheets), First Revised Sheet No. 31, and Original Sheet No. 31A, to be effective November 1, 1996.

PGT states the purpose of this filing is to implement the Stipulation and Agreement (Settlement) in PGT's general Section 4 rate case in Docket Nos. RP94-149-000, *et al.*, its Hub Services limited Section 4 rate case in Docket Nos. RP94-145-000, *et al.*, (consolidated), and its Gas Supply Realignment (GSR) limited Section 4 rate case in Docket Nos. RP95-141-000, *et al.* (not consolidated) as approved by Order of the Commission issued September 11, 1996.

PGT further states a copy of this filing has been served upon its jurisdictional customers and interested state regulatory agencies, as well as the official service list compiled by the Secretary in the above-referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-25994 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-339-001]

**Pacific Gas Transmission Company;
Notice of Compliance Filing**

October 4, 1996.

Take notice that on September 26, 1996, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A: Second Substitute Title Sheet, Second Substitute Second Revised Sheet No. 2, Second Substitute First Revised Sheet Nos. 6B, 6D, 6E and 7, Second Substitute Seventh Revised Sheet No. 51, and Second Substitute First Revised Sheet No. 139; and as part of its FERC Gas Tariff, Second Revised Volume No. 1: Second Substitute Title Sheet. PGT requested the above-referenced tariff sheets become effective September 13, 1996.

PGT asserts that the purpose of this filing is to comply with the Commission's September 11, 1996 order in this proceeding to bring PGT's tariff into compliance with Order Nos. 582 and 582-A, issued September 28, 1995 and February 29, 1996, respectively, in Docket Nos. RM95-3-000, *et al.* In that order, FERC accepted the above-referenced tariff sheets effective September 13, 1996 but directed they be refiled to incorporate some non-substantive technical corrections. PGT further states these sheets were previously submitted but are now being resubmitted pursuant to an informal FERC request for further non-substantive technical corrections. PGT states the proposed changes will not affect PGT's costs, rates or revenues, and that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a motion to protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-25996 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT97-2-000]

**Paiute Pipeline Company; Notice of
Proposed Changes in FERC Gas Tariff**

October 4, 1996.

Take notice that on October 1, 1996, Paiute Pipeline Company (Paiute) tendered for filing Sixth Revised Sheet No. 161 to be a part of Second Revised Volume No. 1-A of its FERC Gas Tariff. Paiute requests that the tendered tariff sheet be accepted for filing to become effective November 1, 1996.

Paiute indicates that the purpose of its filing is to comply with the Commission's order issued June 1, 1995 in Docket Nos. RP95-55-001 and RP95-269-000, by which the Commission approved an offer of settlement filed by Paiute. Paiute states that pursuant to the settlement, the monthly billing determinants pertaining to Paiute's firm transportation service under Rate Schedule FT-1 are to be revised periodically as of certain specified dates, including November 1, 1996. Paiute states that the tendered tariff sheet reflects the monthly billing determinants for each of Paiute's firm transportation shippers that are to be effective November 1, 1996 under the terms of the settlement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96-25992 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER96-2538-000]**Sandia Energy Resources Company;
Notice of Issuance of Order**

October 7, 1996.

Sandia Energy Resources Company (Sandia) submitted for filing a rate schedule under which Sandia will engage in wholesale electric power and energy transactions as a marketer. Sandia also requested waiver of various Commission regulations. In particular, Sandia requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuance of securities and assumptions of liability by Sandia.

On September 26, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Sandia 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).

Absent a request for hearing within this period, Sandia is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Sandia's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 28, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 96-26060 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-819-000]**Tennessee Gas Pipeline Company;
Notice of Application for Abandonment**

October 4, 1996.

Take notice that on September 30, 1996, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam Street, Houston, Texas 77002 filed, in Docket No. CP96-819-000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for permission and approval to abandon three Rate Schedule FSST service agreements (FSST agreements) with Boston Gas Company (Boston Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee relates that it seeks to abandon the FSST agreements, authorized in Docket No. CP94-441-000, in order to replace them with a new firm transportation agreement with Boston Gas for service under Part 284 of the Commission's Regulations and the terms and conditions of Tennessee's Rate Schedule FT-A. Tennessee says that under the FSST agreements, it transported up to 13,027 Dth of natural gas per day for Boston Gas to and from certain third party storage operators.

Tennessee relates that each of the FSST agreements had a primary term extending until March 31, 1995, and continuing thereafter until terminated by either party on twelve months prior notice. Tennessee and Boston Gas have agreed by written notice to terminate the FSST agreements as of August 31, 1996. Tennessee states that upon receipt of the requested abandonment authorization, it will replace the FSST agreements with one FT-A agreement with a commencement date of September 1, 1996. Therefore, Tennessee requests that the Commission grant abandonment of the FSST agreements effective August 31, 1996. Tennessee states that no facilities are proposed to be abandoned, and there will be no reduction in service to any customer.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 25, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 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

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 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 motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96-26009 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP97-1-000]**Tennessee Gas Pipeline Company;
Notice of Request Under Blanket
Authorization**

October 4, 1996.

Take notice that on October 1, 1996, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam Street, Houston, Texas 77252-2511 filed in Docket No. CP97-1-000 a request pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for approval and permission to construct and operate a delivery point located in Acorn County, Mississippi to provide continuing firm natural gas transportation service for the Corinth Public Utilities Commission, Gas and Water Department (Corinth), under the blanket certificate issued in Docket No. CP82-413-000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that it proposes to deliver natural gas volumes to Corinth at the proposed delivery point pursuant to Tennessee's Rate Schedule FT-GS and the terms and conditions of an

existing firm transportation agreement with Corinth. It is indicated that the total estimated construction cost of the proposed delivery point is \$98,300, for which Corinth will reimburse Tennessee. Tennessee asserts that the total quantities to be delivered to Corinth after the delivery point is installed will not exceed the total quantities authorized prior to this request. Tennessee further asserts that the installation of the proposed delivery point is not prohibited by Tennessee's existing tariff. Tennessee also indicates that it has sufficient capacity to accomplish deliveries at the proposed delivery point without detriment or disadvantage to its other customers.

Any person or Commission Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 96-26010 Filed 10-9-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP92-184-015]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

October 4, 1996.

Take notice that on September 30, 1996, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet to be effective November 1, 1996:

Thirteenth Revised Sheet No. 34A

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's orders issued March 17, 1995 and June 6, 1995 in Docket No. CP92-184, et al.

Texas Eastern states that on August 29, 1994 in Docket No. CP92-184-009, Texas Eastern filed an application pursuant to Section 7(c) of the NGA to

amend its July 1993 ITP certificate to, inter alia, modify the facility configuration for changing customer requirements and to revise the initial incremental rates authorized for its 1996 ITP service. In the March 17, 1995 order, the Commission approved Texas Eastern's application and amended Texas Eastern's ITP certificate as requested.

Texas Eastern states that it is filing Thirteenth Revised Sheet No. 34A to implement the initial incremental rates for 1996 ITP service.

Texas Eastern states that copies of the filing were served on the firm customers of Texas Eastern and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-26006 Filed 10-9-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP96-211-005]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

October 4, 1996.

Take notice that on October 2, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain pro forma tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are listed on Attachment A attached to the filing.

Transco states that the purpose of the instant filing is to comply with the Commission's orders dated September 16, 1996 in Docket No. RP96-211-000 (September 16 Order). The September 16 Order directed Transco to modify its firm open access transportation rate schedules to provide firm backhaul service on a primary point basis unless such service is operationally infeasible, as determined on a case-by-case basis.

Transco states that it is serving copies of the instant filing to customers, State

Commissions and other interested parties.

Any person desiring to protest such filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission, and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-25995 Filed 10-9-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP97-12-000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 4, 1996.

Take notice that on October 1, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1996:

4th Revised First Sheet No. 171
First Revised Sheet No. 439
Second Revised Sheet No. 440

Transco states that the purpose of the instant filing is to modify Transco's Rate Schedule IT and the form of service agreement for service under Rate Schedule IT to remove the requirement that specific points of delivery be specified in executed service agreements, and to revise outdated references to Transco's bulletin board.

Transco states that it is serving copies of the instant filing to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96-25998 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-109-004]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 4, 1996.

Take notice that on September 27, 1996 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing First Revised Sheet No. 37C.01 and First Revised Sheet No. 40C.01 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are proposed to be effective November 1, 1996.

Transco states that the purpose of the instant filing is to set forth under Rate Schedule FT the reservation rate authorized by the Commission for Phase II of SE95/96 firm transportation service commencing November 1, 1996 pursuant to its February 5, 1996 order in Docket No. CP94-109-002 (February 5 Order). In compliance with the February 5 Order, Transco tendered for filing First Revised Sheet No. 40C.01 which sets forth the incremental reservation rate of \$9.2464 per dt for the SE95/96 firm transportation service commencing November 1, 1996.

Transco states that it has converted the authorized reservation rate of \$9.57 per Mcf to a dt basis using a factor of 1.035 consistent with the rates which were filed in Transco's August 30, 1996 filing in Docket No. RP96-365 in compliance with Commission Order No. 582. In addition, all applicable surcharges under Rate Schedule FT shall apply to SE95/96 firm transportation service.

In recognition that SE95/96 firm transportation capacity is eligible to be released in accordance with Section 42 of the General Terms and Conditions of Transco's FERC Gas Tariff, Transco is filing First Revised Sheet No. 37C.01 to set forth the rates and charges under Rate Schedule FT-R applicable to capacity released under Transco's SE95/96 incremental firm transportation service.

Transco states that copies of the instant filing are being mailed to

customers, State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-26007 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT97-1-000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 4, 1996.

Take notice that on October 1, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective October 1, 1996:

Second Revised Volume No. 1
Tenth Revised Sheet No. 778
Thirteenth Revised Sheet No. 779
Twelfth Revised Sheet No. 780
Tenth Revised Sheet No. 781
Twelfth Revised Sheet Nos. 782-784
Fourteenth Revised Sheet No. 785
Fifteenth Revised Sheet No. 786
Sixteenth Revised Sheet Nos. 787-788
Seventeenth Revised Sheet Nos. 789-790
Sixteenth Revised Sheet No. 791
Seventeenth Revised Sheet Nos. 792-794
Eleventh Revised Sheet No. 827
Twelfth Revised Sheet No. 831
Fifteenth Revised Sheet No. 832
Sixteenth Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

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, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96-26011 Filed 10-9-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-18-000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 4, 1996.

Take notice that on October 1, 1996 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, the following pro forma tariff sheets, with a proposed effective date of April 1, 1997:

Pro Forma Sheet No. 49
Pro Forma Sheet No. 58
Pro Forma Sheet No. 61
Pro Forma Sheet No. 62
Pro Forma Sheet No. 63
Pro Forma Sheet No. 63A
Pro Forma Sheet No. 64
Pro Forma Sheet No. 71
Pro Forma Sheet No. 80
Pro Forma Sheet No. 80A
Pro Forma Sheet No. 81A
Pro Forma Sheet No. 81E
Pro Forma Sheet No. 95
Pro Forma Sheet No. 95A
Pro Forma Sheet No. 95B
Pro Forma Sheet No. 95B.1
Pro Forma Sheet No. 95C
Pro Forma Sheet No. 95D
Pro Forma Sheet No. 95E
Pro Forma Sheet No. 95F
Pro Forma Sheet No. 95G
Pro Forma Sheet No. 95H
Pro Forma Sheet No. 95I
Pro Forma Sheet No. 95K
Pro Forma Sheet No. 95L
Pro Forma Sheet No. 95M-95P

On July 17, 1996, the Commission issued Order No. 587, Standards for Business Practices of Interstate Natural Gas Pipelines, in Docket No. RM96-1-000 (Final Rule). The Final Rule adopts certain standardized business practices and electronic communication practices promulgated by the Gas Industry Standards Board (GISB) and required pipelines to comply with the requirements of the GISB consensus standards by incorporating the GISB standards by reference into the Commission's regulations.

Transwestern states that the purpose of this filing is to comply with the Final Rule.

Transwestern states that the filing reflects pro forma changes to the General Terms and Conditions of Transwestern's tariff to implement the business standards issued by GISB. These GISB standards are the 140 standards filed with the Commission on March 15, 1996, and relate to nominations, allocations, balancing, measurement, invoicing, electronic delivery mechanisms and capacity release.

Transwestern is proposing to, effective with the effectiveness of the tariff changes, adopt the data elements filed with the Commission on April 12, 1996.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said 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. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations on or before October 22, 1996. 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.

Lois D. Cashell,
Secretary.

[FR Doc. 96-25988 Filed 10-9-96; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 2523-007, Project No. 11496-000]

N.E.W. Hydro, Inc. City of Oconto Falls, Wisconsin; Notice of Availability of Draft Environmental Assessment

October 4, 1996.

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 a new license for the Oconto Falls Hydroelectric Project,

located on the Oconto River, in the City of Oconto Falls, Oconto County, Wisconsin; and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2-A, of the Commission's offices at 888 First Street N.E., Washington D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, Room 1-A, 888 First Street N.E., Washington, D.C. 20426. Please affix Oconto Falls Hydroelectric Project Nos. 2523 and 11496 to all comments. For further information, please contact Edward R. Meyer at (202) 208-7998.

Lois D. Cashell,
Secretary.

[FR Doc. 96-25993 Filed 10-9-96; 8:45 am]
BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; DA 96-1664]

The North American Numbering Council Chairman Announces Organizational Structure and Seeks Working Group and Task Force Participants

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 4, 1996, the Commission released a public notice stating that the North American Numbering Council (NANC) Chairman announced the organizational structure of the NANC and seeks working group and task force participants. The intended effect of this action is to make the public aware of the NANC's organizational structure and that the NANC is seeking participants on its working group and task forces.

FOR FURTHER INFORMATION CONTACT: Marian Gordon, Designated Federal Official of the North American Numbering Council, (202) 418-2337 or Mary DeLuca, Alternate Designated Federal Official of the North American Numbering Council, (202) 418-2334. The address for both is: Network

Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW., Suite 235, Washington, DC 20054. The fax number for both is: (202) 418-2345. The TTY number for both is: (202) 418-0484.

SUPPLEMENTARY INFORMATION: Released: October 4, 1996.

I. Background

On October 1, 1996, the North American Numbering Council (NANC), a Federal Advisory Committee established pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988) (FACA), held its initial meeting at the Federal Communications Commission (Commission). The NANC was established to advise the Commission and other North American Numbering Plan (NANP) member countries on issues related to NANP administration, and to advise the Commission on local number portability administration issues in the United States. Among other tasks, the NANC must recommend to the Commission a new neutral NANP Administrator and one or more neutral local Number Portability Administrator(s) (LNAPA(s)).

Several working groups and task forces will address specific tasks and issues regarding numbering administration and local number portability and report to the NANC. This Notice describes the tentative structure for these groups, identifies the tasks for the working groups and the task forces within those groups, and seeks nominations for participants with appropriate expertise to serve on them. As will be evident from the tasks and deadlines described below, participants in the working groups and task forces will be expected to be able to offer a substantial time commitment from the outset.

II. NANC Structure

The tasks and objectives of the working groups and task forces are described below. The NANC, by issuance of this Public Notice, seeks individuals with specialized expertise to serve on the North American Numbering Plan Administration Working Group and the Local Number Portability Administration (LNPA) Selection Working Group, and on associated task forces. All such participants should have a willingness and ability to dedicate the time and resources necessary to effectively accomplish the tasks and objectives of their group. The NANC intends that this organizational structure will enable all interested parties to express their views.

A. Steering Group

The Steering Group held its first meeting immediately following the October 1st meeting of the NANC. The NANC Chairman announced formation of the Steering Group composed of 13 Council members. The Steering Group will oversee the process of the other working groups in meeting their project milestones and will act as a liaison between the other working groups and NANC. In this capacity, the Steering Group will select the participants on the working groups and task forces identified below. The Steering Group will also study and recommend to the NANC a method for introducing future issues, including issues related to code and number conservation, for consideration by the NANC, and will study and recommend whether the NANC should seek to renew its charter as an advisory committee in October 1997.

1. Dispute Resolution Task Force

This Task Force will develop and recommend to the NANC procedures for addressing and initially resolving disputes regarding numbering administration. It would be useful for the task force's participants to be familiar with dispute resolution procedures used in different fora.

B. North American Numbering Plan Administration Working Group

The NANP Administration Working Group will develop and advise the NANC on an appropriate process for selecting a neutral NANP Administrator. It is proposed that this working group will have three task forces: (1) Cost Recovery Task Force; (2) Transition Planning Task Force for Current NANP Administration Functions; and (3) Transition Planning Task Force for Central Office (CO) Code Administration Functions.

The Working Group will coordinate with its task forces issues related to the recovery of the costs of NANP administration and the transfer of number administration functions. The NANC is seeking members to participate on the NANP Administration Working Group. It would be useful for such participants to have one or more of the following: (1) familiarity with the operations of the current number administration system from either the perspective of administrator or the perspective of entities that use numbering resources, including the functions of the current NANP Administrator and the Central Office Code Administrators; (2) familiarity with the technical and operational workings of the

telecommunications network; and (3) experience with contracting proposals.

1. Cost Recovery Task Force

The NANP Administration Cost Recovery Task Force will report to the NANP Administration working group. This task force will assist the NANP Administration Working Group in formulating and making a recommendation to the NANC of a mechanism for recovering the costs of the administration of the NANP in the United States on a competitively neutral basis. It would be useful for participants to have one or more of the following: (1) a background in or knowledge of economics, accounting, or both; (2) familiarity with the pricing mechanisms in the telecommunications industry; and (3) familiarity with the operations of the current number administration system, including the functions of the current NANP Administrator and the Central Office Code Administrators.

2. Transition Planning Task Force for Current NANP Administration Functions

The Transition Planning Task Force for Current NANP Administration Functions will assist the NANP Administration Working Group in developing a plan to transfer to the new NANP Administrator number administration functions that are performed by the current NANP Administrator within ninety days of selection of the new Administrator. It would be useful for participants on this Task Force to be familiar with the operations of the current NANP Administrator.

3. Transition Planning Task Force for Central Office (CO) Code Administration Functions

The Transition Planning Task Force for CO Code Administration Functions will assist the NANP Administration Working Group in developing a plan for the transfer of CO Code administration functions from the incumbent local exchange carriers to the new, neutral NANP Administrator within eighteen months of the completion of the transfer of the current NANP Administrator's functions to the new Administrator. It would be useful for participants to have one or more of the following: (1) knowledge of the operations of the current CO code administrators; (2) knowledge in forecasting area code exhaust and planning for area code relief; and (3) familiarity with the operation of the current NANP Administrator.

C. Local Number Portability Administration (LNPA) Selection Working Group

The NANC must recommend to the Commission no later than May 1, 1997 one or more entities to serve as LNPA(s). The LNPA Working Group will develop and advise the NANC on an appropriate process for selecting an entity or entities to serve as LNPA(s), whether one or multiple LNPA(s) should be selected, whether the LNPA can be the same entity as the NANP Administrator, and what the specific duties of the LNPA(s) should be. The LNPA will also direct implementation of a nationwide system of regional SMS databases for number portability, and will determine possible future SMS needs. It would be useful for participants in this working group to have one or more of the following: (1) technical and operational expertise with respect to number portability mechanisms; (2) experience with state-based efforts in local number portability; and (3) expertise in the operations of existing SMS databases.

1. LNPA Architecture Planning Task Force

This Task Force will assist the LNPA Working Group in recommending to the Commission, through coordination with the industry, a database architecture plan for the national number portability system. Such recommendation must address the geographic coverage of the regional databases and the locations of the regional databases. It would be useful for participants to have one or more of the following: (1) experience with state-based efforts in local number portability; and (2) knowledge of operations of existing industry-wide databases.

2. LNPA Technical and Operational Requirements Task Force

This Task Force must recommend to the Commission a plan, developed through coordination with the industry, for the technical and operational requirements of the national number portability database system. The Task Force will address, among other things, technical interoperability and operational standards for the database system, user and network interface standards, and technical specifications for the regional databases. It would be useful for participants to have one or more of the following: (1) technical and operational expertise with respect to number portability mechanisms; (2) experience with state-based efforts in local number portability; and (3) knowledge of operations of existing industry-wide databases.

D. Legal Expertise

In addition to the specialized expertise sought for the individual working groups and task forces described above, the NANC seeks individuals with legal expertise to ensure that potential legal issues that arise in the context of the tasks to be performed by working groups and associated task forces are identified and recommended solutions developed for each. Individuals with expertise in contract law and in the establishment of Limited Liability Corporations are specifically encouraged to apply.

III. Nomination Procedures and Timeline

Nominations for participation on any of the working groups or task forces described above should include the following information about the nominee:

(1) Name, company affiliation, address, telephone number, facsimile number, and E-mail address, if available; (2) the working group(s) and/or task force(s) for which he or she is being nominated; and (3) a brief description of how the nominee's experience and skills would match the needs of the working group(s) and/or task force(s) he or she is being nominated to serve on.

Nominations for participation on any of the working groups or task forces must be made no later than October 15, 1996. Nominations should be sent by e-mail, if possible, to lsimms@fcc.gov. A written copy of any nominations must also be filed with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554, and must reference CC Docket No. 92-237. Members selected will be notified and should expect initial working group meetings to occur no later than November 7, 1996.

FOR FURTHER INFORMATION CONTACT: Marian Gordon, Designated Federal Official of the North American Numbering Council, (202) 418-2337 or Mary DeLuca, Alternate Designated Federal Official of the North American Numbering Council, (202) 418-2334. The address for both is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, N.W., Suite 235, Washington, DC 20054. The fax number for both is: (202) 418-2345. The TTY number for both is: (202) 418-0484.

Federal Communications Commission
Geraldine A. Matise,
Chief, Network Services Division, Common
Carrier Bureau.
[FR Doc. 96-26159 Filed 10-9-96; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL HOUSING FINANCE BOARD**Sunshine Act Meeting**

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 49326, September 19, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Thursday, September 26, 1996.

CHANGE IN THE MEETING: Previously announced Board meeting time as been changed from 9:00 a.m. to 8:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408-2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96-26232 Filed 10-08-96; 2:46 pm]

BILLING CODE 6725-01-P

FEDERAL MARITIME COMMISSION**Notice of Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011290-018

Title: Vessel Operators Hazardous Material Association Agreement

Parties:

American President Lines, Ltd.
A.P. Moller-Maersk Line
Atlantic Container Line BV
Australia-New Zealand Direct Line
Crowley Maritime Corporation
Delmas AAEL
Evergreen Marine Corporation
(Taiwan), Ltd.
Farrell Lines, Inc.
Columbus Line
Hapag-Lloyd AG
Hoegh Lines
Hyundai Merchant Marine (America)
Inc.
Independent Container Line Ltd.
Italia de Navigazione, S.P.A.

A/S Ivarans Rederi
Kawasaki Kisen Kaisha Ltd.
Mitsui O.S.K. Lines, Ltd.
Nedlloyd Lijnen BV
Nippon Yusen Kaisha
Orient Overseas Container Line
P&O Containers Limited
Sea-Land Service, Inc.
Senator Line GmbH & Co., KG
Tecmarine Lines, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed modification revises Article 5.3 of the Agreement to clarify that the parties have no rate authority under the Agreement.

Agreement No.: 224-200992-001

Title: SeaEscape Cruises, Maritime Entertainment, Ltd. and Broward County Assignment and Assumption Agreement

Parties:

SeaEscape Cruises, Ltd.
Maritime Entertainment, Ltd.
Broward County

Synopsis: The proposed modification permits SeaEscape Cruises, Ltd. to assign, transfer, and turn over all of its rights, title, interest, duties, and obligations it has in the Agreement to Maritime Entertainment, Ltd.

Dated: October 4, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96-26014 Filed 10-9-96; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM**Sunshine Meeting Notice**

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Tuesday, October 15, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank

holding company applications scheduled for the meeting.

Dated: October 7, 1996.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 96-26139 Filed 10-7-96; 4:47 pm]
BILLING CODE 6210-01-P

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. Once the application has been accepted for processing, it will also 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, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a

statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 November 4, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Crestar Financial Corporation*, Richmond, Virginia; to merge with Citizens Bancorp, Laurel, Maryland, and thereby indirectly acquire Citizens Bank of Maryland, Laurel, Maryland, and Citizens Bank of Washington, National Association, Washington, D.C.

B. Federal Reserve Bank of Minneapolis, (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northern Plains Investment, Inc.*, Jamestown, North Dakota; to acquire an additional 1.92 percent, for a total of 41.94 percent, of the voting shares of Stutsman County State Bank, Jamestown, North Dakota.

Board of Governors of the Federal Reserve System, October 4, 1996.

Jennifer J. Johnson
Deputy Secretary of the Board
[FR Doc. 96-26057 Filed 10-9-96; 8:45 am]
BILLING CODE 6210-01-F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 10:00 a.m. (EDT), October 21, 1996.
PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the September 16, 1996, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Newly enacted Thrift Savings Plan legislation.
4. Board staff 1996 pay.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: October 7, 1996.
Roger W. Mehle,
Executive Director, Federal Retirement Thrift Investment Board.
[FR Doc. 96-26155 Filed 10-8-96; 9:49 am]
BILLING CODE 6760-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this section be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091696 AND 092796

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Helix Health, Inc., Coastal Physician Group, Inc., Physician Planning Group, Inc	96-2749	09/16/96
Compass Group PLC (a British company), General Electric Company, Service America Corporation	96-2761	09/16/96
Incentive AB, Nelson R. Shaller, Cambridge Dialysis Center at Santa Maria, Inc	96-2834	09/16/96
WMX Technologies, Inc., Kamilche Company, Simpson Paper Company	96-2847	09/16/96
Imperial Credit Industries, Inc., Textron, Inc., Avco Financial Services, Inc. and Avco Leasing	96-2850	09/16/96
National Data Corporation, Equifax Inc., Equifax Healthcare EDI Services, Inc	96-2858	09/16/96
General Electric Company, Dataflex Corporation, Dataflex Corporation	96-2863	09/16/96
Kidd, Kamm Equity Partners, L.P., MEM Company, Inc., MEM Company, Inc	96-2876	09/16/96
United Wisconsin Services, Inc., American Medical Security Group, Inc., American Medical Security Group, Inc	96-2882	09/16/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091696 AND 092796—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Wallace J. Hilliard, United Wisconsin Services, Inc., United Wisconsin Services, Inc	96-2883	09/16/96
E. Bronson Ingram Q-TIP Marital Trust, Ingram Industries Inc., Ingram Micro Inc	96-2891	09/16/96
Philip M. Pfeffer, Ingram Industries Inc., Ingram Micro Inc	96-2892	09/16/96
Erskin B. Ingram Trust for David B. Ingram (6/14/68), Ingram Industries Inc., Ingram Entertainment Inc	96-2893	09/16/96
David B. Ingram, Ingram Industries Inc., Ingram Micro Inc	96-2894	09/16/96
Orrin H. Ingram, II, Ingram Industries Inc., Ingram Micro Inc	96-2895	09/16/96
Martha R. Ingram, Ingram Industries Inc., Ingram Micro Inc	96-2896	09/16/96
McCown De Leeuw & Co. III, L.P., Sara Wilcox and James R. Wilcox, Sarcom, Inc	96-2897	09/16/96
PhyCor, Inc., Toledo Clinic, Inc., Toledo Clinic, Inc	96-2898	09/16/96
Northland Cable Properties Six Limited Partnership, Tele-communications, Inc., TCI Cablevision of Georgia, Inc	96-2747	09/17/96
Titanium Metals Corporation, Antonia Ax:son Johnson, Axel Johnson Metals, Inc	96-2865	09/17/96
Mallinckrodt Group Inc., Dr. Dean M. Graham, D.M. Graham Laboratories, Inc	96-2872	09/17/96
Teleflex Incorporated, Mr. Norbert A. Bruns, Lehr Precision, Inc	96-2878	09/17/96
Teleflex Incorporated, Mr. Edward C. Bruns, Lehr Precision, Inc	96-2879	09/17/96
Patrick P. Lee, William M. Jones, Cleveland Machine Controls, Inc	96-2899	09/17/96
American Radio Systems Corporation, Allen B. Shaw, Crescent Communications L.P	96-2821	09/18/96
ACX Technologies, Inc., Photocomm, Inc., Photocomm, Inc	96-2824	09/18/96
Belmont Homes, Inc., Third Amended and Restated Stephen M. Suddath R/T, Bellecrest Homes, Inc	96-2857	09/18/96
BellSouth Corporation, PriCellular Corporation, Cellular Information Systems of Florence, Inc	96-2870	09/18/96
Cal Dive International, Inc., McDermott International, Inc., J. Ray McDermott, S.A	96-2906	09/18/96
McDermott International, Inc., Cal Dive International, Inc., Cal Dive International, Inc	96-2907	09/18/96
Lifespan Corporation, St. Joseph Health Services of Rhode Island, St. Joseph Health Services of Rhode Island	96-2733	09/19/96
Beth Israel Corporation, Mount Auburn Foundation, Inc., Mount Auburn Foundation, Inc	96-2798	09/19/96
Equity-Linked Investors, L.P., Visionworks Holdings, Inc., Visionworks Holdings, Inc	96-2909	09/19/96
Richards Capital Fund, L.P., U.S. Industries, Inc., Tubular Textile Machinery Corporation	96-2861	09/20/96
AgriBioTech, Inc., Berisford, PLC, Germain's, Inc., W-L Research, Inc., Flintrock, Inc	96-2873	09/20/96
Universal Outdoor Holdings, Inc., Outdoor Advertising Holdings, Inc., Outdoor Advertising Holdings, Inc	96-2905	09/20/96
Scott K. Ginsburg, Rex B. Rivers, WEDR Inc	96-2915	09/20/96
Atrium Corporation, Howard S. Saffan, Vinyl Building Specialties of Connecticut, Inc	96-2916	09/20/96
Atrium Corporation, Leslie Goldbloom, Vinyl Building Specialties of Connecticut, Inc	96-2917	09/20/96
Big Flower Press Holdings, Inc., PCC Investments, L.P., Pacific Color Connection, Inc	96-2922	09/20/96
The Finger Lakes Companies, Inc., Excellus, Inc., Excellus, Inc	96-2924	09/20/96
Leandro P. Rizzuto, Bausch & Lomb Incorporated, Bausch & Lomb Oral Care Division, Inc	96-2925	09/20/96
PhyCor, Inc., Hattiesburg Clinic Professional Association, Hattiesburg Clinic Professional Association	96-2928	09/20/96
Heilig-Meyers Company, James A. McMahan, McMahan's Furniture Stores	96-2929	09/20/96
General Electric Company, Travelers Group Inc., Commercial Credit Company (Hawaii)	96-2933	09/20/96
Osicom Technologies, Inc., Cray Electronics Holdings, PLC (an English company), CEH Holdings, Inc	96-2934	09/20/96
Gilbert Associates, Inc., Bruce E. Creger, SAFCO Corporation	96-2938	09/20/96
Quaker State Corporation, Mark Reichenbaum a/k/a Mark Owens, MEDCO Industries, Inc	96-2942	09/20/96
The Coastal Corporation, Primark Corporation, Primark Storage Leasing Corporation	96-2950	09/20/96
Patterson Dental Company, Deluxe Corporation, Colwell Systems Division	96-2951	09/20/96
ValueVision International, Inc., General Electric Company, Montgomery Ward Direct, L.P	96-2954	09/20/96
ValueVision International, Inc., Bernard F. Brennan, Montgomery Wards Direct, L.P	96-2955	09/20/96
Grupo Acerero del Norte, S.A. de C.V. (a Mexican co), Consolidated Nevada Goldfields Corporation, Consolidated Nevada Goldfields Corporation	96-2957	09/20/96
Thyssen Aktiengesellschaft, John W. Clark, Clark Metals, Inc	96-2965	09/20/96
U.S. Province o/t Congregation—Sisters of Bon Secours, Mercy Hospital, Altoona, Mercy Hospital, Altoona	96-2966	09/20/96
Compagnie de Suez, Tractebel, S.A., Tractebel, S.A	96-2993	09/20/96
Mid-America Dairyman, Inc., Richard Riordan, RVM Dairy Holding Corporation	96-2723	09/22/96
MBNA Corporation, NationsBank Corporation, NationsBank, N.A	96-2953	09/23/96
Silgan Holdings Inc., Pro-Fac Cooperative, Inc., Finger Lakes Packaging Co., Inc	96-2799	09/24/96
Cisco Systems, Inc., Andreas Bechtolsheim, Granite Systems, Inc	96-2840	09/24/96
Andreas Bechtolsheim, Cisco Systems, Inc., Cisco Systems, Inc	96-2841	09/24/96
Rubbermaid Incorporated, GCP Investors, Inc., GCP Investors, Inc	96-2885	09/24/96
U.S. Diagnostic Labs Inc., Medical Imaging Centers of America, Inc., Medical Imaging Centers of America, Inc	96-2935	09/24/96
Shiloh Industries, Inc., Greenfield Die & Manufacturing Corp., Greenfield Die & Manufacturing Corp	96-2937	09/24/96
Ontario Teachers' Pension Plan Board, Winton M. Blount, Blount International, Inc	96-2766	09/25/96
Respironics, Inc., LIFECARE International, Inc., LIFECARE International, Inc	96-2811	09/25/96
Tracor, Inc., Cordant Holdings Corporation, Cordant Holdings Corporation	96-2839	09/25/96
Conseco, Inc., Conseco Capital Partners II, L.P., American Life Holdings, Inc	96-2884	09/25/96
Household International, Inc., NationsBank Corporation, NationsBank, N.A	96-2900	09/25/96
Caribiner International, Inc., General Electric Company, General Electric Capital Computer Leasing Corporation	96-2943	09/25/96
United States Filter Corporation, CGW Southeast Partners I, L.P., USG Holding Corporation/the Utility Supply Group, Inc	96-2945	09/25/96
Hicks, Muse, Tate & Furst Equity Fund III, L.P., The Estate of Carter Burden, Commodore Media, Inc	96-2946	09/25/96
Harrowston Inc., ZS Coulton L.P., Coulton Chemical Company L.P	96-2716	09/26/96
The Interpublic Group of Companies, Inc., Robert A. Ingram, Media Incorporated	96-2948	09/26/96
The Interpublic Group of Companies, Inc., Michael Kubin, Media Incorporated	96-2949	09/26/96
Delphi Group plc, Alpine Computer Systems, Inc., Alpine Computer Systems, Inc	96-2952	09/26/96
DAKA International, Inc., DAKA International, Inc., Daka Restaurants, L.P	96-2958	09/26/96
United Auto Group, Inc., Charles F. Evans, Charles Evans BMW, Inc. & Charles Evans Nissan, Inc	96-2963	09/26/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091696 AND 092796—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
HIG Investment Group, L.P., Woodrow A. Hall, Film Fabricators, Inc	96-2976	09/27/96

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, or Parcelena P. Fielding, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96-26015 Filed 10-9-96; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority; Program Support Center

Part P, (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995, as amended most recently at 61 FR 52033, October 4, 1996) is amended to reflect a reorganization of functions within the Human Resources Service (HRS). This reorganization is taking place to provide an effective organization structure to support the movement of HRS into a multi-customer, fee-for-service, cost centered organization.

Program Support Center

Part P, Section P-20, Functions, is amended as follows:

Under *Chapter PA, Officer of the Director (PA)*, delete the title and statement in its entirety for the *Office of Equal Employment Opportunity (PA4)*.

Chapter PB, Human Resources Service (PB) is amended as follows:

Delete the functional statement in its entirety for the *Office of the Director (PBA)* and substitute it with the following:

Office of the Director (PBA)

(1) Provides executive direction, leadership, guidance and support to all Human Resources Service (HRS) components; (2) Oversees the development and implementation of administrative support functions for the HRS including budgeting, acquisition, personnel, and facilities management; (3) Provides leadership and direction in

the movement of HRS to a multi-customer, competitive, fee-for-service, cost centered organization, and personnel policy coordination for the Program Support Center (PSC): (4) Formulates and implements the multi-year plan for the HRS; (5) Directs the human resources program for the PSC; (6) Provides leadership to ensure the effective administration of the Board for Correction of PHS Commissioned Corps Records; (7) Provides leadership in establishing and maintaining an Equal Employment Opportunity (EEO) Program for the PSC. The PSC EEO Program includes the development and implementation of EEO policies, procedures and practices, a complaints processing system, and the administration of a special emphasis program for women, Hispanics, persons with disabilities, and other minorities; and (8) Administers an EEO complaints investigation program for the Department.

Under the heading *Systems Design and Analysis Division (PBB)*, insert item (6) Schedules and carries out the implementation of new systems changes into the production operation.

Under the heading *Systems Engineering and Maintenance Division (PBC)*, delete the functional statement in its entirety and substitute it with the following:

Systems Engineering and Maintenance Division (PBC)

(1) Maintains and enhances the Department's automated personnel and payroll system and subsystems; (2) Administers the Department's human resource data base through data definition, development of data structures, imposition of security measures, data base maintenance and control of user access and use of data; (3) Develops detailed system and/or subsystem specifications, program specifications, program modules, files, data bases, libraries and documentation necessary to support system maintenance and development activities; (4) Participates in the development of test criteria and test methodology necessary to conduct system/subsystem and program level tests needed to ensure the integrity of the Department's automated personnel and payroll system; (5) Develops and implements methods for reduction in

hardware, software and personnel costs while maintaining the highest system integrity and employing state-of-the-art data processing techniques where appropriate; (6) Performs quality assurance, including acceptance testing, for all new systems/subsystems, major enhancements and systems changes for the human resource information system; (7) Serves as HRS ADP Systems Security Officer, including physical security, system back-up, file access security, access codes, adherence to Privacy and Freedom of Information Act requirements and security standards for the human resource and payroll system; (8) Develops, publishes, maintains and ensures adherence to ADP standards and procedures; (9) Controls and maintains system documentation, including all documentation of a change or development cycle; and (10) Builds and maintains a regression library to be used in the standard test systems.

Under the heading *Systems Integrity Division (PBE)*, delete the title and functional statement in its entirety.

Under the heading *Business Systems Engineering Division (PBF)*, delete the functional statement in its entirety and substitute it with the following:

Business Systems Engineering Division (PBF)

(1) Administers the full range of human resource ADP support systems to manage the Commissioned Corps personnel system of the Public Health Service; (2) Performs systems analysis, design, development, testing, documentation and production for changes, enhancements and new requirements to the Commissioned Corps human resource ADP support systems; and (3) Schedules, operates and maintains systems applications, including the production of official personnel orders and monthly payroll transactions for the U.S. Treasury.

Delete the titles and functional statements in their entirety for the *Southwest Personnel Operations Division (PBK)* and the *Parklawn Personnel Operations Division (PBL)*.

Establish the *Personnel Policy, Programs and Organizational Development Division (PBN)* and enter the functional statement as follows:

Personnel Policy, Programs and Organizational Development Division (PBN)

(1) Plans, develops, coordinates and implements policies and guidance to meet the programmatic needs of the Human Resources Service, the Office of the Secretary (OS), the Office of Inspector General and the Administration on Aging; (2) Provides policies and guidance to managers in the full range of human resource management activities, including compensation, performance management, leave, merit staffing, classification, career management, alternative work schedules, flexiplace, and delegations of personnel authorities; (3) Develops systems to facilitate the implementation of policies, evaluate effectiveness, monitor and provide feedback on critical areas that impact on human resource management programs, and policy implementation; (4) Provides consultative services and expert advice to organizations effecting change management activities. Specialized services include restructuring, streamlining, employee empowerment, quality management, team building, program evaluation, and other organizational improvement efforts; (5) Oversees the operation of the Career Management Center and provides individual consultative services and expert advice to employees on career related activities; and (6) Oversees the operation of the Employee Assistance Program (EAP) for OS, PSC and other HHS components located in the Southwest Washington, DC area. Services include intake, assessment, referral of employees, and education of employees and management about EAP services.

Establish the *Personnel Operations Division (PBP)* and enter the functional statement as follows:

Personnel Operations Division (PBP)

(1) Administers a comprehensive human resources management program for headquarters and field components of the Office of the Secretary, the Office of Inspector General, the Program Support Center and the Administration on Aging; (2) Develops and implements strategies and processes to ensure the progression of the Personnel Operations Division to a multi-customer, competitive, fee-for-service, cost centered organization; (3) Formulates and implements marketing strategies to promote the utilization of the Personnel Operations Division services by other HHS components and external customers; (4) Provides personnel management advice and assistance on

all aspects of personnel administration including analyzing employee resources, forecasting future requirements, coordinating policy to meet departmental mission and public interest needs, and communication to managers, supervisors, and employees; (5) Provides the full range of personnel operations services and consultation to managers in their human resources activities, including recruitment, staffing, position classification, pay administration, performance management, awards, security, special and executive recruitment, and Commissioned Corps liaison activities; and (6) Provides retirement and benefits counseling, and maintains official personnel records.

Establish the *Training and Career Development Division (PBQ)* and enter the functional statement as follows:

Training and Career Development Division (PBQ)

(1) Administers a comprehensive training and career development program for headquarters and field components of the Office of the Secretary, the Office of Inspector General, the Program Support Center and the Administration on Aging; (2) Provides consolidated training for HHS components and external customers in Southwest Washington, D.C. and in the Parklawn, Rockville, Maryland complex, other Federal agencies and external customers; (3) Develops and implements strategies and processes to ensure that HRS training services becomes a multi-customer, competitive, fee-for-service, cost centered organization; and (4) Formulates and implements marketing strategies to competitively promote the utilization of the Training and Career Development Division services by other HHS organizations and external customers.

Establish the *Employee and Labor Relations Division (PBR)* and enter the functional statement as follows:

Employee and Labor Relations Division (PBR)

(1) Administers a comprehensive employee and labor relations program for headquarters and field components of the Office of the Secretary, the Office of Inspector General, the Program Support Center, the Administration on Aging, other HHS components and external customers; (2) Develops and implements strategies and programs to ensure that the Employee and Labor Relations Division becomes a multi-customer, competitive, fee-for-service cost centered organization; (3) Formulates and implements marketing strategies to promote the utilization of

the Employee and Labor Relations Division by other HHS organizations and external customers; (4) Develops and administers written policies, procedures, planning and guidance materials on the full range of employee relations program areas for the PSC and its customers; (5) Provides advice and assistance on employee relations services and consultation to managers, supervisors and employees, including adverse actions, employee performance deficiencies, discipline, grievances and appeals, reduction-in-force, incentive awards program, leave regulations, standards of conduct, fitness for duty and violence in the work place, retirement, worker's compensation, conflict of interest, including outside activities, and financial disclosure; (6) Provides expert managerial advisory services to management on the full range of labor relations functions, including negotiated agreements, contract dispute resolution and the National Partnership Council; and (7) Administers the full range of special initiative programs including all official Department commemorative events, special incentives and honor awards programs, special leave programs, and employee suggestions programs.

Dated: October 2, 1996.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 96-26092 Filed 10-9-96; 8:45 am]

BILLING CODE 4160-17-M

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC), announce the following meeting:

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

Times and Dates: 8 a.m.-5 p.m., October 24, 1996. 8 a.m.-12 noon, October 25, 1996.

Place: Terrace Garden Buckhead, 3405 Lenox Road, N.E., Atlanta, Georgia 30326, telephone 404/261-9250, FAX 404/848-7391.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December

1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. Activities focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health (NIOSH), and ATSDR on the progress of current studies; presentations by Radiological Assessments Corporation on the SRS Environmental Dose Reconstruction Project Task 3: Source Term Calculations and Task 4: Data Evaluation; and results of the Fernald Dosimetry Reconstruction Project. Agenda items are subject to change as priorities dictate.

An unavoidable administrative delay prevented meeting the fifteen day publication requirement.

Contact Persons for More Information: Paul G. Renard or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F-35), Atlanta, Georgia 30341-3724, telephone 770/488-7040, FAX 770/488-7044.

Dated: October 4, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96-26052 Filed 10-9-96; 8:45 am]

BILLING CODE 4163-18-M

Health Care Financing Administration [Document Identifier: HCFA-R-96]

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. **HCFA-R-96 Type of Information Collection Request:** Extension of currently approved collection; **Title of Information Collection:** Emergency and Foreign Hospital Services-Beneficiary Statement In Canadian Travel Claims and Supporting Regulation 42 CFR 424.123; **Form No.:** HCFA-R-96; **Use:** This form is completed by beneficiaries, representative, or assignees to support claims for payments for Medicare covered emergency services provided in Canada. 42 CFR 424.123 is the regulation supporting this collection of information; **Frequency:** On occasion; **Affected Public:** Individuals or households; **Number of Respondents:** 1,100; **Total Annual Responses:** 1,100; **Total Annual Hours:** 275.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at <http://www.hcfa.gov>, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and

Planning Staff, Attention: John Burke, Room C2-26-17, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: October 3, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96-26003 Filed 10-9-96; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Proposed Collection; Comment Request; Evaluation of NIH Implementation of Section 491 of the Public Health Service Act, Mandating a Program of Protection for Research Subjects

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), Office of the Director, will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: Title: Evaluation of NIH Implementation of Section 491 of the Public Health Service Act, Mandating a Program of Protection for Research Subjects. Type of Information Collection: EXTENSION of OMB No. 0925-0404, expiration 12/31/96. Need and use of Information Collection: This study will assess the performance of the system of human subjects protections. It will provide up-to-date comprehensive and systematic information on the effectiveness and efficiency of procedural protections by measuring outcome, output, process, and resources of the current system to develop possible recommendations. The study will use survey, interview, and record extraction methodologies. Development of the survey instruments and methodology has involved representatives of the affected public over the past 2 years. Frequency of Response: One time response. Affected Public: Individuals or households; Not-for Profit Institutions; State, Local, or Tribal Government. Type of Respondents: University officials, staff, and faculty. The annual reporting burden is as follows: Estimated Number of Respondents: 2,358; Number of Responses per Respondent: 1; Average Burden per Response: 0.513 hr.; and Estimated Total Annual Burden Hours Requested: 1,210. The annualized cost to respondents is \$57,605. There are no

Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUESTS FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Charles R. MacKay, Project Clearance Officer, Office of Policy for Extramural Research Administration, Office of Extramural Research, Office of the Director, NIH, Rockledge 2, 6701 Rockledge Drive, MSC 7730, Room 2196, Bethesda, MD 20892-7730, or call nontoll-free number (301) 435-0978 or E-mail your request, including your address to: cm13f@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before December 9, 1996.

Dated: October 3, 1996.

Geoffrey E. Grant,

Acting Deputy Director for Extramural Research, NIH.

[FR Doc. 96-25978 Filed 10-9-96; 8:45 am]

BILLING CODE 4140-01-M

Notice of a Meeting of the Office of AIDS Research Advisory Council

Pursuant to P.L. 92-463, notice is hereby given of the Third meeting of the Office of AIDS Research Advisory Council (OARAC) on October 29, 1996, from 8:30 a.m. to 5:00 p.m., at the National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Sixth Floor, Conference Room 10. The meeting will be open to the public.

The Office of AIDS Research is responsible for the planning, coordination, and evaluation of the NIH AIDS research program. The OARAC

was established to advise the Director of the OAR regarding these activities.

The agenda of the meeting will include the following: the FY 1997 AIDS research budget, the FY 1998 HIH Plan for HIV-Related Research, the process for implementing the recommendations from the NIH AIDS Research Program Evaluation, and a new proposal for the use of the OAR discretionary fund.

Copies of the meeting agenda and the roster of council members will be furnished upon request by Jeannette R. De Lawter, Program Analyst, Office of AIDS Research, National Institutes of Health, Building 31, Room 4B54, 9000 Rockville Pike, Bethesda, MD 20892, Phone (301) 402-3357, Fax (301) 402-3360. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. De Lawter no later than October 22.

Dated: October 3, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96-25970 Filed 10-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the meetings of the National Cancer Institute Special Emphasis Panel (SEP):

Name of SEP: 3D Conformal Radiation Therapy.

Date: October 15-17, 1996.

Time: October 15-7 pm, October 16-17, 8 am.

Place: Dumont Hotel—New York; New York, NY 10016.

Contact Person: Dr. Gerald Lovinger, Scientific Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 630C, 6130 Executive Boulevard MSC 7405, Bethesda, MD 20892-7405, Telephone: 301/496-7987.

Purpose/Agenda: This meeting will be devoted to the review, discussion, and evaluation of a grant application.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Oncogenes & Mitogenes—Intracellular.

Date: October 22, 1996.

Time: October 22—1 pm.

Place: Teleconference, Executive Plaza North, 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Dr. Martin H. Goldrosen, Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 635F, 6130 Executive Boulevard MSC

7405, Bethesda, MD 20892-7405, Telephone: 301/496-7930.

Purpose/Agenda: This meeting will be devoted to the review, discussion, and evaluation of a grant application.

Name of SEP: Synthesis of Selected Chemical Carcinogens and Chemopreventive Agents.

Date: October 25, 1996.

Time: October 25—8:30 am.

Place: 6100 Executive Boulevard, Conference Room 1, Rockville, MD 20852.

Contact Person: Dr. Courtney Michael Kerwin, Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 601, 6130 Executive Boulevard MSC 7405, Bethesda, MD 20892-7405, Telephone: 301/496-7421.

Purpose/Agenda: This meeting will be devoted to the review, discussion, and evaluation of a grant application.

Name of SEP: Biology & Genetics of Marrow Allografts for Leukemia.

Date: November 20-22, 1996.

Time: November 20-7 pm, November 21-22, 8 am.

Place: Loews New York, 569 Lexington Avenue, New York, NY 10022.

Contact Person: Dr. Ray Bramhall, Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 643, 6130 Executive Boulevard MSC 7405, Bethesda, MD 20892-7405, Telephone: 301/496-3428.

Purpose/Agenda: This meeting will be devoted to the review, discussion, and evaluation of a grant application.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 3, 1996.

Paula N. Hayes,

Acting Management Officer, NIH.

[FR Doc. 96-25971 Filed 10-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the President's Cancer Panel.

This meeting will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such

as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below.

This meeting will be closed in accordance with the provisions set forth in section 552b(c)(9), Title 5, U.S.C. for discussion of future meetings and preparation of the annual report of the President. These discussions could disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed action the Panel may plan to take.

Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630M, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892-7405 (301/496-5708) will provide a summary of the meeting and the roster of committee members upon request. Other information pertaining to the meetings may be obtained from the contact person indicated below.

Committee Name: President's Cancer Panel.

Date: October 24-25, 1996.

Place: Rhode Island Hospital, George Building, George Auditorium, 593 Eddy Street, Providence, RI 02903.

Closed: October 24, 1996—7 p.m. to 9 p.m.

Agenda: Planning Session to discuss future meetings and preparation of the mandatory Annual Report of the Chairman to the President.

Open: October 25, 1996—8:30 a.m. to 5 p.m.

Agenda: Issues in Translational Research/The Crisis and Solutions for Phase I Trials and Associated Issues.

Contact Person: Dr. Maureen O. Wilson, Executive Secretary, National Cancer Institute, Building 31, Room 4A43-2473, 31 Center Drive, Bethesda, MD 20892-2473, 301/496-1148.

This notice is being published less than 15 days prior to the meeting due to the urgent need to proceed with the meeting as scheduled in order to address these issues in a timely manner.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 3, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.
[FR Doc. 96-25972 Filed 10-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Purpose/Agenda: Review, discussion and evaluation of individual grant applications.

Committee Name: NCI Initial Review Group—Education Subcommittee G.

Date: November 13, 1996.

Time: 8 a.m.

Place: The Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Dr. John W. Abrell, Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 635B, 6130 Executive Boulevard MSC 7405, Bethesda, MD 20892-7405 Telephone: 301/496-9767.

The meeting will be closed in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 3, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96-25973 Filed 10-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the Board of Scientific Counselors, National Cancer Institute.

The meetings will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meetings.

The meetings will be closed in accordance with the provisions set forth

in section 552b(c)(6), Title 5, U.S.C. The closed sessions will be devoted to the review, discussion and evaluation of individual programs and projects. This will include consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Committee Name: Board of Scientific Counselors, National Cancer Institute—Clinical Sciences Subcommittee.

Date: November 4, 1996.

Place: National Institutes of Health, 9000 Rockville Pike, Bldg. 31, C Wing, 6th floor, Conference Room 10, Bethesda, MD 20892.

Open: November 4, 1996—8:30 a.m. to 9:00 a.m.

Agenda: Welcoming remarks, introductions and several presentations regarding the National Cancer Institute's current and future activities.

Closed: November 4, 1996—9:00 a.m. to 6:00 p.m.

Agenda: To discuss administrative confidential site visit reports pertaining to laboratories in the Division of Clinical Sciences.

Contact Person: Edison Liu, M.D., Building 31, Room 3A11, 9000 Rockville Pike, Bethesda, MD 20892, Telephone: (301) 496-3251.

Committee Name: Board of Scientific Counselors, National Cancer Institute—Basic Sciences Subcommittee.

Date: November 6-7, 1996.

Place: National Institutes of Health, 9000 Rockville Pike, Bldg. 31, C Wing, 6th floor, Conference Room 10, Bethesda, MD 20892.

Open: November 7, 1996—8:30 a.m. to 9:00 a.m.

Agenda: Welcoming remarks, introductions and several presentations regarding the National Cancer Institute's current and future activities.

Closed: November 6, 1996—7:00 p.m. to 10:00 p.m., November 7, 1996—9:00 a.m. to 6:00 p.m.

Agenda: To discuss administrative confidential site visit reports pertaining to laboratories in the Division of Basic Sciences.

Contact Person: Edward Harlow, Ph.D., Building 31, Room 3A11, 9000 Rockville Pike, Bethesda, MD 20892, Telephone: (301) 435-2277.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 3, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96-25974 Filed 10-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Cancer Centers Working Group of NCI Board of Scientific Advisors scheduled for October 14, 1996, which was published in the Federal Register on September 26 (61 FR 50495).

The meeting was canceled due to administrative complications.

Dated: October 3, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96-25975 Filed 10-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Demonstration and Education Research Grant Applications.

Date: November 7-8, 1996.

Time: 9:00 a.m.

Place: Washington National Airport Hilton, Arlington, Virginia.

Contact Person: Louise P. Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, Bethesda, MD 20892-7924, (301) 435-0270.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Mentored Research Scientist Development Award for Minority Faculty (K01), Minority Institution Faculty Mentored Research Scientist Development Award (K01), Minority Institutional Research Training Program (T32M), and Short-Term Training of Minority Students Program (T35M) Review.

Date: December 16, 1996.

Time: 8:00 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Diane Reid, M.D., Two Rockledge Center, Room 7190, 6701 Rockledge Drive, Bethesda, MD 20892-7190, (301) 435-0280.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552(b)(4) and 552(b)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular

Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: October 3, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96-25977 Filed 10-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Dates of Meeting: October 28-29, 1996.

Time: October 28-7:30 a.m.—recess.

October 29-8:00 a.m.—adjournment.

Place of Meeting: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Theresa Lo, Ph.D., Natcher Building, 45 Center Drive, Rm 5AS-25U, Bethesda, MD 20892-6500. Telephone: 301-594-4952.

The meeting will be closed in accordance with the provisions set forth in secs. 552(b)(4) and 552(b)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Disease Research], National Institutes of Health, HHS)

Dated: October 4, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96-25969 Filed 10-9-96; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences.

This meeting will be open to the public as indicated below with attendance limited to space available. Individuals who plan to attend and

need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AS-43, Bethesda, Maryland 20892, (301) 496-7301, in advance of the meeting.

Committee Name: Minority Biomedical Research Support Subcommittee, Minority Programs Review Committee.

Date: November 13-14, 1996.

Time: 8:30 a.m.-5:00 p.m.

Place: National Institutes of Health, Natcher Conference Center, Conference Room C, 45 Center Drive, Bethesda, Maryland 20892-6200.

Open: November 13, 8:30 a.m.-9:30 a.m.

Agenda: Special reports related to committee activities.

Closed: November 13, 9:30 a.m.-5:00 p.m., November 14, 8:30 a.m.—adjournment.

Agenda: Review and evaluation of grant applications.

Contact Person: Michael Sesma, Ph.D., Scientific Review Administrator, NIGMS, Office of Scientific Review, 45 Center Drive, Room 1AS-19H, Bethesda, Maryland 20892-6200, Telephone (301) 594-2048.

The meeting will be closed in accordance with the provisions set forth in secs. 552(b)(4) and 552(b)(6), Titles 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program Nos. 93.821, 93.859, 93.862, 93.863, 93.880, and 93.375, National Institute of General Medical Sciences, National Institutes of Health)

Dated: October 3, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96-25976 Filed 10-9-96; 8:45 am]

BILLING CODE 4140-01-M

Office of Inspector General**Program Exclusions: September 1996**

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of September 1996, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under

the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
Program-related convictions:	
Moulton, Grant S, Fallon, NV	10/09/96
Osman Pharmacy, Inc, Vanceburg, KY	10/10/96
Wilson, Karen L, Bryan, OH	10/10/96
License revocation/suspension/surrender:	
Dubovy, Carl, Morristown, NJ	10/10/96
Omar, Ahmed Hussein, Huntsville, AL	10/10/96
Federal/State exclusion/suspension	
Alexander, C William, Wichita, KS	10/10/96
Dorion, Theo, Richmond Hill, NY	09/09/96
Default on heal loan:	
Bulen, Jerry L, Lehigh Acres, FL	10/10/96
Copeland, Kathryn K, St Petersburg, FL	10/10/96
Downs-Reason, Cynthia L, Woodland Park, CO	10/10/96
Koper, David W, Baton Rouge, LA	10/10/96
Kotula, Jeanne, Sheppard AFB, TX	10/10/96
Nelson, Christopher Gustaf, Albuquerque, NM	10/10/96
Pellerin, Stephen P, Ahwahnee, CA	09/24/96
Plaster, Michael A, Deadwood, SD	10/10/96
Section 1128Aa:	
Goldberg, Yvette Lisa Bagel, Atlanta, GA	05/20/96
Kirtley, George W JR, Little Rock, AR	01/18/96
Kirtley, Deann, Little Rock, AR	01/18/96
YLM Medical Company Atlanta, GA	05/20/96

Dated: October 2, 1996.
 William M. Libercci,
 Director, Health Care Administrative Sanctions, Office of Enforcement and Compliance.
 [FR Doc. 96-26075 Filed 10-9-96; 8:45 am]
 BILLING CODE 4150-04-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4152-N-01]

Office of the Assistant Secretary for Public and Indian Housing; Cooperative Agreement Between the Department of Housing and Urban Development and the Milton S. Eisenhower Foundation (MEF)—Fiscal Year 1996

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Announcement of funding award.

SUMMARY: According to section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding award for Fiscal Year (FY) 1996 Technical Assistance to the Milton S. Eisenhower Foundation. The purpose of this document is to announce the name and address of the grantee and the amount of the award.

FOR FURTHER INFORMATION, CONTACT: Malcolm E. Main, Office of Crime Prevention and Security, Office Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4112, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708-1197, ext 4232. A

telecommunications device for hearing or speech-impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: This cooperative agreement is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), Public Law 101-625, approved November 28, 1990, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992), Public Law 102-550, approved October 28, 1992.

On April 26, 1996, the President signed the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134) (FY 1996 Appropriations Act). The amount available, to remain available until expended. The FY 1996 Appropriations Act appropriated \$290 million for the Drug Elimination Program. Of the total \$290 million appropriated; \$10 million will fund drug elimination technical assistance, contracts and other assistance training, program assessments, and execution for or on

behalf of public housing agencies and resident organizations (including the cost of necessary travel for participants in such training).

Grant award: \$1,400,000.
Recipient: Milton S. Eisenhower Foundation, Suite 200, 1660 L Street, NW, Washington, DC 20036.

Recipient contact person: Lynn A. Curtis, President and CEO.
Recipient phone number: (202) 429-0440, fax (202) 452-0169.

HUD cooperative agreement number: DC00TTC0096.

The United States Department of Housing and Urban Development and the Milton S. Eisenhower Foundation entered into a cooperative agreement to provide technical assistance to housing authorities to implement and evaluate law enforcement mini-stations and inner-city youth safe havens in the following public housing authorities: District of Columbia, Columbia, SC, Little Rock, AK, Memphis, TN, San Juan, Puerto Rico, Baltimore, MD and Newark, NJ. In addition, the Foundation and HUD will identify best practices among drug-prevention efforts which operate through community-based facilities, as methods public housing authorities can use in support of residents, who must transition from welfare to work.

The KOBAN police and community partnership program is a unique innovative program to improve relationships between local law enforcement agencies and the inner-city neighborhoods they patrol, to reduce crime and drug abuse in the neighborhoods and prevent inner-city youth from engaging in high-risk behavior. The program builds on policing strategies that have operated successfully in Japan and proven successful in other variations in American cities.

Dated: October 4, 1996.
 Kevin Emanuel Marchman,
 Acting Assistant Secretary for Public and Indian Housing.
 [FR Doc. 96-26091 Filed 10-9-96; 8:45 am]
 BILLING CODE 4210-33-P

[Docket No. FR-4151-N-01]

Office of the Assistant Secretary for Public and Indian Housing; Announcement Designations for Campus of Learners for Public and Indian Housing; Fiscal Year 1996

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of Campus of Learners Designees.

SUMMARY: This announcement notifies the public of Campus of Learners designated public housing sites. Under this program, HUD will create Campus of Learners communities through increased access to education, vocational training, or job training with computer or telecommunications technology, and changes and enhancements to public housing and living environments. The purpose of this document is to announce the name and address of Campus of Learners designees.

FOR FURTHER INFORMATION, CONTACT: Ronald Ashford, Director, Office of Supportive Services, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708-0614 (this is not a toll-free telephone number). A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: The Designated Campus of Learners program incorporates economic opportunities for residents and families of public housing including but not limited to: coordination and commitments from local schools, community colleges and universities and upward mobility for public housing residents; campus learning environments for entire families; increased access to computer technology, defined resident responsibility agreements; affordable housing options/homeownership and reduced dependence on public housing. A Notice published in the Federal Register on April 1, 1996 (61 FR 14331), announced that the Department would designate sites for the Campus of Learners Initiative. Applications were rated and selected on the basis of selection criteria contained in that Notice.

The Department is hereby publishing the names and addresses of the Public Housing Authority designations as shown in Appendix A.

Dated: October 4, 1996.

Kevin Emanuel Marchman,
Acting Assistant Secretary for Public and Indian Housing.

Appendix A—Designation for Campus of Learners

PHA Name: Housing Authority of East Baton Rouge Parish.

Sponsor/Address: 4546 North Street, Baton Rouge, LA 70806.

Number of Units: 97.

Contract Authority: \$0.

Development Name: Clarksdale Apartments.

Project Contact/Phone Number: Larry E. Cole, (504) 923-8100.

PHA Name: Chicago Housing Authority.

Sponsor/Address: 626 W. Jackson Blvd., Chicago, IL 60661.

Number of Units: 700.

Contract Authority: \$0.

Development Name: Alba.

Project Contact/Phone Number: Ron Carter, Jr., (312) 567-1831.

PHA Name: Columbus Metropolitan Housing Authority.

Sponsor/Address: 960 E. Fifth Avenue, Columbus, OH 43201.

Number of Units: 230.

Contract Authority: \$0.

Development Name: Rosewind.

Project Contact/Phone Number: Stephen J. Havens, (614) 421-4502.

PHA Name: Cuyahoga Metropolitan Housing Authority.

Sponsor/Address: 1441 West 25th Street Cuyahoga, OH 44113.

Number of Units: 100.

Contract Authority: \$0.

Development Name: Carver Park Extension.

Project Contact/Phone Number: Claire E. Freeman, (216) 348-5000.

PHA Name: Housing Authority of the City and County of Denver (Prototype).

Sponsor/Address: 1100 West Colfax Avenue, Denver, CO 80204.

Number of Units: 206.

Contract Authority: \$0.

Development Name: North Lincoln Park Homes.

Project Contact/Phone Number: Salvadore Carpio, Jr., (303) 535-0821, ext. 171.

PHA Name: Housing Authority of the City of East St. Louis.

Sponsor/Address: 700 North 20th Street, East St. Louis, IL 62205.

Number of Units: 73.

Contract Authority: \$0.

Development Name: Phoenix Courts.

Project Contact/Phone Number: Stevens Gregory, (618) 271-0498.

PHA Name: The Housing Authority of the City of Evansville.

Sponsor/Address: 411 S.E. 8th Street, Evansville, IN 47713.

Number of Units: 140.

Contract Authority: \$0.

Development Name: Lincoln Gardens.

Project Contact/Phone Number: John W. Collier, (812) 428-8500.

PHA Name: Fort Worth Housing Authority.

Sponsor/Address: 212 Burnett Street; P.O. Box 430, Fort Worth, TX 76101.

Number of Units: 234.

Contract Authority: \$0.

Development Name: Butler Housing Community.

Project Contact/Phone Number: Barbara Holston, (817) 336-2419, ext. 117.

PHA Name: Hartford Housing Authority.

Sponsor/Address: 475 Flatbush Avenue, Hartford, CT 06106.

Number of Units: 1000.

Contract Authority: \$0.

Development Name: Charter Oaks.

Project Contact/Phone Number: John D. Wardlaw, (860) 275-8420.

PHA Name: Community Development Commission/Housing Authority of the County of Los Angeles.

Sponsor/Address: 2 Coral Circle, Monterey Park, CA 91754.

Number of Units: 1216.

Contract Authority: \$0.

Development Name: Nueva Maraville Carmelitos.

Project Contact/Phone Number: Bobbette Glover, (213) 890-7402.

PHA Name: Housing Authority of the City of Milwaukee.

Sponsor/Address: 809 North Broadway, Milwaukee, WI 53202.

Number of Units: 526.

Contract Authority: \$0.

Development Name: Hillside Terrace.

Project Contact/Phone Number: Ricardo Diaz, (414) 286-5670.

PHA Name: Housing Authority of New Haven.

Sponsor/Address: 360 Orange Street, New Haven, CT 06510.

Number of Units: 462.

Contract Authority: \$0.

Development Name: Elm Haven.

Project Contact/Phone Number: Bryan Anderson, (203) 946-2800.

PHA Name: The Housing Authority of the City of Omaha.

Sponsor/Address: 540 South 27th Street, Omaha, NE 68105.

Number of Units: 363.

Contract Authority: \$0.

Development Name: Spenser Housing Development.

Project Contact/Phone Number: Kathleen Ulrich, (402) 444-7377.

PHA Name: Philadelphia Housing Authority

Sponsor/Address: 2012 Chestnut Street Philadelphia, PA 19103

Number of Units: 1321

Contract \$0

Development Name: Richard Allen Homes

Project Contact/Phone Number: Errol Shorter, (215) 684-4027

PHA Name: Housing Authority of the City of Pittsburgh

Sponsor/Address: 200 Ross Street Pittsburgh, PA 15219

Number of Units: 50

Contract \$0

Development Name: Manchester Allequippa Terrace
Project Contact/Phone Number: Patricia Hairston, (412) 456-5079
PHA Name: Housing Authority of Prince George's County Maryland
Sponsor/Address: 9400 Peppercorn Place, Suite 200 Largo, MD 20770
Number of Units: 63
Contract \$0
Development Name: Marlborough Towne
Project Contact/Phone Number: Michael A. Doaks, (301) 883-5531
PHA Name: Housing Authority of Portland, Oregon
Sponsor/Address: 135 S.W. Ash Portland, OR 97204
Number of Units: 300
Contract \$0
Development Name: Columbia Villa, N. Portland
Project Contact/Phone Number: Paul Parker, (503) 335-6815
PHA Name: San Diego Housing Commission
Sponsor/Address: 1625 Newton Avenue San Diego, CA 92113-1038
Number of Units: 66
Contract \$0
Development Name: Vista de Valle
Project Contact/Phone Number: Patricia Zamora, (619) 525-3716
PHA Name: San Francisco Housing Authority
Sponsor/Address: 440 Turk Street San Francisco, CA 94101
Number of Units: 195
Contract \$0
Development Name: Hayes Valley
Project Contact/Phone Number: Thomas Mayfield, (415) 715-3229
PHA Name: Seattle Housing Authority
Sponsor/Address: 7011 32nd Avenue South, Seattle, WA 98118.
Number of Units: 400.
Contract Authority: \$0.
Development Name: Holly Park.
Project Contact/Phone Number: Bruce Murray, (206) 721-6388.
PHA Name: The Housing Authority of the City of South Bend.
Sponsor/Address: 501 S. Scott; P.O. Box 11057, South Bend, IN 46634-0057.
Number of Units: 140.
Contract Authority: \$0.
Development Name: Monroe Cirle, Laurel Court.
Project Contact/Phone Number: Frank Alford, (219) 235-9346.
PHA Name: Housing Authority of St. Louis County.
Sponsor/Address: 8865 Natural Bridge Road, St. Louis County, MO 63121.
Number of Units: 96.
Contract Authority: \$0.

Development Name: Springwood.
Project Contact/Phone Number: Julia Tibbs, (314) 428-3200, ext. 278.
PHA Name: Housing Authority of the City of Union City.
Sponsor/Address: 3911 Kennedy Boulevard, Union City, NJ 07087.
Number of Units: 259.
Contract Authority: \$0.
Development Name: Hillside Terrace I, Hillside Terrace II.
Project Contact/Phone Number: Virgilio Cabello, (201) 864-1515.
PHA Name: Wilmington Housing Authority.
Sponsor/Address: 400 Walnut Street, Wilmington, DE 19801.
Number of Units: 180.
Contract Authority: \$0.
Development Name: South Bridge.
Project Contact/Phone Number: Ron Petrou, (302) 429-6700, ext. 40.
PHA Name: The Housing Authority of the City of Woonsocket, Rhode Island.
Sponsor/Address: 679 Social Street, Woonsocket, RI 02895.
Number of Units: 300.
Contract Authority: \$0.
Development Name: Veteran's Memorial.
Project Contact/Phone Number: Stephen A. Vadnais, (401) 767-8000.
 [FR Doc. 96-26090 Filed 10-9-96; 8:45 am]
 BILLING CODE 4210-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-050-1220-00:GP6-0280]

Closure of Public Lands

AGENCY: Prineville District, Deschutes Resource Area.

ACTION: Notice is hereby given that effective immediately, the area as legally described below is closed to all motorized vehicle use year-long. The purpose of this closure is to protect wildlife and watershed resources. Exemptions to this closure will apply to administrative personnel of the Bureau of Land Management. Other exemptions to this closure order may be made on a case by case basis by the authorized officer. This closure will remain in effect until further notice.

Legal Description: This closure order applies to all public land in that portion of Sections 2, 11, 13 & 14 lying west of Highway 197 and portions of Sections 3, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 21, 22, 23, 26 & 27 all in T. 6 S., R. 14 E., WM, Wasco County, Oregon. A small area in the SW¹/₄ NW¹/₄ of Section 13, adjacent to Highway 197, will remain open for

public parking. The closed area, known as the acquired lands of the Criterion Exchange, are found between the Deschutes River and State Highway 197 south of Maupin in Wasco County, Oregon.

FOR FURTHER INFORMATION CONTACT: John Hanf, Rangeland Management Specialist, BLM Prineville District, P.O. Box 550, Prineville, Oregon 97754, telephone 541-416-6432.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8341.2 and 43 CFR 8364.1. The closure will remain in effect until an activity plan which addresses public access and resource protection can be completed and implemented. Violations of this closure order are punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0-7.

Dated: September 23, 1996.

Donald L. Smith,

Acting District Manager.

[FR Doc. 96-26078 Filed 10-9-96; 8:45 am]

BILLING CODE 4310-33-M

[AZ-040-7122-00-5514; AZA 28789]

Availability of Final Environmental Impact Statement (FEIS) for the Morenci Land Exchange, Greenlee County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: The BLM has prepared a Final Environmental Impact Statement (FEIS), analyzing the impacts to the human environment, of a proposed land exchange with the Phelps Dodge Mining Company, A Division of the Phelps Dodge Corporation, near Morenci, Arizona. The proposed exchange involves trading 3,758 acres of public land managed by the Bureau of Land Management for 960-1,200 acres of private land owned by the Phelps Dodge Mining Company. This FEIS (1) assesses the environmental impacts of the proposed land exchange as described in the Proposed Action, Equal Appraised Value Alternative and the No Action Alternative; (2) determines if there are direct, indirect and cumulative impacts; and (3) identifies necessary mitigative measures. This FEIS was prepared to comply with the Council on Environmental Quality's regulations (40 CFR Part 1500-1508) for implementing the National Environmental Policy Act of 1969, 43 U.S.C. at 1701, The Federal Land Exchange Facilitation Act of 1988, 43 U.S.C. at 1716 and 1740, and BLM

regulations governing land exchanges (43 CFR Parts 2090 and 2200).

DATES: Written comments relating to the FEIS will be accepted until November 12, 1996.

ADDRESSES: Send written comments to the Bureau of Land Management, Safford Field Office, Attention: Scott Evans, Project Manager, 711 14th Avenue, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: The public lands proposed for exchange include 15 small parcels, under 1 acre, surrounded by private property and 12 larger parcels, 5 to 2,560 acres, adjacent to the existing Phelps Dodge Morenci mining operation. Phelps Dodge wishes to acquire these lands to continue and expand their existing mining operation. More than 90 percent of the public lands proposed for exchange are encumbered by mining claims held by Phelps Dodge Corporation and others. The private lands offered for exchange include high resource value in holdings within the Gila Box Riparian National Conservation Area and the Cienega Creek Long-Term Management Area as well as two parcels adjacent to the Dos Cabezas Mountains Wilderness Area.

FOR FURTHER INFORMATION CONTACT: Scott Evans, Project Manager, Mike McQueen, NEPA Compliance Officer, at BLM, Safford Field Office, telephone number (520) 428-4040 or Tina Lee, Project Manager, at SWCA, Inc., telephone number (520) 325-9194.

Dated: September 24, 1996.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 96-25442 Filed 10-9-96; 8:45 am]

BILLING CODE 4310-32-M

[UT-940-1910-00-4677]

Idaho: Filing of Protraction Diagrams in Idaho

The protraction diagrams of the following described unsurveyed townships, all in Boise Meridian, Idaho, were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. September 30, 1996.

T. 25 N., R. 7 E.; T. 26 N., R. 7 E.; T. 27 N., R. 7 E.; T. 28 N., R. 7 E.; T. 25 N., R. 8 E.; T. 26 N., R. 8 E.; T. 27 N., R. 8 E.; T. 28 N., R. 8 E.; T. 30 N., R. 8 E.; T. 31 N., R. 8 E.; T. 32 N., R. 8 E.; T. 25 N., R. 9 E.; T. 26 N., R. 9 E.; T. 27 N., R. 9 E.; T. 28 N., R. 9 E.; T. 29 N., R. 9 E.; T. 30 N., R. 9 E.; T. 31 N., R. 9 E.; T. 32 N., R. 9 E.; T. 25 N., R. 10 E.; T. 26 N., R. 10 E.; T. 27 N., R. 10 E.; T. 28 N., R. 10 E.; T. 29 N., R. 10 E.; T. 30 N., R. 10 E.; T. 31 N., R. 10 E.; T. 32 N., R. 10 E.; T. 25 N.,

R. 11 E.; T. 26 N., R. 11 E.; T. 27 N., R. 11 E.; T. 28 N., R. 11 E.; T. 29 N., R. 11 E.; T. 30 N., R. 11 E.; T. 25 N., R. 12 E.; T. 26 N., R. 12 E.; T. 27 N., R. 12 E.; T. 28 N., R. 12 E.; T. 29 N., R. 12 E.; T. 30 N., R. 12 E.; T. 29 N., R. 13 E.; T. 30 N., R. 13 E.; T. 29 N., R. 14 E.; T. 30 N., R. 14 E.; T. 29 N., R. 15 E.; T. 30 N., R. 15 E.; T. 29 N., R. 16 E.; T. 30 N., R. 16 E.; T. 29 N., R. 17 E.; T. 30 N., R. 17 E.;

The preparation of these diagrams was requested by the USDA Forest Service, Geometrics Service Center, to support its mapping program.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: September 30, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96-26032 Filed 10-9-96; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-931-1430-01; AZA 5968; AZA 29172]

Public Land Order No. 7214; Partial Revocation and Modification of Public Land Order No. 5279; Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects Public Land Order No. 7214, 61 FR 46820-46821, published September 5, 1996, as FR Doc. 96-22587.

On page 46820, third column, under T. 4 N., R. 9 E., which reads "Sec. 3, NE $\frac{1}{4}$ NE $\frac{1}{4}$." is hereby corrected to read "Sec. 3, NW $\frac{1}{4}$ NE $\frac{1}{4}$."

Michael A. Ferguson,

Deputy State Director, Resources Division, Arizona.

[FR Doc. 96-26031 Filed 10-9-96; 8:45 am]

BILLING CODE 4310-32-P

[ID-933-1430-01; IDI-08346]

Public land order No. 7218; Revocation of Public Land Order No. 1871; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order in its entirety which withdrew 279.82 acres of public land by the Bureau of Land Management for the Rathdram Municipal Watershed Management Area. The land is no longer needed for this purpose and the

revocation is needed to transfer the land by exchange. This action will open the land to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: November 12, 1996.

FOR FURTHER INFORMATION CONTACT:

Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706-2500, 208-384-3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 1871, which withdrew the following described land, is hereby revoked in its entirety:

Boise Meridian

T. 52 N., R. 5 W.,

Sec. 23, NE $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 24, lot 1.

The area described contains 279.82 acres in Kootenai County.

2. At 9 a.m., on November 12, 1996, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m., on November 12, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m., on November 12, 1996, the land will be opened to location and entry under the United States mining laws, and to the operation of the mineral leasing laws and the Materials Act of July 31, 1947, as amended, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 2, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96-26077 Filed 10-09-96; 8:45 am]

BILLING CODE 4310-GG-P

[NM-030-1430-00; NMNM 96519]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action; R&PP Act Classification.

SUMMARY: The following public land in Otero County, New Mexico has been examined and found suitable for classification for lease or conveyance to Otero County under the provision of the R&PP Act, as amended (43 U.S.C. 869 et. seq.). Otero County, Alamo West Fire Rescue Department proposes to use the land for a substation and fire training facility.

T. 17 S., R. 9 E., NMPM,
Sec. 17, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$
Containing 10 acres, more or less.

DATE: Comments regarding the proposed lease/conveyance or classification must be submitted on or before November 27, 1996.

ADDRESSES: Comments should be sent to the BLM, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Lorraine J. Salas at the address above or at (505) 525-4388.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

4. Upon determination by the authorized officer that the project has successfully been completed in accordance with the approved plan of development and management, the subject parcel will be conveyed simultaneously pursuant to Section 209 of the Act of October 21, 1976 (43 U.S.C. 1719).

5. Subject to right-of-way NMNM 031478 held by Texas/New Mexico Power Company for the purpose of a 115 kv powerline.

6. Subject to right-of-way NMNM 021762 held by the New Mexico State Highway Department for the purpose of a Federal Aid highway.

7. Subject to right-of-way NMNM 58293 held by Otero County Electric Coop. for the purpose of an electric distribution line.

8. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the BLM, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico, 88005. Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before November 27, 1996, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a substation and training facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proposed administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a substation and training facility.

Dated: October 4, 1996.
Richard T. Watts,
Acting District Manager.
[FR Doc. 96-26048 Filed 10-9-96; 8:45 am]
BILLING CODE 4310-VC-P

[ES-030-06-1430-01; WIES-O47053]

Notice of Realty Action: Sale of Public Land in Waushara County, WI

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The following land has been found suitable for sale under authority of the Color-of-Title Act of December 22, 1928, as amended July 28, 1953, 43 U.S.C. 1068, 1068a (1982), as a claim of Class I at the estimated fair market value less equities presented by the applicant. The land will not be offered for sale until at least 60 days after the date of this notice.

Fourth Principal Meridian, Wisconsin
T.20N., R.12E.,
Sec. 1, NWSW,
containing 40 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Leslie L. and Nancy L. Parrott. The mineral interest will not be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests under Sec. 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713).

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations, as well as specific conditions of the sale, are available for review at the Bureau of Land Management, Milwaukee District Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin.

DATES: Interested parties may submit comments until November 22, 1996. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Comments should be sent to: Bureau of Land Management, Milwaukee District, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

FOR FURTHER INFORMATION CONTACT: Howard Levine, Realty Specialist, Milwaukee District, (414) 297-4463.

Dated: October 3, 1996.
James W. Dryden,
District Manager.
[FR Doc. 96-26046 Filed 10-9-96; 8:45 am]
BILLING CODE 4310-GJ-P

[ES-030-06-1430-01; WIES-047060]

Notice of Realty Action: Sale of Public Land in Bayfield County, WI

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following land has been found suitable for sale under authority of the Color-of-Title Act of December 22, 1928, as amended July 28, 1953, 43 U.S.C. 1068, 1068a (1982), as a claim of Class I at the estimated fair market value less equities presented by the applicant. The land will not be offered for sale until at least 60 days after the date of this notice.

Fourth Principal Meridian

T.43N., R.7W.,

Sec. 17, Lot #7 & Lot #8.

Containing 22.00 acres & 9.47 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to William Burmeister. The mineral interest will not be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests under Sec. 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713).

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations, as well as specific conditions of the sale; are available for review at the Bureau of Land Management, Milwaukee District Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin.

DATES: Interested parties may submit comments until November 22, 1996. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Comments should be sent to: Bureau of Land Management, Milwaukee District, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Realty Specialist, Milwaukee District, (414) 297-4413.

Dated: October 3, 1996.

James W. Dryden,

District Manager.

[FR Doc. 96-26152 Filed 10-9-96; 8:45 am]

BILLING CODE 4310-GJ-P

[ES-030-06-1430-01; WIES-047534]

Notice of Realty Action: Sale of Public Land in Bayfield County, Wisconsin

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following land has been found suitable for sale under authority of the Color-of-Title Act of December 22, 1928, as amended July 28, 1953, 43 U.S.C. 1068, 1068a (1982), as a claim of Class I at the estimated fair market value less equities presented by the applicant. The land will not be offered for sale until at least 60 days after the date of this notice.

Fourth Principal Meridian

T.43N., R.7W.,

Sec. 17, Lot #10.

Containing 29.15 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Metro Maznio.

The mineral interest will not be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests under Sec. 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713).

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations, as well as specific conditions of the sale, are available for review at the Bureau of Land Management, Milwaukee District Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin.

DATES: Interested parties may submit comments until November 22, 1996. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Comments should be sent to: Bureau of Land Management, Milwaukee District, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Realty Specialist, Milwaukee District, (414) 297-4413.

Dated: October 3, 1996.

James W. Dryden,

District Manager.

[FR Doc. 96-26153 Filed 10-9-96; 8:45 am]

BILLING CODE 4310-GJ-P

Geological Survey

Federal Geographic Data Committee (FGDC); Public Meeting to Develop a Strategy for the National Spatial Data Infrastructure (NSDI)

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice is to invite public participation in an FGDC-sponsored meeting to design strategies for further development of NSDI.

TIME AND PLACE: November 7-8, 1996. The one and one-half day meeting will be held in the Chicago area at the Days Inn O'Hare South, 3801 N. Mannheim Road, Schiller Park, IL 60176, phone (847)678-0670. Accommodations are available at the meeting site from the Days Inn nationwide reservation under (800-325-2525); special rates of \$45/day are available to those attending the NSDI Strategy Meeting. There is no charge for attendance at the meeting.

FOR FURTHER INFORMATION CONTACT:

Jennifer Fox, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; telephone (703) 648-5514; facsimile (703) 648-5755; Internet "gdc@usgs.gov".

SUPPLEMENTARY INFORMATION: The FGDC is a committee of Federal agencies charged with coordinating the development of the NSDI. The NSDI includes the technology, policies, and people necessary to promote geospatial data sharing throughout all levels of government, the private and non-profit sectors, and academia. FGDC subcommittees and working groups, assisted by representatives of the broader geospatial data community, establish standards for data content, quality, and transfer; encourage the exchange of information and the transfer of data; and organize the collection of geographic data to reduce duplication of effort. A plan developed in 1994 guided initial NSDI implementation activities. The November 7-8 meeting will provide an opportunity for the entire geospatial community of data producers and users to participate in open discussion and development of NSDI implementation strategies for the next four years. The draft strategy document is available for review prior to the meeting by contacting Jennifer Fox (see contact information) or at Internet address <http://www.fgdc.gov/strategy/>

Dated: October 2, 1996.
 Wendy A. Budd,
 Associate Chief, National Mapping Division.
 [FR Doc. 96-26076 Filed 10-9-96; 8:45 am]
 BILLING CODE 4310-31-M

National Park Service

Notice of Inventory Completion for Native American Human Remains from the Island of Maui, Hawaii, in the Possession of the Department of Anthropology, California State University-Fullerton, Fullerton, CA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains in the possession of the Department of Anthropology, California State University-Fullerton, Fullerton, CA.

A detailed assessment of the human remains was made by CSU-Fullerton Department of Anthropology professional staff in consultation with representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*.

In 1970, human remains representing a minimum of sixteen individuals were recovered from a site east of Paia, Maui during a legally authorized salvage operation. No known individuals were identified. Records indicate that funerary objects were also recovered at the time, but are not in the possession of CSU-Fullerton.

Visual examination of the human remains indicate these are Native Hawaiian human remains from the pre-contact period based on morphology and condition of the remains. Representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* verify the site and manner of interment of these individuals is consistent with Native Hawaiian traditional practice.

Based on the above mentioned information, officials of California State University-Fullerton have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of sixteen individuals of Native Hawaiian ancestry. Officials of California State University-Fullerton have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native Hawaiian human remains and associated funerary objects and *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, the Office of Hawaiian

Affairs Historic Preservation Office, and the Maui/Lana'i Islands Burial Council.

This notice has been sent to officials of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, the Office of Hawaiian Affairs Historic Preservation Council, and the Maui/Lana'i Islands Burial Council. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Judy Myers Suchey, Professor of Anthropology, California State University-Fullerton, Fullerton, CA 92634; telephone: (714) 524-1265, before November 12, 1996. Repatriation of the human remains and associated funerary objects to *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, the Office of Hawaiian Affairs Historic Preservation Office, and the Maui/Lana'i Islands Burial Council may begin after that date if no additional claimants come forward.

Dated: October 4, 1996,
 Francis P. McManamon,
 Departmental Consulting Archeologist,
 Manager, Archeology and Ethnography Program.
 [FR Doc. 96-26041 Filed 10-9-96; 8:45 am]
 BILLING CODE 4310-70-F

Notice of Inventory Completion for Native American Human Remains in the Possession of Channel Islands National Park, Ventura, CA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains possession of the National Park Service, Channel Islands National Park, Ventura, CA.

A detailed assessment of the human remains was made by National Park Service professional staff in consultation with representatives of the Santa Ynez Band of Mission Indians. Consultation also took place with representatives of the Coastal Band of the Chumash and Southern Band of the Chumash, both non-federally recognized Indian groups.

Between the 1920s and 1986, human remains representing three individuals were collected from San Miguel Island. In the 1920s, human remains representing two individuals were collected from a burial site on the east end of San Miguel Island by Mr. Snyder. Possession of the remains transferred to Jim Snyder, the collector's grandson, in

1956. Jim Snyder gave the remains to the park in 1995. Between 1985 and 1986, human remains representing a minimum of one individual were excavated from Daisy Cave on San Miguel Island during a planned excavation. No known individuals were identified. No associated funerary objects are present. The remains from Daisy Cave were reburied in 1996 pursuant to a 1989 agreement with concerned Chumash.

In 1977, human remains representing one individual were recovered from a stream bed on Santa Cruz Island by Bill Connally, then owner of the park's tour boat concession. These remains were donated to the park in 1980. No known individuals were identified. No associated funerary objects are present.

Between the 1920s and the mid-1970s, human remains representing two individuals were collected from Santa Rosa Island. In the 1920s a skull was collected by a visitor. Possession of the skull passed down to Susan H. Parker who gave them to the park in 1993. In the mid-1970s, a cranial vault was collected by an anonymous visitor. In 1990, these remains were given to the park. No known individuals were identified. No associated funerary objects are present.

The geographic affiliation of these human remains is consistent with the historically documented territory of the Santa Ynez Band of Mission Indians. Archeological evidence supports this evidence, indicating that ancestors of the Santa Ynez came into the Channel Islands area approximately 11,600 years ago and maintained an unbroken sequence of occupation and development through the present. Both the geographical and archeological evidence is consistent with the tribal affiliation statements given by members of the Santa Ynez Band of Mission Indians during an ethnographic affiliation study recently conducted by the National Park Service.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of six individuals of Native American ancestry. Officials of the National Park Service have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Santa Ynez Band of Mission Indians.

This notice has been sent to officials of the Santa Ynez Band of Mission Indians. Representatives of any other

Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Tim Setnicka, Acting Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001; telephone: (805) 658-5700, before November 12, 1996. Repatriation of the human remains and associated funerary objects to the Santa Ynez Band of Mission Indians may begin after that date if no additional claimants come forward.

Dated: October 4, 1996,

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 96-26042 Filed 10-9-96; 8:45 am]

BILLING CODE 4310-70-F

MERIT SYSTEMS PROTECTION BOARD

Sunshine Act Notice

TIME AND DATE: 9:30 a.m., Friday, October 11, 1996.

PLACE: Board Conference Room, Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC, 20419.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Agency caseload and case processing.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Matthew Shannon, Counsel to the Clerk of the Board, (202) 653-7200.

Dated: October 7, 1996.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 96-26156 Filed 10-8-96; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96-121]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent

Counsel, Jet Propulsion Laboratory, Mail Code SPJ, Pasadena, CA 91109. Claims are deleted from the patent applications to avoid premature disclosure.

DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT:

Thomas H. Jones, Patent Counsel, Mail Code SPJ, NASA Management Office—JPL, Pasadena, CA 91109; telephone (818) 354-5179, fax (818) 354-6051.

NASA Case No. NPO-18518-2: Solid-state Image Sensor With Focal-Plane Digital Photon-Counting Pixel Arrays;

NASA Case No. NPO-18836-3: Buried Porous Si-Ge Layers In Monocrystalline Si Lattices;

NASA Case No. NPO-18919-2: Global Positioning System Fixed-Height Tripod Adapter;

NASA Case No. NPO-19077-2: A Neural Network With Modular Hierarchical Learning.

Dated: October 1, 1996.

Edward A. Frankle,
General Counsel.

[FR Doc. 96-26021 Filed 10-9-96; 8:45 am]

BILLING CODE 7510-01-M

[Notice 96-120]

Performance Review Board, Senior Executive Service

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Pub. L. 95-454 (Section 405) requires that appointments of individual members to a Performance Review Board be published in the Federal Register.

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board (PRB) and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator, members of the PRB, and executives in the Office of the Inspector General. The following individuals are serving on the Board and the Committee:

Performance Review Board

Robert E. Whitehead, Associate Administrator for Aeronautics, NASA Headquarters

John T. Pennington, Executive Secretary, Chief, Agency Executive Personnel Branch, NASA Headquarters

Vicki A. Novak, Director, Personnel Division, NASA Headquarters

George E. Reese, Deputy General Counsel, NASA Headquarters

Arnauld E. Nicogossian, Deputy Associate Administrator for Life and Microgravity Sciences and Applications, NASA Headquarters

Gregory M. Reck, Deputy Associate Administrator for Space Access and Technology, NASA Headquarters

Richard J. Wisniewski, Deputy Associate Administrator for Space Flight, NASA Headquarters

William F. Townsend, Deputy Associate Administrator for Mission to Planet Earth (Programs), NASA Headquarters

Earle K. Huckins, Deputy Associate Administrator for Space Science, NASA Headquarters

Geoffrey H. Vincent, Deputy Associate Administrator for Public Affairs, NASA Headquarters

H. Lee Beach, Jr., Deputy Director, NASA Langley Research Center

Mark K. Craig, Deputy Director, NASA Stennis Space Center

William E. Dean, Deputy Director, NASA Ames Research Center

Carolyn S. Griner, Deputy Director, NASA Marshall Space Flight Center

Senior Executive Committee

J.R. Dailey, Chairperson, Associate Deputy Administrator, NASA Headquarters

Vicki A. Novak, Executive Secretary, Director, Personnel Division, NASA Headquarters

Michael I. Mott, Associate Deputy Administrator (Technical), NASA Headquarters

Robert E. Whitehead, Associate Administrator for Aeronautics, NASA Headquarters

Spence M. Armstrong, Associate Administrator for Human Resources and Education, NASA Headquarters.

Dated: July 2, 1996.

Daniel S. Goldin,
Administrator.

[FR Doc. 96-26020 Filed 10-9-96; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish

notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:
Nadene G. Kennedy, Permit Office,
Office of Polar Programs, Rm. 755,
National Science Foundation, 4201
Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 30, 1996, the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued on October 1, 1996 to the following applicants:

Bill J. Baker, Permit #97-004

Donald B. Siniff, Permits #97-006 and #97-007

Wayne Z. Trivelpiece, Permit #97-012

Arthur L. DeVries, Permit #97-014

Nadene G. Kennedy,
Permit Office.

[FR Doc. 96-26073 Filed 10-9-96; 8:45 am]

BILLING CODE 7555-01-M

2. Atmosphere and Climate;
3. Land and Offshore Resources;
4. Land-Atmosphere Interactions;
5. Engineering and Technology;
6. Social Science; and
7. Health.

Coordinated interagency efforts and supporting programs are also discussed. These include arctic contamination studies, data and information, logistics, and international activities.

Public Participation: This meeting is open to the public. Comments from representatives of groups named in the Arctic Research and Policy Act are encouraged. Written comments should be submitted at the public meeting or mailed to the address below by November 12, 1996. If you would like to address the Committee, please call 703-306-1029 to reserve a time.

Costs to Public: None.

Charles E. Myers,

Head, Arctic Interagency Staff, National Science Foundation.

[FR Doc. 96-26016 Filed 10-9-96; 8:45 am]

BILLING CODE 7555-01-M

remediate the building slabs, basements, sub-surface utilities and soil at the Parks Township facility. Radioactive contamination at the licensee's Parks Township facility discussed in the SDP consists of soils and building rubble contaminated with uranium, transuranic radionuclides, and byproduct material resulting from licensed operations that occurred from the late 1950s until the early 1990s.

The NRC will require the licensee to remediate the Parks Township facility to meet NRC's decommissioning criteria, and during the decommissioning activities, to maintain effluent and doses within NRC requirements and as low as reasonably achievable.

Prior to approving the decommissioning plan, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment. Approval of the SDP will be documented in an amendment to SNM-414.

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this Federal Register notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738; or
2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

Interagency Arctic Research Policy Committee

In accordance with the Arctic Research and Policy Act, Pub. L. 98-373, the National Science Foundation (NSF) announces the following meeting:

Name: Interagency Arctic Research Policy Committee (IARPC)—Meeting to Receive Comments on the U.S. Arctic Research Plan.

Date and Time: Wednesday, November 13, 1996, 2:00-3:30 PM.

Place: National Science Foundation, Room 390, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open. The meeting is open to the public.

Contact Person: Charles E. Myers, Office of Polar Programs, Room 755, National Science Foundation, Arlington, VA 22230, Telephone: (703) 306-1029.

Purpose of Meeting: Section 109(a) of the Arctic Research and Policy Act requires a biennial revision of the United States Arctic Research Plan (the next revision is due in July 1997). Section 109(a) of the Act further requires the Interagency Arctic Research Policy Committee to consult with the public during development of the Plan.

Representatives of the groups named in section 109(a) of the Act as well as members of the general public are invited to obtain a copy of the current plan (available from: Arctic Research and Policy Staff, National Science Foundation, 4201 Wilson Boulevard, Room 755, Arlington, VA 22230, telephone (703) 306-1029), and to bring any comments they may have to the meeting. Staff of the Interagency Committee will be present to receive comments and answer questions. The Interagency Committee and its staff and working groups are preparing the revision to the Plan.

The U.S. Arctic Research Plan is organized to address research needs in the following areas:

1. Arctic Oceans and Marginal Seas;

NUCLEAR REGULATORY COMMISSION

[Docket No.: 070-364]

Consideration of Amendment Request for Decommissioning the Babcock and Wilcox Facility in Parks Township, Pennsylvania, and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for decommissioning the Babcock and Wilcox Facility in Parks Township, Pennsylvania, and opportunity for a hearing.

The U.S. Nuclear Regulatory Commission is considering issuance of a license amendment to Special Nuclear Material License No. SNM-414 (SNM-414), issued to the Babcock and Wilcox Company, Pennsylvania Nuclear Service Operations (the licensee), to authorize decommissioning of its former plutonium processing facility in Parks Township, Pennsylvania. This amendment does not relate to the decommissioning of the licensee's Shallow Land Disposal Area, which is under a separate license.

The licensee has been decommissioning the buildings at the Parks Township facility in accordance with the conditions discussed in SNM-414. On January 26, 1996, the licensee submitted a site decommissioning plan (SDP) to NRC for review that summarized the decommissioning activities that will be undertaken to

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR § 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Babcock and Wilcox Company, R. D. 1, Box 355, Vandergrift, PA 15690 Attention: Mr. Don K. Sgarlata; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the site decommissioning plan is available for inspection at the NRC's Public Document Room, 2120 L Street N.W., Washington, D.C. 20555 and in NRC's Local Public Document Room located at the Apollo Memorial Library, 219 North Pennsylvania Avenue, Apollo, PA 15613.

Dated at Rockville, Maryland, this 3rd day of October, 1996.

For the Nuclear Regulatory Commission.
Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96-26054 Filed 10-9-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket Nos. 50-317, 50-318, and 72-8]

Baltimore Gas and Electric Company; Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Calvert Cliffs Independent Spent Fuel Storage Installation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval of the transfer of, and issuance of amendments to, Facility Operating License No. DPR-53, DPR-69, and SNM-2505, issued to Baltimore Gas and Electric Company (BGE), (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI), located in Calvert County, Maryland.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the transfer of control of the operating licenses and amend them to reflect the transfer of control of the licenses for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and the Calvert Cliffs ISFSI held by BGE. The proposed license transfers would transfer authority to possess and operate Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and the ISFSI from BGE to Constellation Energy Corporation. The proposed amendments would change the licenses, to reflect this transfer by substituting Constellation Energy Corporation in place of BGE as the licensee for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and the ISFSI. The proposed action is in accordance with the licensee's application dated April 5, 1996.

The Need for the Proposed Action

The proposed actions are required to approve and reflect the transfer of control of the licenses discussed above. The transfer and amendments reflecting the transfer of control will have minimal impact on the operation of the facilities. The transfer and amendments will not affect the Technical Specifications or license conditions for the facilities.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed transfer of control of the licenses and related amendments and concludes that there will be no changes to the operation of Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and Calvert Cliffs ISFSI since the Constellation Energy Corporation management directly responsible for the operation will be experienced BGE managers.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the transfer of control and related amendments would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological

environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and the Environmental Assessment for Calvert Cliffs ISFSI, dated March 1991.

Agencies and Persons Consulted

In accordance with its stated policy, on September 18, 1996, the staff consulted with the Maryland State official, Richard I. McLean of the Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission 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 5, 1996, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 4th day of October 1996.

For the Nuclear Regulatory Commission.
Alexander W. Dromerick,
Senior Project Manager, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96-26053 Filed 10-9-96; 8:45 am]

BILLING CODE 7590-01-P

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

**Implementation of Tariff-Rate Quota for
Imports of Beef**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that USTR has determined that New Zealand, pursuant to its request, is no longer a participating country for purposes of the export certification program for imports of beef under the tariff-rate quota.

DATES: The action is effective October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Len Condon, Deputy Assistant United States Trade Representative for Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW, Washington, DC 20508; telephone: (202) 395-9564.

SUPPLEMENTARY INFORMATION: The United States maintains a tariff-rate quota on imports of beef as part of its implementation of the Marrakesh Agreement Establishing the World Trade Organization. The in-quota quantity of that tariff-rate quota is allocated in part among a number of countries. As part of the administration of that tariff-rate quota, USTR provided, in 15 CFR Part 2012, for the use of export certificates with respect to imports of beef from countries that have an allocation of the in-quota quantity. The export certificates apply only to those countries that USTR determines are participating countries for purposes of 15 CFR Part 2012. USTR, pursuant to an earlier request by the government of New Zealand, previously determined that New Zealand was a participating country.

The government of New Zealand has now requested that, effective October 1, 1996, New Zealand no longer be considered as a participating country for purposes of the export certification program. Accordingly, USTR has determined that, effective October 1, 1996, New Zealand is not a participating country for purposes of 15 CFR Part 2012. As a result, imports of beef from New Zealand will no longer need to be accompanied by an export certificate in order to qualify for the in-quota tariff rate.

Charlene Barshefsky,
Acting United States Trade Representative.
[FR Doc. 96-26039 Filed 10-9-96; 8:45 am]

BILLING CODE 3190-01-M

**Action Under Section 305 of the Trade
Agreements Act of 1979**

AGENCY: Office of the United States Trade Representative.

ACTION: Action Under Section 305 of the Trade Agreements Act of 1979.

On July 1, 1996, I identified Germany as a country that maintains in government procurement of heavy electrical equipment, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses. Pursuant to section 305(g)(2) of the Trade Agreements Act of 1979, as amended, I determined at that time that immediate imposition of the sanctions specified in section 305(g)(1)(B) of the Act would harm the public interest of the United States, and accordingly suspended imposition of those sanctions until September 30, 1996, to allow more time for negotiation between the United States and the Commission of the European Communities, representing Germany.

Prior to September 30, 1996, the United States held numerous consultations with the Commission of the European Communities, representing Germany, to address the discriminatory practices cited. On September 25, 1996, the German Cabinet approved a proposal for legislative reform of the procurement remedies system in Germany. I have also been assured by the German Government that prior to enactment of the reform legislation, the German Government will take a number of actions to ensure that procuring entities comply with their international obligations. These steps go a long way in addressing U.S. concerns. Until the legislation is actually enacted, however, there is no assurance that our concerns will be addressed in a permanent fashion. Therefore, I have determined to further suspend sanctions while legislation is pending and monitor developments in Germany. I will review my decision if the U.S. Government is dissatisfied with the details of the legislative reform package, there are unreasonable delays in the submission or passage of such legislation or U.S. firms experience difficulties with future procurements while legislation is pending. A first review will be conducted no later than December 1, 1996.

This determination shall be published in the Federal Register.

Dated: October 1, 1996.
Ambassador Charlene Barshefsky,
Acting United States Trade Representative.
[FR Doc. 96-26179 Filed 10-9-96; 11:45 am]
BILLING CODE 3110-01-M

**PRESIDENT'S COUNCIL ON
INTEGRITY AND EFFICIENCY**

**Senior Executive Service Performance
Review Board Membership**

AGENCY: President's Council on Integrity and Efficiency (PCIE).

ACTION: Notice.

SUMMARY: This notice sets forth the names and titles of the current membership of the PCIE Performance Review Board.

EFFECTIVE DATE: October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Individual Offices of (the) Inspector General.

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General's Act of 1978, as amended, has created independent audit and investigative units—Offices of (the) Inspector General—at 57 Federal agencies. In 1981, the President's Council on Integrity and Efficiency (PCIE) was established by Executive Order as an interagency committee charged with promoting integrity and effectiveness in Federal programs. The PCIE is chaired by the Office of Management and Budget's Deputy Director for Management, and comprised principally of the 27 Presidential appointed Inspectors General (IGs). The primary objectives of the PCIE are (1) mounting collaborative efforts to address integrity, economy and effectiveness issues that transcend individual Federal agencies; and (2) increasing the professionalism and effectiveness of IG personnel throughout the Government.

II. PCIE Performance Review Board

Under 5 U.S.C. 4314(c) (1)-(5) and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the President's Council on Integrity and Efficiency Performance Review Board are as follows:

Members	Title
Agency for International Development	
Everett L. Mosley Carol L. Levy C. Michael Flannery Robert S. Perkins	Deputy Inspector General. Assistant Inspector General for Investigations. Assistant Inspector General for Security. Legal Counsel.
Department of Agriculture	
Joyce Fleischman Christine Jung Paula F. Hayes James R. Ebbitt Richard D. Long Robert W. Young, Jr Craig L. Beauchamp Jon E. Novak	Deputy Inspector General. Deputy Inspector General for Investigations. Assistant Inspector General for Policy Development & Resources Management. Assistant Inspector General for Audit. Deputy Assistant Inspector General for Audit. Deputy Assistant Inspector General for Audit. Assistant Inspector General for Investigations. Deputy Assistant Inspector General for Investigations.
Department of Commerce	
Michael Zimmerman John Newell	Deputy Inspector General. Assistant Inspector General for Audits.
Department of Defense	
Nicholas T. Lutsch Robert J. Lieberman Donald Mancuso Russell A. Rau Clifford F. Broome Joel J. Leson David K. Steensma, II William G. Dupree Donald E. Davis David A. Brinkman John F. Keenan Thomas F. Gimble Paul J. Granetto Michael G. Huston Shelton R. Young Stephen A. Whitlock John C. Speedy, III	Assistant Inspector General for Administration & Information Management. Assistant Inspector General for Auditing. Assistant Inspector General for Investigations. Assistant Inspector General for Policy & Oversight. Director for Departmental Inquiries. Deputy Assistant Inspector General for Administration & Information Management. Deputy Assistant Inspector General for Auditing. Deputy Assistant Inspector General for Investigations. Deputy Assistant Inspector General for Audit Policy & Oversight. Director, Audit Follow-up. Director, Investigation Operations. Director, Readiness and Operational Support. Director, Contract Management. Director, Analysis Planning & Technical Support. Director, Logistics & Support. Special Assistant for Ethics & Internal Programs. Special Assistant.
Department of Energy	
Gordon W. Harvey Gregory H. Friedman Michael W. Conley Judith D. Gibson William H. Garvie Herbert Richardson Stanley R. Sulak	Principal Deputy Inspector General. Deputy Inspector General for Audit Services. Deputy Inspector General for Inspections. Assistant Inspector General for Policy, Planning & Management. Assistant Inspector General for Investigations. Deputy Assistant Inspector General for Investigations. Director Audit Policy, Plans & Programs.
Department of Health and Human Services	
Michael F. Mangano Thomas D. Roslewicz Joseph E. Vengrin George Reeb Joe Green John A. Ferris John E. Hartwig Robert E. Richardson George Grob Dennis J. Duquette Eileen Boyd D. McCarty Thornton	Principal Deputy Inspector General. Deputy Inspector General for Audit Services. Assistant Inspector General for Audit Policy/Oversight. Assistant Inspector General for Health Care Financing Audits. Assistant Inspector General for Public Health Service Audits. Assistant Inspector General for Human, Family & Department Services Audits. Deputy Inspector General for Investigations. Assistant Inspector General for Criminal Investigations. Deputy Inspector General for Evaluation & Inspections. Deputy Inspector General for Management & Policy. Deputy Inspector General for Enforcement & Compliance. Counsel to the Inspector General.

Members	Title
Lewis Morris	Assistant Inspector General for Litigation Coordination.
Department of Housing and Urban Development	
John J. Connors	Deputy Inspector General.
Kathryn M. Kuhl-Inclan	Assistant Inspector General for Audit.
Patrick J. Neri	Assistant Inspector General for Investigation.
Judith Hetherton	Counsel to the Inspector General.
Department of Justice	
Robert L. Ashbaugh	Deputy Inspector General.
Mary W. Demory	Assistant Inspector General for Management & Planning.
Howard L. Sribnick	General Counsel.
Department of Labor	
Patricia Dalton	Deputy Inspector General.
Sylvia Horowitz	Assistant Inspector General for Management & Council.
John Getek	Assistant Inspector General for Audit.
F. M. Broadaway	Assistant Inspector General for Investigations.
Veronica Campbell	Director, Office of Evaluations & Inspections.
Department of State	
John C. Payne	Deputy Inspector General.
Richard Melton	Deputy Inspector General.
M. Milton MacDonald	Assistant Inspector General for Audits.
James K. Blubaugh	Assistant Inspector General for Inspections.
Robert S. Terjesen	Assistant Inspector General for Investigations.
Jon Wiant	Assistant Inspector General for Security & Intelligence Oversight.
Department of Transportation	
Mario A. Lauro, Jr	Deputy Inspector General.
Roger P. Williams	Senior Counsel.
Raymond J. DeCarli	Assistant Inspector General for Auditing.
Wilbur L. Daniels	Assistant Inspector General for Inspections & Evaluations.
Lawrence H. Weintrob	Deputy Assistant Inspector General for Auditing.
Patricia J. Thompson	Director of Administration.
Alexis M. Stefani	Director, Office of Transportation Program Audits.
Department of the Treasury	
Richard Calahan	Deputy Inspector General.
Dennis Schindel	Assistant Inspector General for Audit.
James Cottos	Assistant Inspector General for Investigations.
Gary Whittington	Assistant Inspector General for Policy, Planning & Resources.
William Pugh	Deputy Assistant Inspector General for Financial Audits.
John Balakos	Associate Inspector General for Program Audits.
Department of Veterans Affairs	
Michael J. Costello	Assistant Inspector General for Investigations.
David H. Gamble	Deputy Assistant Inspector General for Investigations.
Michael G. Sullivan	Assistant Inspector General for Auditing.
Michael Slachta, Jr	Deputy Assistant Inspector General for Auditing.
Jack H. Kroll	Assistant Inspector General for Departmental Reviews & Management Support.
John H. Mather, M.D	Assistant Inspector General for Healthcare Inspections.
Maureen T. Regan	Counselor to the Inspector General.
Environmental Protection Agency	
Nikki Tinsley	Deputy Inspector General.
Kenneth Konz	Assistant Inspector General for Audit.
John Jones	Assistant Inspector General for Management.
Allen Fallin	Assistant Inspector General for Investigations.
Emmett Dashiell	Deputy Assistant Inspector for Investigations.

Members	Title
Federal Emergency Management Agency	
Richard Skinner	Deputy Inspector General.
Nancy Hendricks	Assistant Inspector General for Audits.
Paul Lillis	Assistant Inspector General for Investigations.
General Services Administration	
Joel S. Gallay	Deputy Inspector General.
Kathleen S. Tighe	Counsel to the Inspector General.
James E. Henderson	Assistant Inspector General for Investigations.
Gary Seybold	Deputy Assistant Inspector General for Investigations.
William E. Whyte, Jr	Assistant Inspector General for Auditing.
Eugene L. Waszily	Deputy Assistant Inspector General for Auditing.
National Aeronautics and Space Administration	
Lewis D. Rinker	Assistant Inspector General for Partnership & Alliances.
Nuclear Regulatory Commission	
Thomas J. Barchi	Assistant Inspector General for Audit.
Office of Personnel Management	
Joseph R. Willever	Deputy Inspector General.
Harvey D. Thorp	Assistant Inspector General for Audits.
Railroad Retirement Board	
William H. Tebbe	Assistant Inspector General for Investigations.
Small Business Administration	
Karen S. Lee	Deputy Inspector General.
Phyllis K. Fong	Assistant Inspector General for Management & Legal Counsel.
Stephen Marica	Assistant Inspector General for Investigations.
Peter L. McClintock	Assistant Inspector General for Auditing.
Thomas C. Cross	Assistant Inspector General for Inspection & Evaluation.
Social Security Administration	
Daniel W. Blades	Deputy Inspector General.
Pamela M. Gardiner	Assistant Inspector General for Audit.
Daniel R. Devlin	Deputy Assistant Inspector General for Audit.
James G. Huse, Jr	Assistant Inspector General for Investigations.
Thomas J. Blatchford	Deputy Assistant Inspector General for Investigations.
Karen M. Shaffer	Assistant Inspector General for Management Services.
Donald G. Anderson	Deputy Assistant Inspector General for Management Services.
Judith A. Kidwell	Counsel to the Inspector General.

Dated: September 24, 1996.

June Gibbs Brown,

Inspector General, Department of Health and Human Services; and Vice Chair, PCIE.

[FR Doc. 96-26024 Filed 10-9-96; 8:45 am]

BILLING CODE 4150-04-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-37783; File Nos. SR-Amex-96-31]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc., Relating to Listing Criteria for Equity Linked Notes

October 4, 1996.

I. Introduction

On August 14, 1996, the American Stock Exchange, Inc. ("Amex"), filed proposed rule changes with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to amend their respective issuer listing standards for Equity Linked Notes ("ELNs")³

Notice of the proposal was published for comment and appeared in the Federal Register on August 27, 1996.⁴ No comment letters were received on the proposed rule change. This order approves the Exchange proposal.

II. Description of the Proposal

ELNs are non-convertible debt securities of an issuer which are linked, in whole or in part, to the market performance of a common stock or a non-convertible preferred stock (the "underlying security"). The Exchange's listing standards currently permit the listing of ELNs if, among other things, (i) the issuer has minimum tangible net worth of \$150 million and (ii) the original issue price of the ELNs, combined with all the issuer's other publicly-traded ELNs, does not exceed 25 percent of the issuer's net worth (the "net worth standard").⁵

The Exchange proposes to add an alternative net worth standard to its ELNs issuer listing standards. Under the new test, an issuer with tangible net

worth of at least \$250 million would be able to issue ELNs without being subject to the limit that the ELNs be no more than 25 percent of the issuer's net worth. Issuers with tangible net worth of at least \$150 million, but less than \$250 million, will still be subject to the 25 percent limit.⁶ This will provide the largest issuers with increased flexibility in their financing and capitalization planning.

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.⁷ Specifically, the Commission finds that the Exchange's proposal strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In particular, the Commission believes that the trading of ELNs permits investors to more closely approximate their desired investment objectives through, for example, shifting some of the opportunity for upside gain in return for additional income.

ELNs, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that a holder of an ELN may not be able to receive full cash settlement at maturity. The Commission believes that the Exchange's proposed alternate ELNs issuer listing standard requiring issuers to have at least \$250 million tangible net worth (without the issuance being limited to 25% of the issuer's net worth), in addition to the existing size and earnings requirements,⁸ reasonably addresses this additional credit risk, and to some extent minimize this risk. The Commission also notes that the revised standard is identical to that approved for other issuer-based products, including index, currency, and currency index warrants.⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-Amex-96-31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.
 Secretary
 Securities Exchange Act Release No. 36168 (August 29, 1996), 61 FR 46637 (September 7, 1996) (SR-Amex-94-38).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-26063 Filed 10-9-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37784; File Nos. SR-NYSE-96-25]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the New York Stock Exchange, Inc., Relating to Listing Criteria for Equity Linked Debt Securities

October 4, 1996.

I. Introduction

On August 16, 1996, the New York Stock Exchange, Inc. ("NYSE"), filed proposed rule changes with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to amend their respective issuer listing standards for Equity Linked Debt Securities ("ELDS").³

Notice of the proposal was published for comment and appeared in the Federal Register on August 27, 1996.⁴ No comment letters were received on the proposed rule change. This order approves the Exchange proposal.

II. Description of the Proposal

ELDS are non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock (the "underlying security"). The Exchange's listing standards currently permit the listing of ELDS if, among other things, (i) the issuer has minimum tangible net worth of \$150 million and (ii) the original issue price of the ELDS, combined with all the issuer's other publicly-traded ELDS, does not exceed 25 percent of the issuer's net worth (the "net worth standard").⁵

The Exchange proposes to add an alternative net worth standard to its ELDS issuer listing standards. Under the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ ELDS are non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.

⁴ See Securities Exchange Act Release No. 37585 (August 20, 1996), 61 FR 44116.

⁵ See NYSE Listed Company Manual Para. 703.21.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ ELNs are non-convertible debt securities of an issuer which are linked, in whole or in part, to the market performance of a common stock or a non-convertible preferred stock.

⁴ See Securities Exchange Act Release No. 37587 (August 20, 1996), 61 FR 44097.

⁵ See Amex Company Guide Section 107B.

new test, an issuer with tangible net worth of at least \$250 million would be able to issue ELDS without being subject to the limit that the ELDS be no more than 25 percent of the issuer's net worth. Issuers with tangible net worth of at least \$150 million, but less than \$250 million, will still be subject to the 25 percent limit.⁶ This will provide the largest issuers with increased flexibility in their financing and capitalization planning.

With respect to the listing of ELDS linked to non-U.S. securities, the NYSE also proposes to amend the definition of "Relative U.S. Share Volume" and to delete the definition of "Relative ADR Volume." Specifically, the NYSE proposes collapsing these two definitions into a single definition of "Relative U.S. Volume." The Exchange states that this change is non-substantive and is proposed solely to clarify and simplify the rule.

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.⁷ Specifically, the Commission finds that the Exchange's proposal strike a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In particular, the Commission believes that the trading of ELDS permits investors to more closely approximate their desired investment objectives through, for example, shifting some of the opportunity for upside gain in return for additional income.

ELDS, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that a holder of an ELDS may not be able to receive full cash settlement at maturity. The Commission believes that the Exchange's proposed alternate ELDS issuer listing standard requiring issuers to have at least \$250 million tangible net worth (without the issuance being limited to 25% of the issuer's net worth), in addition to the existing size and earnings requirements,⁸ reasonably

⁶ The Commission notes that under the ELDS standards, issuers must have a minimum net worth of at least \$150 million.

⁷ 15 U.S.C. 78f(b)(5).

⁸ See NYSE *Listed Company Manual* Paras. 102.01-102.03 or 103.01-103.05.

addresses this additional credit risk, and to some extent minimize this risk. The Commission also notes that the revised standard is identical to that approved for other issuer-based products, including index, currency, and currency index warrants.⁹

The Commission also believes that the NYSE's proposal to amend the definition of "Relative U.S. Share Volume," delete the definition of "Relative ADR Volume," and collapse the two definitions into a single definition of "Relative U.S. Volume" reasonably addresses its desire to clarify and strengthen its rule language.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-NYSE-96-25) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-26064 Filed 10-9-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37780; File No. SR-PSE-96-03]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to Proposed Rule Change Relating to the Lead Market Maker Program

October 3, 1996.

I. Introduction

On January 16, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal relating to changes to its Lead Market Maker ("LMM") Program. The proposed rule change was published for comment in the Federal Register on March 18, 1996.³ The Exchange filed an amendment ("Amendment No. 1")⁴ to

⁹ See Securities Exchange Act Release No. 36165 (August 29, 1995), 61 FR 46653 (September 7, 1996) (SR-NYSE-94-41).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 36952 (March 11, 1996), 61 FR 11072.

⁴ Amendment No. 1 provides further justification and rationale for the PSE's proposed changes to the LMM Rule. Amendment No. 1 also provides revised language to the proposed Rule 6.82 changes. Letter from Michael D. Pierson, Senior Attorney,

its proposal on August 11, 1996. The Exchange filed a second amendment ("Amendment No. 2")⁵ to its proposal on September 26, 1996. No comments were received on the proposed rule change. This order approves the Exchange's proposal as amended.

II. Description of the Proposal

PSE Rule 6.82 ("LMM Rule") sets forth the basic rules and procedures applicable to LMMs and the LMM Program.⁶ The Exchange proposes to modify Rule 6.82 by adding several new substantive provisions and by restructuring the rule and clarifying some of its existing provisions. The purpose of the proposal is to enhance the LMM Program and to clarify and streamline the LMM Rule. The proposed changes include, more specifically, the following:

1. Current PSE Rule 6.82(c)(6) provides that LMMs are guaranteed 50% participation in transactions occurring at their disseminated bids and offers in their allocated issues. The Exchange is proposing to create an exception to this provision.⁷ Specifically, with regard to multiply-traded issues, the proposed rule will provide that if the average daily trading volume in an issue reached 3,000 contracts at the Exchange for three consecutive months, and if (i) in the case of an issue traded by two options exchanges, the Exchange's share of the total multi-exchange customer trading volume in the issue drops from above 70% to below 70%, or (ii) in the

Regulatory Policy, PSE, to Michael A. Walinskas, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated August 9, 1996.

⁵ Amendment No. 2, like Amendment No. 1, provides further justification and rationale for the PSE's proposed changes to the LMM Rule and provides revised language to the proposed Rule 6.82 changes. Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Janet Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated September 26, 1996.

⁶ The LMM Rule was adopted in January 1990 as a pilot program. See Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462. The pilot program most recently was extended to September 30, 1997. See Securities Exchange Act Release No. 37767 (September 30, 1996).

⁷ Current Rule 6.82(b)(3)(iii) provides that, subsequent to appointment of an issue to an LMM, the issue may be reassigned to the market maker system, pursuant to subsection (b)(7), once trading volume in the issue reaches an average daily volume of 3,000 contracts at the Exchange for four consecutive months, immediately preceded by an Exchange average of 75% of the total multi-exchange trading volume for three consecutive months. The Exchange is proposing to delete this provision and modify it as discussed below. It should be noted that both the provision being deleted and the one replacing it are permissive, not mandatory. See Amendment No. 1, *supra* note 4.

case of an issue traded by three or more options exchanges, the Exchange's share of the total multi-exchange customer trading in the issue drops from above 45% to below 45%, the Options Allocation Committee shall evaluate the LMM's performance in that issue, and, based on that evaluation, may reduce the LMM's guaranteed participation in the issue from 50% to 40%. See proposed Rule 6.82(d)(2)(A)-(B).

This proposed change is intended to give discretion to the Options Allocation Committee to reduce an LMM's guaranteed participation when trading volume levels are sufficiently high and the individual situation warrants such action. In making these determinations, the Options Allocation Committee would consider the factors specified in proposed Rule 6.83(e)(4) regarding evaluation of LMMs, including, among other things, consideration of the LMM's evaluation conducted pursuant to Options Floor Procedure Advice ("OFPA") B-13, and the LMM's compliance with Exchange rules, including, but not limited to, Rules 6.32 through 6.40 and Article XI, Section 2 of the Exchange Constitution. The proposal would prompt the Options Allocation Committee to review the performance of LMMs when issues they trade have substantial increases in order flow.⁸

These new provisions assure LMMs that they will continue to retain some guaranteed participation as long as their performance is adequate. Thus, they serve as incentives to attract and keep qualified LMMs who will participate in the LMM Program and offer competitive markets and services. With respect to issues traded only on the Exchange, the Exchange believes that the Options Allocation Committee should have the flexibility to reduce an LMM's guaranteed participation in a high-volume issue from 50% to 25% if it finds, based upon review of an LMM's performance, that that issue has reached a high level of trading volume for reasons other than those for which the LMM is responsible.⁹

With respect to multiply-traded issues, the proposal would allow the Options Allocation Committee to take action in situations where an issue becomes heavily traded at the Exchange, but the Exchange begins to lose a certain share of order flow to a competing exchange.¹⁰ In such situations, if the Options Allocation Committee finds that the LMM was responsible for the loss of order flow, it would have the

ability to encourage better performance by reducing an LMM's guaranteed participation.¹¹

The Exchange has selected the 40% and 25% figures (rather than other figures) because they take into account what the Exchange believes to be an appropriate balance of the factors that would be considered by the Options Allocation Committee in deciding whether to reduce an LMM's guaranteed participation. These factors include compensation to the LMM for taking on the responsibilities of an LMM,¹² and the amount of guaranteed participation necessary for the LMM to compete in multiple trading.¹³

With regard to the proposed change in the number of months (from four to three) that must pass before an LMM's guaranteed participation may be reduced, the Exchange seeks to accelerate the review process so that appropriate action may be taken more quickly.

2. Commentary .02 to Rule 6.82 currently provides that for an LMM to be used in any options class opened for trading at the Exchange before January 1, 1990, such option class must have an average monthly contract volume for the previous six-month period that ranks that class in the bottom 20% of class activity for the options floor. It further provides that any dually-traded options class whose daily contract volume for the previous calendar year falls below 70% of the total multi-exchange volume and any options class subject to reallocation pursuant to OFPA B-13 may be converted to the LMM Program at the discretion of the Exchange. The Exchange is proposing in Amendment No. 1 to eliminate Commentary .02 because the Exchange believes that all issues traded in the options floor should be eligible for trading under the LMM Program.¹⁴ The Exchange believes that Commentary .02 is unnecessarily restrictive. To the extent that it precludes LMMs from trading high volume issues, the Exchange believes that it is unwarranted based on the Exchange's experience with several high-volume, multiply-traded issues that are, and have been, successfully traded under the LMM Program. The Exchange believes that there may be

¹¹ The Options Allocation Committee could, of course, also reallocate the issue to another LMM or to the trading crowd pursuant to Rule 6.82(f)(1)(A) if the individual situation warranted such action.

¹² See Rule 6.82(c).

¹³ The proposed reductions in guaranteed participation to 25% in exclusively-traded issues and to 40% in multiply-traded issues are based on the assumption that in multiply-traded issues, the LMM requires greater participation to compete for order flow with order exchanges.

¹⁴ Amendment No. 1, *supra* note 4.

situations, other than those where reallocation currently is permissible, where reallocation to an LMM of a non-multiply-traded issue would be appropriate (e.g. where a trading crowd voluntarily requests an issue to be reallocated and an LMM offers to make better markets and to provide better customer service than any other applicant for the issue). Furthermore, the Exchange asserts that the current restrictions place the PSE at a competitive disadvantage to other exchanges. See e.g. CBOE Rule 8.80(a).¹⁵

The Exchange also is proposing to delete the reference to Commentary .02 in Rule 6.82(a)(2) because, under the proposal, Commentary .02 will be deleted.¹⁶

3. Under the proposal, if an issue is reallocated from an LMM to a market maker trading crowd, the market quality and service provided by the crowd must equal or better that previously provided or guaranteed by the LMM. Otherwise, the Options Allocation Committee may determine that the issue revert to the LMM system. See proposed Rule 6.82(f)(2).

4. The proposal would allow the Options Appointment Committee to designate a cooperative of market makers to act as an LMM in an issue provided the market makers in the cooperative together maintain a cash or liquid asset position in the amount required for LMM's, set forth in current Rule 6.82(c)(8).¹⁷ A cooperative would consist usually of two or three Exchange members who must be registered as market makers. They may not, however, have "financial arrangements" with one another as defined in PSE Rule 6.40, which restricts such members from trading in the same trading crowd.¹⁸ This provision further states that violations of the Exchange Constitution and Rules committed by a market maker cooperative that is not registered as a broker-dealer may render each market maker thereof personally liable for

¹⁵ Amendment No. 2, *supra* note 5.

¹⁶ *Id.*

¹⁷ Under the proposal, current Rule 6.82(c)(8) will be renumbered as Rule 6.82(c)(11) and will continue to require that an LMM maintain a cash or liquid asset position in the amount of \$100,000 or in an amount sufficient to assume a position of 20 trading units of the security underlying the option the LMM has been allocated, whichever amount is greater.

¹⁸ The PSE recently amended its Rule 6.40, Financial Arrangements of Options Floor Members (formerly, Financial Arrangements of Market Makers) in Securities Exchange Act Release No. 37543, (August 8, 1996), 61 FR 42458. See also Discussion section, *infra*, at notes 39-42 and accompanying text.

⁸ Amendment No. 1, *supra* note 4.

⁹ Amendment No. 1, *supra* note 5.

¹⁰ *Id.*

disciplinary sanctions for such violations.¹⁹

The Exchange believes that such cooperatives will serve a useful function by allowing for greater liquidity in an LMM issue together with greater accountability and service to customers than might otherwise be provided if only one member served as LMM in that issue.²⁰

The Exchange believes that it is appropriate to allow such cooperatives to serve as LMMs so long as the capital requirements and customer service requirements of the LMM Rule are met, and the trading restrictions on members with financial arrangements are satisfied. If trading conditions were to become unduly complicated, however, the Options Allocation Committee could rectify the situation by disallowing more than one member to serve as LMM in that issue.²¹

5. The Exchange proposes that in the absence of extraordinary circumstances, as determined by the Options Allocation Committee, no LMM may be allocated more than 10% of the number of all option issues traded on the Options Floor. See proposed Rule 6.82(e)(3). The purpose of this proposed change is to reduce the Exchange's risk in the event that a member fails or a market break occurs and a number of option issues would then be required to be reallocated.²²

6. The Exchange proposes to replace references to the LMM Appointment Committee in the current rule with references to either the Options Allocation Committee or the Options Appointments Committee. See *passim*. When Rule 6.82 first was adopted in 1990, it provided for the LMM Appointment Committee to administer virtually all of the provisions of the LMM Rule.²³ In June 1992, however, the Commission approved an Exchange proposal that, among other things, eliminated the LMM Appointment Committee, whose functions were assumed by the Options Allocation Committee and the Options Appointment Committee.²⁴ The current proposal conforms Rule 6.82 to Rules 11.10(a) and 11.10(c).²⁵

Currently, and as specified in the rule change proposal, the Options Appointment Committee is responsible for "qualifying" LLMs, *i.e.*, approving their registration as LMMs based on capital requirements (and other factors). The Options Allocation Committee currently is responsible for allocating option issues to LMMs, evaluating LMM performance, and, if necessary, reallocating issues traded by LMMs. In addition, the Exchange notes that the Market Performance Subcommittee of the Options Floor Trading Committee currently is responsible for evaluating the performances of LMMs on a case by case basis when relevant issues arise, and making recommendations to the Options Allocation Committee on those issues.²⁶

7. The proposal specifies that each LMM must designate an approved LMM to act as a substitute LMM (in case the designated LMM is unable to perform its duties), and notify Book Staff of such designation. See proposed Rule 6.82(c)(5). The term "substitute LMM" refers to a member who agrees to act for an LMM on a temporary basis when the registered LMM is unable to be present throughout a trading day. Substitute LMMs, agree to assume all of the registered LMM's duties as LMM. They must previously have been approved by the Options Appointment Committee and must currently meet all other requirements of the LMM Rule, including capital requirements.²⁷

8. Rule 6.82(b)(8) currently provides that if an issue is reallocated pursuant to subsection (b)(7), the LMM shall receive an award of compensation based upon time of service, performance, capital commitment, and trading volume in the subject option issue. It further provides that this award shall not exceed two years. The Exchange proposes to change the term "shall" in that provision to "may." See proposed Rule 6.82(f)(3). The Exchange believes that situations may arise where an issue is reallocated and the LMM should not be entitled to any compensation (*e.g.*, due to lack of performance). Given that the current rule is sufficiently vague that its requirements could be satisfied by providing an LMM with nominal compensation, the Exchange believes that the proposed change is relatively insignificant.²⁸

In addition, in Amendment No. 1, the Exchange is proposing to change the reference to subsection (f)(2) contained in subsection (f)(4) to a reference to subsection (f)(1), because the Exchange

notes that an award of compensation may be appropriate in any of the circumstances set forth in subsection (f)(1). The Exchange notes that under Amendment No. 1, subsection (f)(2) will be deleted.

9. The Exchange proposes to simplify the current provisions concerning appeals from Options Allocation Committee or Options Appointment Committee decisions so that in all cases such appeals are governed by Rule 11,²⁹ and, during such appeals, the Options Allocation Committee shall appoint an interim LMM or trading crowd until such appeal has been resolved. See proposed Rule 6.82(g). The Exchange believes that such decisions are not disciplinary in nature and that such appeals are more properly addressed by Rule 11 relating to appeals of committee decisions, rather than Rule 10, which relates to appeals of disciplinary decisions.

10. The proposal would remove a provision requiring that LMM issues be traded in an area of the trading floor that is separate from other issues. See current Rule 6.82(a)(2). The Exchange does not believe that segregated areas for market maker and LMM trading posts should be required because the integration of LMMs with market maker trading crowds allows for greater competition and liquidity. In addition, with the limited amount of space on the trading floor, the Exchange needs maximum flexibility when it is necessary to move an issue to a new location on the floor. The Exchange also intends to allow individual members to trade issues as LMMs while continuing to trade other issues as market makers in various locations on the floor.³⁰

11. Proposed Rule 6.82(c)(2) states that each LMM is obligated to honor guaranteed markets, including markets required by Rule 6.86³¹ and any better market pledged during the allocation process. The term "better market pledged" refers to the market depth or width that an applicant for a new issue agrees to provide if the Options Allocation Committee allocates that issue to that applicant. The Options Allocation Committee considers such pledges when choosing among applicants for allocations of new option issues. The rule change merely

²⁹ PSE Rule 11 concerns generally committees of the Exchange. PSE Rule 11.7 concerns hearings and review of committee action.

³⁰ Amendment No. 1, *supra* note 4.

³¹ PSE Rule 6.86 states that non-broker-dealer customer orders are entitled to a guaranteed minimum of twenty option contracts at the bid or offering prices being disseminated at the time the order is represented at the designated trading post.

¹⁹ See proposed Rule 6.82(a)(3).

²⁰ Amendment No. 1, *supra* note 4.

²¹ *Id.*

²² *Id.*

²³ See Securities Exchange Act Release No. 27631, *supra* note 6.

²⁴ See Securities Exchange Act Release No. 20843 (June 19, 1992), 57 FR 28889 (approving File No. SR-PSE-92-07); see also PSE Rule 11.10(a) (Options Appointment Committee), Rule 11.10(c) (Options Allocation Committee), and OFPA B-13 (Evaluations of Options Trading Crowd Performance).

²⁵ Amendment No. 1, *supra* note 4.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

reinforces the obvious requirements that LMMs must honor those pledges.³²

12. The Exchange proposes to replace existing language in Rule 6.82(b)(10), which currently states that the "Committee"³³ may perform all functions of the Market Performance Committee of the Board of Governors under the PSE rules with respect to review and evaluation of the conduct of LMMs in the classes of their LMM appointment. Instead, proposed Rule 6.82(e)(4) states that the Options Allocation Committee shall monitor and evaluate the performance of LMMs with regard to quality of markets. This will continue to be done at least semiannually. In reviewing and evaluating an LMM's performance, the Options Allocation Committee will consider, among other things, OFPA B-13, and the LMM's compliance with Exchange rules, including, but not limited to, Rules 6.32 through 6.40 and Article XI, Section 2 of the Exchange Constitution. The Exchange notes that the reference to the Market Performance Committee should be deleted because that entity has been replaced by the Exchange's Board Oversight Committee.³⁴

13. Rules 6.82(b)(4) and (b)(9)(ii) currently provide that an LMM who is the subject of "Committee"³⁵ review in connection with the termination of an LMM appointment will be advised of the review and, upon receipt of such notification, shall have ten (10) business days in which to submit a written statement for the consideration of the Committee, and that formal rules of evidence do not apply to these proceedings.³⁶

The Exchange proposes to delete this provision on the ground that it unnecessarily restricts the Options Allocation Committee, which may need to act promptly in reallocating issues, or the Options Appointment Committee, which may need to act quickly in disqualifying an LMM. The Exchange believes that these committees ought to have the ability to reallocate issues or disqualify LMMs in the normal course of business, and that no special procedures should be required, as is the case with virtually all other actions of committees.

14. In Amendment No. 1, the Exchange is proposing to modify Rules 6.82(b)(3) and 6.82(c)(13) so that members will be required to notify the

Exchange, rather than specific committees (as stated in the original proposal), when certain events occur (i.e. notice of an LMM's resignation or notice of a material financial, operational or personnel change to the LMM). The Exchange believes that this change will make administration of the relevant rule provisions more efficient. The Exchange also is proposing to eliminate the phrase "as determined by the Options Appointment Committee" from the text of proposed Rule 6.82(f)(1)(B) because under that rule, determinations may be made either by the Options Appointment Committee or the Options Allocation Committee, depending upon the issue or circumstances. The Exchange will assure that any such notices will be forwarded to the appropriate Committee.

15. Rule 6.82(b)(7)(ii) currently provides that the use of an LMM in a particular option may be discontinued if "it is * * * determined, considering all the facts and circumstances, that the trading in a particular option class would be better accommodated by the introduction of, or return to, the market maker system without an LMM. An LMM so affected shall be required to terminate his appointment in no fewer than three (3) business days subsequent to his receipt of written notice from the Exchange." The Exchange believes, based on its evaluation of the LMM Program over the past several years, that this vague provision is unnecessary for the operation of the LMM Program.³⁷

16. In Amendment No. 1, the Exchange is proposing to modify OFPA B-13 to provide expressly that all of the rules and procedures applicable to the semiannual evaluations of options trading crowd performance will also apply to evaluations of LMM performance. This change would codify an existing practice of the Options Allocation Committee. As stated in the rule change, trading crowds are compared with other trading crowds and LMMs are compared with other LMMs for determining which trading crowds and which LMMs rank in the bottom 10% of the floor, thereby subjecting them to the remedial action specified in subsection (a) of OFPA B-13. In addition, the Exchange is proposing to modify subsection (i) of OFPA B-13 so that appeals of remedial action taken by the Options Allocation Committee will be governed by Rule 11.7 ("Hearing and Review of Committee Action"), rather than by Rule 10.11(d), which relates to appeals of disciplinary decisions.

17. The Exchange is proposing to eliminate the requirement in current Rule 6.82(c)(3) that the LMM disclose to the trading crowd the elements of any formula the LMM uses for automatically updating market quotations. The Exchange believes that this provision is unnecessary because the Exchange has a longstanding policy that any member who wants to know what formula is being used for automatically updating quotations in an issue can simply ask the Order Book Official, and he or she will provide the information to that member. The Exchange believes that this policy improves upon the existing rule, which is not specific as to when, or to whom the formula must be disclosed.

18. In Amendment No. 2, the Exchange is proposing to strike the words "dually-traded or" from Rule 6.82(d)(2)(A) because they are superfluous.³⁸ The Exchange also is replacing the term "exclusively-traded" in proposed Rule 6.82(d)(2)(B) with the term "non-multiply-traded."³⁹ Finally, the Exchange proposes to restructure the rule, eliminate superfluous provisions, and make other revisions that would clarify the current text of the Rule. See *passim*.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act, in that the proposal is designed to protect investors and the public interest. The Commission finds generally that the proposed changes to the PSE's LMM Program may continue to enhance the market making mechanism at the PSE, thereby improving the market for listed options on the Exchange. Specifically, the Commission finds as follows:

1. The Commission believes that the Exchange's proposal to provide the Options Allocation Committee with the discretion to reduce an LMM's guaranteed participation in a dually- or multiply-traded issue from 50% to 40%, and, in a non-multiply-traded issue, from 50% to 25%, if certain volume levels are reached, is consistent with the Act.

The Commission agrees with the Exchange that once sufficient volume in an LMM issue has been developed it may be appropriate to undertake such action. The Commission also notes that with respect to multiply-traded issues,

³⁸ Amendment No. 2, *supra* note 5.

³⁹ *Id.*

³² Amendment No. 1, *supra* note 4.

³³ Securities Exchange Act Release No. 30843, *supra* note 24.

³⁴ Amendment No. 1, *supra* note 4.

³⁵ Securities Exchange Act Release No. 30843, *supra* note 24.

³⁶ Amendment No. 1 *supra* note 4.

³⁷ *Id.*

the Exchange proposal would provide for such reductions only if the Exchange's share of trading volume fell below certain thresholds. The Commission notes that in making the determination whether to reduce an LMM's guaranteed participation, the Options Allocation Committee will consider factors such as the LMM's evaluation conducted pursuant to OFPA B-13, and the LMM's compliance with Exchange rules, including, but not limited to, Rules 6.32 through 6.40 and Article XI, Section 2 of the Exchange Constitution.⁴⁰ The Commission also notes that these provisions are permissive, not mandatory.

The Commission finds that the distinction the Exchange makes between multiply-traded issues and non-multiply-traded issues is reasonable. As noted by the Exchange, this distinction, is intended to provide an LMM with greater participation for multiply-traded issues, given that it will be competing for order flow with other exchanges. As further noted by the Exchange, when an issue traded only on the Exchange reaches a high level of trading volume, there should be flexibility to reduce the LMM's guaranteed participation where the issue has reached high trading volume for reasons other than those attributable to LMM performance.

The Commission also finds that the change from four to three as the number of months that must pass before an LMM's guaranteed participation may be reduced is reasonable given that it will permit appropriate action to be taken more quickly.

2. Commentary .02 to Rule 6.82 currently restricts the use of an LMM to various options classes. The Exchange is proposing to make all issues traded on the options floor eligible for the LMM Program. The Commission notes that in the original proposal for the LMM Program, the Exchange made eligible new options classes, and those with comparatively low volume.⁴¹ The Exchange believes that Commentary .02 is unnecessarily restrictive based on its successful experience trading several high-volume, multiply-traded issues in the LMM Program. The Commission finds that it is appropriate to open the LMM Program to all issues traded on the options floor because the broadening of the LMM Program may enhance the market making mechanism on the Exchange, thereby improving the markets for all listed options on the Exchange. Specifically, the Commission believes that expanding the LMM

Program may improve the Exchange's market making capabilities by encouraging long-term commitments to options classes.

The Commission notes that the pilot LMM Program recently was extended for another year, and will expire in September 1997.⁴² In approving the modification to the LMM Program making all option issues eligible, the Commission notes, however, that before the LMM Program can be approved on a permanent basis, or further extended, the Exchange must provide the Commission with an updated report on the operation of the LMM Program.⁴³ When the Commission receives this report, it will consider the impact of this modification in deciding whether to approve the LMM Program on a permanent basis, or to further extend it.

3. The Commission believes that, if an issue is reallocated from an LMM to a market maker trading crowd, it is reasonable that the Exchange require that the market quality and service equal or better that previously provided or guaranteed by the LMM. The Commission notes that under the proposal the Options Allocation Committee is not required to reallocate the issue to the LMM system. The Commission believes that it is consistent with the Act to allow the Options Allocation Committee to take such action because it should result in options being reallocated in a manner designed to achieve improved market quality and service.

4. The Commission believes that the Exchange's proposal to allow the Options Appointment Committee to designate a cooperative of market makers to act as an LMM in an issue is consistent with the Act. The Exchange states that it believes that such cooperatives should serve to increase liquidity in an LMM issue and provide for better service to customers than might otherwise exist. In addition, PSE Rule 6.40 should address concerns that may exist that a market maker cooperative might dominate the market in a given issue.⁴⁴ Rule 6.40 provides that a member with a "financial arrangement"⁴⁵ with another member may not bid, offer, and/or trade in the same trading crowd at the same time in

⁴² Securities Exchange Act Release No. 37767, *supra* note 6.

⁴³ *Id.*

⁴⁴ The purpose of Rule 6.40 is to prevent market makers who have financial arrangements with each other from unfairly dominating the market in any option issues or series. PSE Rule 6.40, Commentary .01. The Commission recently approved certain changes to PSE Rule 6.40. Securities Exchange Act Release No. 37543, *supra* note 18.

⁴⁵ PSE Rule 6.40(a), Financial Arrangements Defined.

the absence of an exemption from the Options Floor Trading Commission.⁴⁶ The Commission expects that, as would generally be the case, in determining whether a market maker cooperative should to receive an exemption from the Rule 6.40 restrictions, the Options Floor Trading Committee will consider the potential for market domination the market maker cooperative could pose. The Commission notes that, in addition to a cooperative meeting the Exchange's capital requirements, each member of a cooperative of market makers that is acting as an LMM must comply with Rule 15c3-1 under the Act, the net capital rule.⁴⁷

5. The Commission finds that the Exchange's proposal to prevent a single LMM from being allocated more than 10% of the number of option issues traded on the options floor is consistent with the Act. The Commission agrees with the Exchange that this provision should help to address concerns regarding the potential adverse effects on the maintenance of a fair and orderly market that could arise from a LMM's insolvency or similar event.

6. The Commission finds that the Exchange's proposal to replace references to the LMM Appointment Committee that exist in the current rule with references either to the Options Allocation Committee or the Options Appointment Committee is appropriate given that the LMM Appointment Committee no longer exists.⁴⁸ The Commission believes that this aspect of the Exchange's proposal should add clarity to the LMM Rule.

7. The Commission believes that the Exchange's proposed requirement that each LMM designate an approved LMM to act as a substitute LMM is reasonable and should serve to benefit the LMM system by ensuring that the duties of an LMM absent on a particular day nevertheless will be undertaken by another LMM.

8. The Exchange has proposed to permit, rather than require, the awarding of compensation to an LMM whose issue is reallocated pursuant to proposed Rule 6.82(f)(1). The Commission finds that it is appropriate for the Exchange to determine what compensation, if any, an LMM should receive in the event of reallocation of an issue.

9. The Commission believes that the Exchange's proposal to have all appeals

⁴⁶ PSE Rule 6.40(b)(1). PSE Rule 6.40 formerly imposed a narrower restriction on market makers with financial arrangements with floor brokers. Former PSE Rule 6.40, Commentary .01.

⁴⁷ 17 CFR 240.15c3-1.

⁴⁸ See Securities Exchange Act Release No. 30843, *supra* note 24.

⁴⁰ Amendment No. 1, *supra* note 4.

⁴¹ Securities Exchange Act Release No. 27631, *supra* note 6.

from Options Allocation Committee or Options Appointment Committee decisions be governed by Rule 11 rather than Rule 10 is appropriate given that Rule 10 concerns disciplinary proceedings and appeals, whereas Rule 11 concerns committees of the Exchange. The Commission agrees with the Exchange that because decisions of the Options Allocation Committee and the Options Appointment Committee are not disciplinary in nature, they more properly are addressed by Rule 11.

10. The Exchange has proposed to remove the provision requiring LMM issues be traded in an area of the trading floor that is separate from other issues. The Commission believes that this restriction is not necessary, and agrees with the PSE that removing it will afford the PSE increased flexibility in allotting limited space, and similarly will allow PSE members to trade issues as LMMs while continuing to trade other issues as market makers.

11. The Commission agrees with the PSE that the provision that an LMM honor any "better markets pledged during the allocation process" reinforces and serves to formalize the implicit requirement that an LMM honor pledges made during the allocation process, and therefore is reasonable.

12. The Commission believes that the Exchange's proposal to replace a reference to "Committee" with one to Options Allocation Committee is appropriate given that "Committee" in current Rule 6.82 refers to the LMM Appointment Committee which no longer exists.⁴⁹ Similarly, the current reference to Market Performance Committee, now the Board Oversight Committee, is removed. The Commission believes that both these changes add clarity to the Exchange's proposal.

13. The Exchange proposes to remove the current provision that states that an LMM that is the subject of Committee review in connection with the termination of an LMM appointment shall have ten business days in which to submit a written statement for the consideration of the Committee. The Exchange has stated that this provision unnecessarily restricts the Options Appointment Committee and the Options Allocation Committee, which may need to act promptly to disqualify an LMM or to reallocate issues, as the case may be. Moreover, the Exchange states that the Options Allocation Committee should be able to effect reallocation in the normal course of its business, and that no special procedures

should be required, given that other actions of committees require no such special procedures.

The Commission believes that this aspect of the Exchange's proposal is appropriate, given that it would allow the Options Appointment Committee to disqualify an LMM due to a material financial, operational, or personnel change warranting immediate action, and furthermore, would permit the Options Allocation Committee to reallocate issues promptly. A ten day notification period is at odds with such a need for prompt action. The Commission finds that the removal of the ten day notice provision is consistent with the Act. Furthermore, the Commission finds that the elimination of this provision is consistent with appeals from Options Allocation Committee or Options Appointment Committee decisions being governed by Rule 11⁵⁰ concerning committees of the Exchange.

14. The Commission agrees that requiring members to notify the Exchange, rather than a specific committee, when certain events occur, such as notice of an LMM's resignation or notice of a material financial, operational, or personnel change to the LMM, will make administration of the relevant rule provisions more efficient. The Commission also agrees that deletion in Rule 6.82(f)(1)(B) of the phrase "as determined by the Options Appointment Committee" is appropriate, where determination of whether a material change in the LMM's operations or status has occurred may be made, depending on the circumstances, by either the Options Appointment Committee or the Options Allocation Committee.

15. The Commission believes that the proposal to delete the provision in current Rule 6.82(b)(7)(ii) requiring an LMM to terminate his appointment within three business days of written notification by the Exchange of a determination that trading in a particular option would be better accommodated by the introduction of, or return to, the market maker system without an LMM, is appropriate. The Commission agrees with the Exchange that the provision is vague, and notes that Rule 6.82 contains more specific provisions for the reallocation of a particular option of another LMM or to the market maker trading crowd.⁵¹

16. The Commission believes that the modification of OFPA B-13 to provide

expressly that all of the rules and procedures applicable to the semiannual evaluations of options trading crowd performance will also apply to evaluations of LMM performance is appropriate. The Commission agrees that this modification is appropriate as the codification of existing practice of the Options Allocation Committee, and that it creates consistency in the treatment of LMMs and options trading crowds with respect to evaluations.

The Exchange also is proposing to modify OFPA B-13 so that appeals of remedial action taken by the Options Allocation Committee will be governed by Rule 11 rather than Rule 10. The Commission believes this modification is consistent with the Exchange's proposal that appeals of decisions from the Options Allocation Committee and the Options Appointment Committee will be governed by Rule 11 concerning appeals of committee decisions, rather than Rule 10 concerning appeals of disciplinary decisions.

17. The Commission finds that the elimination of the requirement to disclose to the trading crowd the formula used by the LMM to automatically update market quotations is appropriate in light of the longstanding Exchange policy, that this information is available upon request from the Order Book Official. The Commission considers the provision requiring LMM disclosure of this information therefore to be superfluous and unnecessary.

18. The Commission finds appropriate the revisions to the proposal that would strike the words "dually-traded or" from Rule 6.82(d)(2)(A) because they are superfluous, and replace the term "exclusively-traded" in proposed Rule 6.82(d)(2)(B) with the term "non-multiply-traded." The Commission finds that the other revisions and restructurings to Rule 6.82 serve to add clarity to the Exchange's proposal, and therefore are appropriate.

19. The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment Nos. 1 and 2 consist of clarifying changes that serve to strengthen the Exchange's proposal, but do not materially alter the terms of the proposal as originally described when published for comment.⁵² Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve

⁴⁹ See PSE Rule 11.7 (concerning hearings and review of committee action).

⁵¹ See current Rule 6.82(b)(4); proposed Rule 6.82(f).

⁵² Securities Exchange Act Release No. 36952, *supra* note 3.

Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-96-03 and should be submitted by October 31, 1996.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵³ that the proposed rule change (SR-PSE-96-03), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵⁴

Jonathan G. Katz,
Secretary.

[FR Doc. 96-26013 Filed 10-9-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37781; File No. SR-PSE-96-16]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to Listing and Trading Guidelines for Municipal Bonds

October 3, 1996.

On June 5, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to

adopt on a permanent basis rules for the listing and trading of municipal bonds.

Notice of the proposed rule change was published for comment and appeared in the Federal Register on July 9, 1996.³ No comments were received on the proposal. On October 1, 1996, PSE submitted Amendment No. 1 ("Amendment No. 1") to the proposal to adopt additional maintenance criteria.⁴ This order approves the proposal, as amended.

I. Description of the Proposal

On March 7, 1994, the Commission approved an Exchange pilot program providing for the listing and trading of "municipal securities," as defined in Section 3(a)(29) of the Act ("pilot program").⁵ The Exchange now proposes to adopt this municipal securities pilot program on a permanent basis.

Under the pilot program, and municipal security may be eligible for Exchange listing provided it is rated as investment grade by at least one nationally recognized rating service, and satisfies the Exchange's distribution criteria for bonds of issuers whose corporate securities are not listed on the Exchange, *i.e.*, the size of issue must be at least \$20 million principal amount/ aggregate market value, with at least 100 holders. In addition, the Exchange may consider such other information as it deems necessary to evaluate the appropriateness of the issue for exchange trading, including the financing structure and/or arrangement of the issuer.

Any municipal securities listed by the Exchange must be assigned to a specialist and traded in accordance with all PSE regulations otherwise applicable to the trading of securities listed on the Exchange. As with corporate bonds, trade reports and quotation information for municipal securities will be disseminated over Network B. However, to ensure uniformity of practice within the securities industry, proposed Rule 5.13(i) provides that all aspects of the trade reconciliation process, including comparison, settlement and clearing will be governed by the applicable requirements of the Municipal

Securities Rulemaking Board ("MSRB").⁶

Under the pilot program, any purchase or sale of a municipal security shall be exempt from the provisions of the Exchange's off-board trading rules.⁷ In addition, the pilot program is not intended to otherwise alter the existing regulatory framework and oversight applicable to municipal securities trading.⁸ Finally, a municipal security would be subject to delisting in the event it were no longer rated as investment grade by a nationally recognized rating service.

To accommodate the listing of municipal securities, the PSE proposes to apply the same rules and conditions of the pilot program, as noted above, on a permanent basis. In addition, the Exchange proposes to adopt the following rules on a permanent basis: Rule 3.2(e)(3) (basic listing requirements); Rule 3.5(d)(5) (maintenance requirements);⁹ Rule 5.13(i) (comparance, settlement, and clearance); and Rule 5.46(xv) (exemption to off-board trading requirements).

The Exchange proposes that any municipal security that it lists be assigned to a specialist and traded in accordance with all PSE regulations otherwise applicable to the trading of securities on the Equity Floors of the Exchange.¹⁰ Finally, the Exchange represents that it will require that its members who trade municipal bonds listed on the Exchange will have an adequate understanding of the tax

⁶ MSRB Rule G-3 provides specific qualification requirements for municipal securities principals and representatives. In light of the PSE's qualification requirements for specialists, the Exchange believes it is appropriate for the PSE to rely on these requirements for its specialists in lieu of the Rule G-3 standards. It is important, however, that any specialist selected by the PSE for a listed municipal security be familiar with the characteristics of municipal securities.

⁷ See Rule 5.46.

⁸ The National Association of Securities Dealers ("NASD") has the authority to enforce the MSRB rules. The Exchange notes that it will also be responsible for enforcing MSRB rules for the listed municipal securities. The PSE's enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

⁹ In addition to requiring a particular issue to be rated as investment grade by at least one nationally recognized rating service, PSE will require the issue to have a market value or principal amount outstanding of at least \$400,000. See Amendment No. 1. The Commission also notes that PSE Rule 3.5(s), which sets forth reasons for suspending or delisting a security, will also apply to municipal securities.

¹⁰ To date, the Exchange has not listed or traded any municipal securities under the pilot program.

³ See Securities Exchange Act Release No. 37385 (June 28, 1996), 61 FR 36099.

⁴ Letter from Michael Pierson, PSE, to Stephen M. Youhn, SEC, dated September 30, 1996.

⁵ See Securities Exchange Act Release No. 33721 (March 7, 1994), 59 FR 11636 (March 11, 1994). On July 5, 1994, the Commission approved a 120-day extension to the Exchange's Municipal Bond Trading Pilot Program. See Securities Exchange Act Release No. 34317 (July 5, 1994), 59 FR 35546 (July 12, 1994). The pilot program expired in November 1994.

¹ 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

² 17 CFR 240.19b-4 (1994).

implication of the trading of such bonds.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).¹¹ In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of exchange be designated to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in, securities, and, in general, to protect investors and the public interest.

Only municipal bond issuers that qualify under PSE's proposed non-listed corporate issuer distribution criteria will be considered for listing on the Exchange. These criteria, along with any other information relevant to determine whether the issue is appropriate for exchange trading, should ensure that only municipal bond issues that can support a liquid trading market will be listed on the Exchange. Moreover, the regulatory scheme in place for municipal securities now would continue to apply to PSE-listed municipal securities, with the additional coverage of PSE-listed municipal securities, with the additional coverage of the PSE surveillance program to the trading of the listed municipal securities. Finally, PSE-listed municipal securities will be traded like other PSE-listed bonds and will be subject to applicable MSRB Rules. For these reasons, the Commission believes the PSE proposal is consistent with the requirements of Section 6(b) of the Act.

The Commission finds good cause to approve Amendment No. 1 to the filing prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Amendment requires that outstanding municipal issues maintain a market value or principal amount of at least \$400,000. The Commission believes that this standard, when considered with the existing requirement that an issue be rated as investment grade by at least one nationally recognized rating service, will ensure that only those issues which are sufficiently liquid for exchange trading will continue to trade on the PSE. In addition, the Commission notes

that the Amendment adopts criteria which makes the PSE's maintenance criteria substantially similar to standards which exist at the American and Philadelphia Stock Exchanges. Accordingly, consistent with Section 6(b)(5) of the Act, the Commission believes that good cause exists to approve Amendment No. 1 to the filing on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-96-16 and should be submitted by October 31, 1996.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-PSE-96-16) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-26062 Filed 10-9-96; 8:45 a.m.]

BILLING CODE 8010-01-M

[Release No. 34-37782; File No. SR-Phlx-96-36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Value Calculations by the Index Calculation Engine ("ICE") System

October 3, 1996

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ notice is hereby given that on August 5, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to utilize the Exchange's own internal system's calculation of index values as: (1) A "back-up" to the values currently calculated by an outside securities information vendor, as well as (2) the official index value for Phlx index options.² Currently, the Exchange utilizes a securities information vendor to calculate the index value for all of its listed index options. Thus, this vendor is the "reporting authority" pursuant to Rule 1000A(b)(9), meaning the institution or reporting service designated by the Exchange as the official source for calculating and determining the current value or the closing index value of the index.

Recently, the Exchange implemented its own index value calculation system, known as the Index Calculation Engine ("ICE"). ICE is a system administered by Regulatory Services, which currently serves as a back-up to the official reporting authority by separately calculating index values. Specifically,

¹ 15 U.S.C. 78s(b)(1).

² The Commission notes that the Phlx seeks to utilize the ICE system value as the official index value in three instances. First, the ICE system value would act as the official index value in the event the reporting authority designated by the Phlx is experiencing difficulties in disseminating an accurate value (e.g., computer failure). Under these circumstances, the ICE system value would be used as the official index value only for the time period that is necessary for the designated agent to correct its problem. This would allow trading to continue in the affected security without interruption.

Second, if the Phlx believes that the problem is chronic, the Exchange may want to designate a different reporting authority or become the reporting authority itself. Therefore, the Phlx seeks the authority to continue to disseminate the ICE system index value during the time it takes the Exchange to make this decision. As soon as this decision is made, however, the Phlx would submit a rule filing pursuant to Section 19 of the Act to switch the reporting authority.

Finally, due to economic and efficiency considerations, the Phlx may want to act as the reporting authority for certain Phlx index options on a permanent basis. Telephone call between Edith Hallahan, Special Counsel, Regulatory Services, Phlx, and Anthony P. Pecora, Attorney, Division of Market Regulation, SEC (Sept. 3, 1996).

¹¹ 15 U.S.C. 78f(b)(5) (1982).

¹² 15 U.S.C. § 78s(b)(2) (1988).

¹³ 17 CFR 200.30-3(a)(12) (1994).

the ICE system receives market price information from another securities information vendor respecting the securities underlying each Phlx index and, employing the particular methodology (*i.e.*, capitalization-weighted), calculates an index value every 15 seconds. Daily, Exchange staff monitors the ICE terminal to ensure that its value coincides with that of the reporting authority, including the last sale prices, outstanding shares, component issues and divisor. The ICE system contains both the Bridge values and the Exchange-calculated values. The system is directed to disseminate the reporting authority's value as opposed to the ICE value at the start of each day. Alarms are established so that if a particular index value calculated by the reporting authority varies by more than a set amount from ICE's value, the alarm will ring to alert staff. If it is determined that the price disruption is due to incorrect information or a technical difficulty with the reporting authority, Exchange staff is able to immediately switch over to the ICE system to disseminate that value. Thus, ICE provides the Exchange with an independent, internal index value as a back-up.

Accordingly, the Exchange proposes to temporarily utilize the ICE system as its reporting authority when ICE indicates that the reporting authority's value is incorrect or the data feed is subject to technical difficulties. The Exchange also proposes to cease using the designated outside vendor as the reporting authority in specific instances, implementing the ICE system as the reporting authority.

II Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

Currently, three market (broad-based) index options, seven industry (narrow-based or sector) index options and the Super Cap Index option trade on the

Exchange. The reporting authority for each index option is currently Bridge Data. For each index option listed on the Exchange, the specifications and descriptions filed with the Commission detail how the index value is calculated and that the calculation is conducted by Bridge.

In the course of reviewing inconsistencies in index value calculations as well as the disaster recovery implications of using a single, outside reporting authority, the Exchange determined to create and build its own internal system for the calculation and dissemination of index values. Recently, the ICE system was completed, tested, and implemented as a surveillance tool for Phlx Regulatory Services and Market Surveillance staff monitoring Exchange index options trading.

In an effort to make use of the capabilities of the ICE system, the Exchange proposes its implementation where its official reporting authority is not able to accurately calculate an index value. This may occur for many reasons, including a system malfunction due to a power surge, cut cable, or line problem. The reporting authority's value may also be based on incorrect price information received from that vendor's source of such data, which the Exchange is able to verify and adjust using another vendor's values. Prior to the implementation of the ICE system, Exchange staff became aware of faulty index values by way of customer complaint, specialist or market maker notification (who generally calculate index values independently), and staff discovery due to routine monitoring of index values and news releases. None of these methods is instantaneous nor independently reliable.

With the ICE system in place, Exchange staff can immediately detect an inconsistency in the value between the two systems and investigate further to identify where the discrepancy lies. Because the system automatically alerts staff to such inconsistencies, monitoring index values becomes less reliant on staff efforts. The staff role then becomes focused on researching and resolving the inconsistencies identified by the ICE system.

The Exchange also believes that the development of the ICE system facilitates its ability to serve as the reporting authority for its own index values. Thus, the system will serve not only as a back-up, but also as the official reporting authority, replacing the outside securities information vendor. The Exchange is proposing to designate the ICE system as the reporting authority temporarily when the other

value is not reliable, as described above. In addition, the Exchange proposes that the ICE system be implemented as the reporting authority for index values temporarily (replacing the official reporting authority instantaneously) until another official reporting authority can be designated, whether it is ultimately ICE or another securities information vendor.

Lastly, the Exchange proposes to utilize the ICE system to calculate index values for customized options that may be traded in the future on the Exchange. Because customization will allow for various methods of determining the index value, the Exchange must provide a method for calculating and disseminating such values. For instance, a P.M.-settled option such as the National Over-the-Counter Index option could be customized for A.M. settlement, requiring the calculation of a morning value for that option. The Exchange believes it will be more efficient and economical to rely on ICE for these functions, rather than contract with an outside vendor.

The Exchange believes that its ICE system supports the integrity of index values on the Exchange in two ways. First, it serves as an automatic trigger that the official value may be incorrect, with independent verification of data. Second, the ICE system provides an automatic replacement value.

The Exchange notes that pursuant to Rule 1102A, neither the Exchange nor its Reporting Authority shall have any liability stemming from the calculation or dissemination of the current or closing index value.³ The Exchange also notes that other exchanges' rules contain substantially similar definitions of reporting authority and liability provisions, and utilize a wide variety of reporting authorities, including calculating certain index values internally, thereby serving as their own reporting authority.⁴

Thus, the Exchange believes that the proposed rule change is consistent with

³ See also Phlx By-Law Article XII, Section 12-11, Use of Facilities of Corporation (limiting the Exchanges' liability concerning damages sustained by a member or member organization utilizing the Exchange's facilities).

The Commission notes, however, that blanket disclaimers may not apply in all instances. See letter from Murray L. Ross, Vice President and Secretary, Phlx, to Anthony P. Pecora, Attorney, Division of Market Regulation, SEC, dated August 21, 1996, in File No. SR-Phlx-96-11 (stating that the Phlx will not rely upon the limitation of liability clause concerning 3-D options in cases of intentional misconduct or any violation of the federal securities laws); 15 U.S.C. 78cc (limiting the ability to waive the protection of the federal securities laws).

⁴ See, e.g., Chicago Board Options Exchange Rule 24.1, Interpretations and Policies .01.

Section 6 of the Act⁵ in general, and in particular, with Section 6(b)(5),⁶ in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as well as to protect investors and the public interest, by creating a back-up and alternative determination of index values on the Exchange. This, in turn, promotes the integrity of the index settlement process by improving both the responsiveness to erroneous values as well as providing a replacement value to ensure the accuracy of disseminated index values.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-96-36 and should be submitted by October 31, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-26065 Filed 10-9-96; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Notice; Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 122.8-4(d)) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6⁷/₈ percent for the October-December quarter of FY 97.

Pursuant to 13 CFR 108.503-8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13

CFR 108.503-4) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. The initial rate for a fixed rate loan shall be the legal rate for the term or the loan.

John R. Cox,

Associate Administrator for Financial Assistance.

Calculation of SBA's Peg Rate and Direct Lending Rate

SBA's PEG RATE is a Weighted Average of the last three months like-maturity rates from the Treasury Department, as follows:

Month	Weight	Rate	Weighted rate
July	1	7	7
August	2	7	14
September	3	6.75	20.25
Sum			41.25

Divide by 6 to get peg rate 6.875=peg rate; round to the nearest eighth=6⁷/₈

SBA's direct rate is last month's like-maturity Treasury Rate plus 1%, as follows:

September=6.75+1

Direct Rate=Last Month+1=7.75

Peg Rate: 6⁷/₈

Direct Rate: 7.750%

Average Maturity Calculation

Of EOL Loans, 1404—12.5 Average Maturity of EOL Loans

Of HAL Loans, 954—14.42 Average Maturity of HAL Loans

Of VET Loans, 816—10.92 Average Maturity of VET Loans

	Weighted Average		
Weight-EOL Loans.	0.442344	5.529300	
Weight-HAL Loans.	0.300567	4.334177	
Weight-VET Loans.	0.257088	2.807410	
Sum	1	12.67088	=Average Maturity.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 C.F.R. 200.30-3(a)(12).

TABLE 1.—INTEREST RATES FOR SPECIFIC MATURITIES

	Used for August 1996 (percent)	Indicated for September 1996 (percent)	Changes
1 year	5 ⁷ / ₈	5 ³ / ₄	- 1/8
5 years	6 ⁵ / ₈	6 ³ / ₈	- 1/4
15 years	7	6 ⁷ / ₈	- 1/8
20 years	7 ¹ / ₈	7	- 1/8

TABLE 2.—RANGE OF MATURITIES TO WHICH THE RATES FOR SEPTEMBER 1996 APPLY

From	To	Rate (percent)
0 years—3 months	0 years—4 months	5 ¹ / ₄
0 years—5 months	0 years—6 months	5 ³ / ₈
0 years—7 months	0 years—9 months	5 ¹ / ₂
0 years—10 months	0 years—11 months	5 ⁵ / ₈
1 year—0 months	1 year—2 months	5 ³ / ₄
1 year—3 months	1 year—6 months	5 ⁷ / ₈
1 year—7 months	1 year—11 months	6
2 years—0 months	2 years—6 months	6 ¹ / ₈
2 years—7 months	3 years—7 months	6 ¹ / ₄
3 years—8 months	5 years—2 months	6 ³ / ₈
5 years—3 months	7 years—4 months	6 ¹ / ₂
7 years—5 months	10 years—6 months	6 ⁵ / ₈
10 years—7 months	14 years—0 months	6 ³ / ₄
14 years—1 month	17 years—10 months	6 ⁷ / ₈
17 years—11 months	23 years—5 months	7
23 years—6 months	30 years—0 months	6 ⁷ / ₈

The rates shown for September are based on average market yields from July 21, 1996 through August 20, 1996.

TABLE 1.—INTEREST RATES FOR SPECIFIC MATURITIES

	Used for July 1996 (percent)	Indicated for August 1996 (percent)	Changes
1 year	5 ³ / ₄	5 ⁷ / ₈	+1/8.
5 years	6 ⁵ / ₈	6 ⁵ / ₈	Unchanged.
15 years	7	7	Unchanged.
20 years	7 ¹ / ₈	7 ¹ / ₈	Unchanged.

TABLE 2.—RANGE OF MATURITIES TO WHICH THE RATES FOR AUGUST 1996 APPLY

From	To	Rate (percent)
0 years—3 months	Only	5 ¹ / ₄
0 years—4 months	0 years—5 months	5 ³ / ₈
0 years—6 months	0 years—7 months	5 ¹ / ₂
0 years—8 months	0 years—9 months	5 ⁵ / ₈
0 years—10 months	0 years—11 months	5 ³ / ₄
1 year—0 months	1 year—2 months	5 ⁷ / ₈
1 year—3 months	1 year—5 months	6
1 year—6 months	1 year—8 months	6 ¹ / ₈
1 year—9 months	2 years—1 months	6 ¹ / ₄
2 years—2 months	2 years—9 months	6 ³ / ₈
2 years—10 months	4 years—0 months	6 ¹ / ₂
4 years—1 month	5 years—7 months	6 ⁵ / ₈
5 years—8 months	8 years—1 month	6 ³ / ₄
8 years—2 months	11 years—11 months	6 ⁷ / ₈
12 years—0 months	16 years—0 months	7
16 years—1 month	27 years—1 month	7 ⁷ / ₈
27 years—2 months	29 years—7 months	7

TABLE 1.—INTEREST RATES FOR SPECIFIC MATURITIES

	Used for June 1996 (percent)	Indicated for July 1996 (percent)	Changes
1 year	5 ⁵ / ₈	5 ³ / ₄	+1/8
5 years	6 ³ / ₈	6 ⁵ / ₈	+1/4

TABLE 1.—INTEREST RATES FOR SPECIFIC MATURITIES—Continued

	Used for June 1996 (percent)	Indicated for July 1996 (percent)	Changes
15 years	6 ⁷ / ₈	7	+1 ⁸ / ₈
20 years	7 ¹ / ₈	7 ¹ / ₈	Unchanged

TABLE 2.—RANGE OF MATURITIES TO WHICH THE RATES FOR JULY 1996 APPLY

From	To	Rate
0 years–3 months	0 years–4 months	5 ¹ / ₄
0 years–5 months	0 years–6 months	5 ³ / ₈
0 years–7 months	0 years–8 months	5 ¹ / ₂
0 years–9 months	0 years–10 months	5 ⁵ / ₈
0 years–11 months	1 year–1 month	5 ³ / ₄
1 year–2 months	1 year–3 months	5 ⁷ / ₈
1 year–4 months	1 year–6 months	6
1 year–7 months	1 year–10 months	6 ¹ / ₈
1 year–11 months	2 years–3 months	6 ¹ / ₄
2 years–4 months	3 years–2 months	6 ³ / ₈
3 years–3 months	4 years–3 months	6 ¹ / ₂
4 years–4 months	5 years–8 months	6 ⁵ / ₈
5 years–9 months	8 years–4 months	6 ³ / ₄
8 years–5 months	12 years–7 months	6 ⁷ / ₈
12 years–8 months	16 years–1 month	7
16 years–2 months	26 years–0 months	7 ¹ / ₈
26 years–1 month	29 years–8 months	7

The rates shown for July are based on average market yields from May 21, 1996 through June 20, 1996.

AVERAGE LOAN MATURITY BY LOAN PROGRAM; LOAN PORTFOLIO BASIS

[Quarter ended 06/30/96]

Loan program	Number of loans	Total maturity months	Average maturity months	Average maturity years
Business 7(A):				
Direct	1,123	233,852	208	17.33
Immed Part	35	7,603	217	18.08
Guaranty	175,191	24,441,973	140	11.67
Total	176,349	24,683,428	140	11.67
EOL:				
Direct	1,404	211,096	150	12.50
Immed Part	4	833	208	17.33
Guaranty	379	56,968	150	12.50
Total	1,787	268,897	150	12.50
Handicapped:				
Direct	954	164,866	173	14.42
Immed Part	38	7,526	198	16.50
Guaranty	7	1,613	230	19.17
Total	999	174,005	174	14.50
Veterans:				
Direct	816	106,847	131	10.92
Immed Part	2	480	240	20.00
Guaranty	0			.00
Total	818	107,327	131	10.92
SBIC:				
Direct	117	16,485	141	11.75
Immed Part	0			.00
Guaranty	212	26,832	127	10.58
Total	329	43,317	132	11.00
Displ Bus:				
Direct	393	125,707	320	26.67
Immed Part	39	11,513	295	24.58
Guaranty	2	546	273	22.75
Total	434	137,766	317	26.42

[FR Doc. 96-26061 Filed 10-9-96; 8:45 am]
BILLING CODE 8023-01-M

DEPARTMENT OF STATE

[Public Notice 2450]

Privacy Act of 1974; Creation of a New System of Records

Notice is hereby given that the Department of State proposes to create a new system of records, STATE-61, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and Office of Management and Budget Circular No. A-130, Appendix I. The Department's report was filed with the Office of Management and Budget on September 25, 1996.

This system of records is being created by the Department of State to support its responsibilities with regard to garnishments of certain employees' wages, retirement benefits and other payments under 42 U.S.C. 659 and 5 U.S.C. 5520a. The information included in the system of records is directly related to garnishment actions.

Any persons interested in commenting on this new system of records may do so by submitting comments in writing to Jacquelyn Lilly, Acting Chief, Privacy, Plans, and Appeals Division, Office of Freedom of Information, Privacy and Classification Review, Room 1239; Department of State, 2201 C Street, NW, Washington, DC 20520-1239. This system of records will be effective 40 days from the date of publication, (November 19, 1996), unless the Department receives comments which will result in a contrary determination.

The new system description, "Garnishment of Wages Records, STATE-61" will read as set forth below.

Dated: September 25, 1996.
Ralph Frank,
Acting Assistant Secretary for the Bureau of Administration.

STATE-61

SYSTEM NAME:

Garnishment of Wages Records.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Department of State, 2201 C Street, NW, Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of State employees (current and retired); employees of the

Agency for International Development, United States Information Agency and the U.S. Arms Control and Disarmament Agency; and other employees and personal services contractors listed on the Department's payroll and/or Foreign Service retirement records who have been the subject of court orders to garnish the employee's wages or retirement benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 (Management of Executive Agencies); 22 U.S.C. 2651a (Organization of the Department of State); 22 U.S.C. 3921 (Management of service); 42 U.S.C. (Child support and alimony garnishment); 5 U.S.C. 5520a (Commercial garnishment).

CATEGORIES OF RECORDS IN THE SYSTEM:

Communications between the Office of the Legal Adviser and the Bureau of Finance and Management Policy regarding the employee's garnishment; communications between the Office of the Legal Adviser and the employee who is the subject of the garnishment; communications between the Office of the Legal Adviser and courts or agencies regarding the employee's garnishment proceeding; communications between the Office of the Legal Adviser and a party named in or affected by the garnishment action; and court or agency orders, summons and other documents related to the garnishment action against the employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information in the records system is used by the Office of the Legal Adviser to provide advice and services to the Bureau of Finance and Management Policy and other bureaus and offices in order to comply with court or agency ordered garnishments. The principal users of this information outside the Department of State are: Federal, state and local courts; state and local tax collection and child enforcement offices; the Internal Revenue Service; private collection agencies, law firms and/or other individuals authorized to receive garnished wages or benefits by court or agency order or otherwise involved in a garnishment proceeding. The information may also be released to other federal, state and local government agencies having statutory or other lawful authority to maintain such information. Also see the "Routine Uses" paragraph of the Prefatory Statement published in the Federal Register.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media; hard copy.

RETRIEVABILITY:

By individual name and Social Security Number.

SAFEGUARDS:

All employees of the Department of State have undergone background investigations. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specified information may be obtained by writing to the Director, Office of Freedom of Information, Privacy, and Classification Review; Room 1239, Department of State; 2201 C Street, NW., Washington, DC 20520-1239.

SYSTEM MANAGER AND ADDRESS:

Executive Director; Office of the Legal Adviser; Room 5519A; Department of State; 2201 C Street, NW; Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Office of the Legal Adviser might have records pertaining to them should write to the Director, Office of Freedom of Information, Privacy and Classification Review, Room 1239, Department of State, 2201 C Street, NW, Washington, DC 20520-1239. The individual must specify that he/she wishes the Garnishment of Wages Records to be checked. At a minimum, the individual must include: Name; date and place of birth; current mailing address and zip code; bureau/

agency to which he/she is or was assigned and dates of assignment; retirement system (if applicable); approximate date of when garnishment began; and signature.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access or amend records pertaining to them should write to the Director, Office of Freedom of Information, Privacy and Classification Review (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from: The individual who is the subject of these records; his/her legal representative; federal, state or local courts or agencies; other parties named in or affected by the individual's garnishment proceedings; the Bureau of Personnel; the Bureau of Finance and Management Policy and the Office of the Legal Adviser.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), certain records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), e(4)(G), (H) and (I) and (f) in accordance with Department of State rules published in the Federal Register.

[FR Doc. 96-25832 Filed 10-9-96; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Salt Lake County and Davis County, UT

AGENCY: Federal Highway Administration, (FHWA), UDOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed Interstate improvement project in Salt Lake County and Davis County, Utah.

FOR FURTHER INFORMATION CONTACT: Tom Allen, Project Development Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone: (801) 963-0182; or Larry Kirby, Project Manager, Utah Department of Transportation, Region Two, 2060 South 2400 West, Salt Lake City, Utah 84104, Telephone: (801) 975-4826.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, will

prepare an environmental impact statement (EIS) on a proposal to address the existing and projected traffic needs in the Interstate (I-15) corridor from 500 North in Salt Lake City to 200 North in Kaysville. The Wasatch Front Regional Council has identified a need for improving the I-15 north corridor of Salt Lake City in previous studies. These studies are the I-15 Corridor Study (1991) and the 2015 Salt Lake Area Long Range Transportation Plan Year (1995).

Alternatives that will be considered based on these studies include (1) taking no action (no-build); (2) highway capacity improvements such as additional through lanes, auxiliary lanes, and interchange modifications; (3) transit improvements such as high occupancy vehicle lanes, express bus service, commuter rail, and light rail; (4) travel demand management strategies which create options designed to discourage the single occupant vehicle; (5) transportation system management strategies which improve the efficiency of the existing highway; (6) combinations of any of the above; and (7) other alternatives identified during the scoping process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in the proposed project. Formal public scoping meetings at two different locations will be held in December, 1996. In addition, a public hearing will be held after the draft EIS has been prepared. Public notice will be given of the time and place of the public scoping meetings and the public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or UDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: October 3, 1996.

Michael G. Ritchie,
Division Administrator, Salt Lake City, Utah.
[FR Doc. 96-26018 Filed 10-9-96; 8:45 am]
BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 74-14; Notice 102]

RIN 2127-AD82

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Review: Fatality Reduction by Air Bags; Evaluation Report

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

ACTION: Request for comments on technical report.

SUMMARY: This notice announces the publication by NHTSA of a Technical Report concerning Safety Standard 208, *Occupant Crash Protection*. The report's title is *Fatality Reduction by Air Bags—Analyses of Accident Data through Early 1996*. It evaluates the front-seat occupant fatality rates of current passenger cars and light trucks equipped with air bags, and compares them to the fatality rates of similar vehicles without air bags.

DATES: Comments must be received no later than January 8, 1997.

ADDRESSES: Report: Interested people may obtain a copy of the report free of charge by sending a self-addressed mailing label to Publications Ordering and Distribution Services (NAD-51), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

Comments: All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW, Washington DC 20590. [Docket hours, 9:30 a.m.-4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590 (202-366-2560).

SUPPLEMENTARY INFORMATION: Safety Standard 208 (49 CFR 571.208) requires automatic occupant protection, such as air bags or automatic belts, to be phased into passenger cars (1987-90) and light trucks (1995-98). As mandated by the Intermodal Surface Transportation Efficiency Act of 1991, driver and passenger air bags plus manual 3-point

belts will be required in all cars manufactured on or after September 1, 1997 and light trucks on or after September 1, 1998.

Pursuant to Executive Order 12286, NHTSA is evaluating the occupant protection program to determine the effectiveness, benefits, costs, performance characteristics and public acceptance of automatic occupant protection and the nationwide effort to increase belt use. Under the Executive Order, agencies review existing regulations to determine if they are achieving the Order's policy goals. An evaluation plan was issued in 1990 (56 FR 1586). A June 1992 interim report (57 FR 30293) showed that increased use of manual belts, air bags, and automatic belts were all contributing to a reduction of fatalities and injuries.

The current report focuses on fatality reduction by air bags. It is based on statistical analyses of accident data from the Fatal Accident Reporting System (FARS) from 1986 through early 1996. The principal conclusion is that driver air bags save lives. The fatality reduction benefit of air bags for all drivers is an estimated 11 percent; this percentage is essentially unchanged from previous analyses by NHTSA staff. New, positive findings are that driver air bags save lives in light trucks and in small cars, that passenger air bags save lives of right-front passengers age 13 or older, and that driver air bags provide a significant supplemental life-saving benefit for the driver who buckles up (as well as saving lives of unbelted drivers). On the other hand, preliminary analyses of limited accident data show a higher fatality risk for child passengers age 0-12 in cars with current dual air bags than in cars without a passenger air bag. Also, current air bags may have diminished, or even negligible benefits for drivers age 70 or older, and they do not have a statistically significant effect for drivers of any age group in oblique-frontal crashes.

NHTSA welcomes public review of the technical report and invites the reviewers to submit comments about the data and the statistical methods used in the report. The agency is interested in learning of any additional data that could be used to expand or improve the analyses, including information on individual accident cases involving vehicles equipped with air bags.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and 7 copies from

which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR Part 512).

All comments received before the close of business on the comment closing date will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested people continue to examine the docket for new material.

People desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 96-26023 Filed 10-9-96; 8:45 am]

BILLING CODE 4910-59-P

Surface Transportation Board¹

[STB Finance Docket No. 33132]

Providence and Worcester Railroad Company—Acquisition and Operation Exemption—Certain Rights of Consolidated Rail Corporation

Providence and Worcester Railroad Company (P&W), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Consolidated Rail Corporation (Conrail): (1) the right to haul sand and stone between New Haven, CT, and Freemont, NY, for interchange with the Long Island Railroad at Freshpond Junction, in Queens, NY; (2) an exclusive freight service right, easement, and trackage rights to haul sand and stone over a line owned by the Connecticut Department of Transportation (CDOT) between

milepost 26.1 at the New York/Connecticut State line in Fairfield County, CT, and milepost 72.83 in New Haven, CT, a distance of 46.73 miles; and (3) an exclusive freight service right, easement, and trackage rights to haul sand and stone between Freemont, NY, and the New York/Connecticut State line via: (a) the Conrail Freemont Secondary Track, Oak Point Yard, and the Market Running Track (approximately 14.4 miles); (b) National Railroad Passenger Corporation's (Amtrak) main line-Shell (CP 216) between milepost 18.9 and milepost 15.5 (approximately 3.4 miles); and (c) the line owned by the Metropolitan Transportation Authority (MTA) between milepost 26.1 at the New York/Connecticut State line and milepost 16.3 in New Rochelle, NY (approximately 9.8 miles).

P&W currently originates movements of sand and stone at three aggregate quarries at Wallingford (Reeds Gap), Wauregan, and Branford (Pine Orchard), CT, and interchanges them with Conrail at New Haven for subsequent movement to Freshpond Junction. The proposed transaction is designed to increase the efficiency of the movements by eliminating the interchange and thus permitting single carrier service. The only shipper affected, Tilcon Connecticut, Inc., supports the transaction, and CDOT, Amtrak, and MTA consent to it. P&W and Conrail anticipate consummation as soon as the notice of exemption is effective and conditions to closing have been satisfied or waived. They indicate that arrangements were made to commence movements by October 6, 1996.²

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33132, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW, Washington, DC 20423, and one copy must be served on: (1) James E. Howard, 90 Canal Street, Boston, MA 02114, and (2) Heidi J. Eddins, Providence and

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995 and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

² By decision served September 27, 1996, the Chairman stayed the notice to enable P&W and Conrail to submit supplemental information in support of this proposal to transfer the authority and obligation to transport individual commodities. Upon consideration of the parties' supplemental submissions, the Board lifted the stay by decision served and effective on October 3, 1996. Thus, movements could commence on or after October 3, 1996.

Worcester Railroad Company, 75
Hammond Street, Worcester, MA 01610.
Decided: October 4, 1996.

By the Board, David M. Konschnik,
Director, Office of Proceedings.
Vernon A. Williams,
Secretary.

[FR Doc. 96-26074 Filed 10-9-96; 8:45 am]
BILLING CODE 4915-00-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 Resolution Authorizing (1) Disposition of Securities Held by Organization, and (2) Execution and Delivery of Bonds of Indemnity.

DATES: Written comment should be received on or before December 9, 1996, 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:

Resolution Authorizing (1) Disposition of Securities Held by Organization, and (2) Execution and Delivery of Bonds of Indemnity.

OMB Number: 1535-0052.

Form Number: PD F 1011.

Abstract: The information is requested to establish the authority of an organization to dispose of registered United States Securities and/or execute bonds of indemnity.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business or other for-profit/not-for-profit institutions.

Estimated Number of Respondents: 485.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 243.

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) the cost burden of the collection of information; and (e) 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.

Dated: October 3, 1996.

Vicki S. Thorpe,

Manager, Forms Management Branch.

[FR Doc. 96-26049 Filed 10-9-96; 8:45 am]

BILLING CODE 4810-39-M

Office of Thrift Supervision

Proposed Agency Information Collection Activities

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Thrift Financial Report.

DATES: Written comments should be received on or before December 9, 1996 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention 1550-0023. These submissions may be hand delivered to

1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Comments over 25 pages in length should be sent to FAX Number (202) 906-6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

Request for additional information should be directed to Trudy Reeves, Financial Reporting Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906-7317. Additional information is also available by requesting Document Number 25008 on OTS's Publifax line at (202) 906-5660.

FOR FURTHER INFORMATION CONTACT: Trudy Reeves, Financial Reporting Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906-7317.

SUPPLEMENTARY INFORMATION:

Title: Thrift Financial Report.

OMB Number: 1550-0023.

Form Numbers: OTS 1313, OTS 1568.

Abstract: The information collections described herein will apply to all savings associations. The collections are necessary to monitor and supervise the thrift industry.

Current Actions: After reviewing its current supervisory and examination needs, the OTS is proposing to make certain changes to the Thrift Financial Report (TFR) effective with the March 31, 1997, report. All of the changes are necessary to monitor and supervise the savings industry, conform to accounting pronouncements, promote consistency with the other banking agencies, and to facilitate the assessment of deposit insurance premiums by the FDIC. A brief description of the proposed changes follows:

- In order to provide consistent reporting of assets within the TFR and to report assets on a more consistent basis with the other Banking Agencies, the OTS proposes to require that all assets be reported net of specific valuation allowances, unearned income, and loans-in-process in all schedules of the TFR. This change would have the greatest affect on Schedule SC.

- Because only general valuation allowances would be reported on Schedule SC, the OTS proposes to expand the reconciliation of valuation allowances on Schedule VA to provide a column for general valuation allowances (including ALLL), a column for specific valuation allowances and a total column that would be computer generated. The breakdown of specific

valuation allowances would be eliminated.

- Because loans in process would no longer be reported on Schedule SC, the OTS proposes to add outstanding balances of loans-in-process for construction loans, other mortgage loans, and nonmortgage loans to Schedule CC.

- Due to the supervisory concern over the increase in delinquencies of consumer loans, the OTS proposes to add data regarding consumer loan delinquencies in Schedule PD. This would provide comparability between schedules SC, VA, and PD and facilitate the calculation of ratios for monitoring purposes.

- Because there is a supervisory concern over the increase in amounts reported in "Other" categories in the TFR, the OTS proposes to require that the amounts of the three largest items comprising the amount an association reports in Other Assets, Other Liabilities, Other Noninterest Income, and Other Noninterest Expense be identified through selection of codes provided from a list in the TFR instructions. Correspondingly, the OTS proposes to delete three line items from the Other Asset category and three line items from the Other Liabilities category.

- In order to provide consistent presentation with the other banking agencies and to conform to generally accepted accounting principles (GAAP), the OTS proposes to require the consolidation of subsidiary depository institutions where required by GAAP. Data items would be added to Schedule SQ identifying any savings associations or commercial banks that have been consolidated.

- The OTS proposes to modify the data collected in Schedule SC on loan servicing to conform to SFAS 125, which takes effect January 1, 1997. This data would be consistent with that collected by the other banking agencies.

- To facilitate the calculation of the deposit insurance assessment base, the FDIC has requested that the OTS add two items in Schedule SI to collect data on the netting of items against demand and time and savings deposit accounts.

- Reciprocal demand accounts would be reported net in Schedule SC to conform with GAAP, and to conform with the 1997 proposed changes of the other banking agencies, resulting in the elimination of one line item in Schedule SI.

- On July 3, 1996, the FDIC proposed to amend certain provisions of its assessment regulations that pertain to institutions that belong to one insurance fund but hold deposits that are insured

by the other insurance fund (known as Oakar institutions). One data item in Schedule SI would be replaced with three new items, eliminating the need for completion of the annual growth adjustment worksheet.

Type of Review: Revision.

Affected Public: Business or For Profit.

Estimated Number of Respondents and Recordkeepers: 1383.

Estimated Time Per Respondent: 34.25 hours average.

Estimated Total Annual Burden Hours: 203,301 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: October 2, 1996.

Catherine C.M. Teti,
Director, Records Management and Information Policy.

[FR Doc. 96-26017 Filed 10-9-96; 8:45 am]

BILLING CODE 6720-01-P

[AC-46; OTS No. 03990]

Citizens Federal Savings and Loan Association of Delphos, Delphos, Ohio; Approval of Conversion Application

Notice is hereby given that on September 30, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Citizens Federal Savings and Loan Association of Delphos, Delphos, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: October 4, 1996.

By the Office of Thrift Supervision,
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 96-26035 Filed 10-9-96; 8:45 am]
BILLING CODE 6720-01-M

[AC-45; OTS No. 0600]

The Market Building and Savings Company, Mt. Healthy, Ohio; Approval of Conversion Application

Notice is hereby given that on September 26, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of the Market Building and Savings Company, Mt. Healthy, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: October 4, 1996.

By the Office of Thrift Supervision,
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 96-26034 Filed 10-9-96; 8:45 am]
BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Proposed collection; Comment request

AGENCY: United States Information Agency.

ACTION: Proposed Collection; Comment Request.

SUMMARY: The United States Information Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection requirement concerning the public use form entitled "Certificate of Eligibility for Exchange Visitor Status (J-1 Visa)". This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 [Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)].

The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Title 22 Code of Federal Regulations (CFR), Section 514, Exchange Visitor Program, Final Rule;

and Title 8, Section 101(a)(15) of the Immigration and Nationality Act.

DATES: Comments are due on or before December 9, 1996.

COPIES: Copies of the Request for Clearance (OMB 83-I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619-4408; and OMB review: Ms. Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503, Telephone (202) 395-3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116-0008) is estimated to average 15 minutes 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. Comments are requested on the proposed information collection concerning (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

Current Actions: This information collection will be submitted to OMB for the purpose of renewal, extending the

expiration date and requesting approval of revisions made to the IAP-66.

Title: "Certificate of Eligibility for Exchange Visitor Status", (J-1 Visa).

Form Number: IAP-66.

Abstract: This information collection is used by Exchange Visitor sponsors to appropriately identify an individual seeking to enter the U.S. as an exchange visitor. The completed form is sent to the prospective exchange visitor abroad, who takes it to the U.S. Consulate (Embassy) to secure an exchange visitor (J-1) visa.

Proposed Frequency of Responses:
No. of Respondents—200,000;
Recordkeeping Hours—.15; Total Annual Burden—50,000.

Dated: October 7, 1996.

Rose Royal,

Federal Register Liaison.

[FR Doc. 96-26081 Filed 10-9-96; 8:45 am]

BILLING CODE 8230-01-M

Multi-Regional Projects for International Visitors; Notice; Request for Proposals

Summary: The Office of International Visitors (IV) of the United States Information Agency's (USIA) Bureau of Educational and Cultural Affairs announces an open competition for assistance awards. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)-1 may apply to develop projects for Multi-Regional Groups of International Visitors traveling in the United States for periods of 24 to 30 days. Groups will be comprised of from 12 to 30 American Embassy contacts in the fields of government, politics, economics, journalism and the media, social processes, and business.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and to the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and

guidelines outlined in the Solicitation Package. The U.S. Information Agency projects, programs and assistance awards are subject to the availability of funds and sufficient number of participant nominations.

Announcement Title and Number: All communications with USIA concerning this announcement should refer to the above title and reference number E/VP-97-1.

To Download a Solicitation Package Via Internet: Information about USIA's IV Program is available via Internet at website: <http://www.usia.gov/education/ivp/usintiv.htm>. The entire Solicitation Package may be downloaded from USIA's website at <http://www.usia.gov/> or from the Internet Gopher at [gopher://gopher.usia.gov](http://gopher.usia.gov). Under the heading "International Exchanges/Training," select "Request for Proposals (RFPs)." Potential applicants should read "About the Following RFPs" before downloading.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C., time on the due date indicated for submission of proposals for each project described below. Faxed documents will not be accepted, nor will documents postmarked on the proposal due date but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the due date which has been established for each available project, as follows:

Grassroots Democracy in the U.S. Federal System

Proposal Due Date: January 7, 1997.

Project Dates: 04/03/97-04/24/97.

Contacts: Susan Lockwood, Gail Curtis.

The democratic system of government is predicated on an informed and involved citizenry which interacts with elected officials who in turn are responsive to the views and interests represented throughout society. The aim of this project is to demonstrate that citizen participation in the political process is a means of harnessing the power of constructive criticism to effect change and to ensure checks on government. The project will incorporate an examination of the decentralized structure of the U.S. government, the interrelationships among the national, state, and local levels, and how citizens communicate with each level. The visitors—civic and community leaders, political party leaders, government officials, educators and journalists—will observe firsthand how grassroots organizations allow citizens to contribute to the debate on

critical issues ranging from foreign policy initiatives to local community efforts. The various processes essential to successful advocacy efforts, such as fund-raising, coalition building, lobbying elected officials, publicity campaigns and volunteer recruitment will be thoroughly explored during community visits around the country. Case studies in direct citizen legislative efforts will be based on initiative or referendum questions decided in the recent elections.

Drug Abuse Prevention and Education Programs

Proposal Due Date: January 7, 1997.

Project Dates: 04/10/97–05/01/97.

Contact: Azza Zaki.

Drug abuse has proven to be an intractable problem in the entire world. A whole new generation is now showing signs of falling into the habits of their elders regarding use, both recreational and hard-core, of illicit substances. This project, designed for drug rehabilitation professionals and educators directly involved in halting drug abuse, will provide an overview of the U.S. response to drug abuse by surveying education strategies and discussing treatment and interdiction methods. Emphasis will be placed on programs successfully developed to help schools and communities eliminate the use of alcohol and drugs by young people. Strategies will be discussed for assessing drug and alcohol problems as well as for long-term ways of alleviating them. The role which the media can play in discouraging young people from embracing a drug-influenced lifestyle by conveying the hazards of substance abuse and by deglamorizing the drug culture will be explored. Visitors will visit schools, local community organizations and treatment centers as well as federal and local law enforcement representatives, and will be encouraged to share perspectives gained through efforts in their own countries to stamp out the use of debilitating drugs.

The Role of Congress in the U.S.

Political System

Proposal Due Date: January 7, 1997.

Project Dates: 04/24/97–05/15/97

Contacts: Janet Beard, Azza Zaki.

Of all American national institutions, the Congress presents perhaps the prime example of representative democracy at work, affording as it does day-to-day evidence of the efficacy of this form of government as it engages in making legislation and appropriating money. This project will provide visitors with a good understanding of the American political process and the role of Congress in that process. It will provide an opportunity to assess the impact of

the 1996 election on the makeup of the legislative branch of the U.S. government, and to examine the extent to which newly elected members of Congress, and the loss of many retired veterans in both houses, will affect the direction the U.S. takes in both its foreign and domestic policies. Through this examination, visitors will learn about the complexity of the system, its strengths and weaknesses, its checks and balances, and the forces that drive it for better or for worse. The project is designed for politicians, academics, government officials, journalists, and labor leaders who have a background or special interest in American politics.

The Globalization of Business and Markets

Proposal Due Date: February 4, 1997.

Project Dates: 05/01/97–05/22/97.

Contacts: Paul Kreutzer, Colleen Fowler.

International trade and worldwide instantaneous communications have created a world in which much of local economic and financial enterprise is inextricably linked to conditions and influences which prevail in many far-flung parts of the world. This project will examine the evolving impact of this globalization on various levels of business, markets and communities. Meetings with large and small businesses and finance companies will allow visitors to review the breadth of economic globalization, from instantaneous worldwide capital flows for business to global sourcing of common consumer goods in markets. Global or regional multilateral institutions will lend their perspectives on the integration of developing countries into both global and regional trade and finance flows. Visits with local community leaders will review public-private responses to the challenges of globalization, including community efforts to attract foreign investment to support economic diversification, retain workers, and sustain a high quality of life in a post-industrial economy. Experts will address critical questions about the potentially negative effects of globalization, such as corporate downsizing, worker displacement, divergence of education and income classes, and rise of anti-trade sentiment. This project is designed for international business leaders; finance, trade, and development officials; community and labor leaders; and academics and journalists concerned with business issues.

Entrepreneurship in the U.S.

Proposal Due Date: February 4, 1997.

Project Dates: 05/08/97–05/29/97.

Contacts: Susan Lockwood, Gail Curtis.

Small business has often been referred to as the engine of economic expansion and job creation. The "entrepreneurial spirit" has been a driving force in the prior success of the U.S. economy and is being looked to as the best hope for reviving economic vitality in regions and industries that have been hard hit in recent years. This project, designed for private business persons, government officials, academics and journalists with an interest in the American free market system, will provide both a theoretical and practical overview of entrepreneurship in the United States. Visitors will study the factors which affect and stimulate private enterprise including prevailing U.S. economic conditions, current Administration policy, the influence of labor, and the impact of immigration, expanding global markets, increasing liberalization of trade, and public/private cooperation. Techniques employed to keep the U.S. competitive in a global economy, including government programs on both the federal and state levels to foster and incubate small business enterprises, will be featured. Visits to one-stop centers for government permits and licenses will showcase the efforts local authorities are making to streamline and untangle the excessive paperwork which frequently confronts the independent business person. Through visits with American entrepreneurs in variously economically-endowed regions of the country, visitors will gain an understanding of the opportunities and challenges they face.

International Security and U.S. Defense Policies

Proposal Due Date: February 4, 1997.

Project Dates: 05/15/97–06/05/97.

Contacts: Janet Beard, Azza Zaki.

With the post-Cold War period well underway, U.S. defense and strategic policies are moving beyond the traditional security concerns which dominated the era of superpower competition. Forces re-alignment, counter-proliferation, domestic and international economic security, peacekeeping and humanitarian missions now form major components of U.S. security and defense policies. This project will examine American defense and international security decision-making from the perspective of government officials and resources and will incorporate the views of interested foreign policy advocacy organizations. The project will review the long-term interests, threat analyses, and force structure considerations which motivate

U.S. security policies, and study the decision-making process with officials and analysts of international security affairs. Visitors will study U.S. defense resources and capabilities, as well as the interaction of defense and foreign policy institutions at the Executive and Congressional level. Leading analysts and critics of U.S. policy will present their views on current international and regional security questions, including multilateral peacekeeping, the role of NGOs, and examples of recent crisis management. This project is designed for mid-level defense and security government officials, military officials and analysts, and scholars concerned with security, strategic, and foreign policy issues.

Independent Judiciary

Proposal Due Date: February 4, 1997.
Project Dates: 05/29/97–06/19/97.
Contact: Colleen Fowler.

An independent judiciary is one of the preeminent requirements for a flourishing democracy, providing as it does protection against arbitrary action by authorities and a credible avenue for redress of grievances and enforcement of contracts. This project is intended for members of the judiciary or their staffs who would benefit from enhanced understanding of the American judicial and legal systems as well as community leaders, law professors, constitutional scholars, and justice ministry officials. In meetings with sitting judges and other authorities, visitors will discuss the principles underlying American jurisprudence such as federalism and the separation of powers, constitutionalism, guarantees of due process, and the Bill of Rights. Visitors will observe courtroom proceedings and meet with prosecutors, public defenders, and court administrators. International rule of law and human rights questions will be addressed by informed experts. Visitors will discuss with legal, political, and academic specialists the variety of means utilized in this country for the selection of judges at the federal, state, and local levels. Current issues in legal reform, the administration of justice, and court management will be identified.

Investigative Reporting in the U.S.

Proposal Due Date: March 4, 1997.
Project Dates: 06/05/97–06/26/97.
Contacts: Margery Benson, Gail Curtis.

As public officials and businesses rely increasingly on public relations professionals to aid in the packaging of news and opinion conveyed to and by the media, journalists have become increasingly sophisticated in

documenting information published as fact for the American public. With the increasing complexity of financial and political transactions, reporters are challenged to document paper trails, check and recheck obscure information, and even to question the fallibility of authoritative sources. This project will provide reporters, journalists, and editors with an overview of the current trends in American investigative reporting regarding ethics and legal concerns, confidentiality of sources, censorship, methodologies for acquiring and confirming statistics, freedom of information procedures and privacy concerns. Efforts to protect investigative journalists whose personal safety is endangered by their efforts to expose corruption and malfeasance will be reviewed. The role which computer-assisted journalism can serve in advancing investigative reporting will also be discussed. The project will include attendance at the annual meeting of Investigative Reporters and Editors to be held in Phoenix, Arizona, June 12–15.

International Environmental Issues

Proposal Due Date: March 4, 1997.
Project Dates: 06/19/97–07/10/97.
Contact: Azza Zaki.

Environmental concerns have come to play an increasingly important role in all aspects of U.S. foreign policy making, including defense and security policies as well as trade negotiations. This project will demonstrate that the United States recognizes the tremendous impact environmental problems have on quality of life for people around the world dealing with the transborder challenges presented by global climate change, pollution, overpopulation, deforestation, and competition for dwindling resources. Appreciation of the role that preservation of the global environment plays in maintaining national security and well-being has led both the State and Defense Departments to create special offices focusing on the need for sensitivity to environmental questions in conducting foreign relations. In this project, which will feature environmental problems and solutions that are international in scope, visitors will look at the unilateral, bilateral, and multilateral efforts in which the United States has been involved and discuss the various levels of success these approaches have had. It will include a serious examination of the political and economic implications of environmental policies and behaviors. Visitors will also discuss environmental regulations, cooperative efforts among businesses, governments, and environmentalists,

sustainable development issues, transnational disputes over resources and pollution, and the role of international science and policy symposia in achieving cooperative solutions. The expected visitors will be decision-makers in government, industry, environmental organizations, academia, and the media.

The U.S. Financial System

Proposal Due Date: March 4, 1997.
Project Dates: 06/26/97–07/23/97.
Contacts: Paul Kreutzer, Colleen Fowler.

The U.S. financial system is becoming ever more intertwined with the global marketplace as it continues to experience growth in its financial market activity in which investors seek the riskier, higher yield capital markets. Consequently, the U.S. financial market serves as both a model and a funding source for emerging markets. Visitors in this project will study the U.S. financial system in its global and domestic context and will look at transferable experiences in market development. The program will present both U.S. and multilateral perspectives and policies and will discuss project finance, structural adjustment mechanisms, privatization, and provisions to assist and reform developing country markets. The group will visit regional finance centers across the country for discussions of lending practices and other developments in financial products. A principal goal of the project is to provide visitors with practical information on confidence-building measures they can implement aimed at attracting foreign capital and investment for the advancement of economic development objectives in their home countries. The project is designed for finance and trade ministry officials, private entrepreneurs, investment analysts, bankers, Chamber of Commerce officials, scholars, and journalists concerned with finance, business, public policy and economics.

International Crime Issues

Proposal Due Date: April 1, 1997.
Project Dates: 07/10/97–07/31/97.
Contacts: Janet Beard, Azza Zaki.

Mounting concerns about international terrorism and drug trafficking on U.S. soil have made American citizens and law enforcement officials aware of the need to increase international cooperative efforts to counter these threats to civil society. This program will examine the structure of the U.S. criminal justice system and how its principles are applied to international crime issues. It will present the Constitutional and historic

basis for the structures, functions, limitations and obligations of the system. U.S. efforts—unilaterally, bilaterally, and multi-laterally—to combat international crime will be examined by looking at new ideas and procedures currently being considered and developed to address specific international crime problems. Critical issues such as those raised by extradition and extraterritoriality in the pursuit and prosecution of international criminals will be addressed. Through team split programming, visitors will be able to pursue subjects of more individualized interest ranging from terrorism or narcotics interdiction, to money laundering or pirating of intellectual property. This project is intended for government officials, law enforcement officials and criminologists, prosecuting and private attorneys, academicians, journalists, and other professionals who deal with international crime.

Civic Journalism: Informing the Public Debate in a Democracy

Proposal Due Date: April 1, 1997.

Project Dates: 07/24/97–08/14/97.

Contacts: Janet Beard, Colleen Fowler.

Civic journalism, the involvement of news outlets in the reporting of news in the name of civic improvement, is a concept that has been in use for less than a decade, but that is garnering a great deal of support and attention across the country. As newsrooms become more involved in not only reporting the news but actually shaping it—by gathering citizen focus groups to ask what they want to read, by sponsoring town meetings to address local concerns, or by soliciting public comments from the voters as well as the candidates—the hope is that citizens will become better informed and more interested as well as involved in politics and community affairs. Visitors will talk with the Pew Center for Civic Journalism to explore their role in sponsoring this work. They will also meet with the newspaper editorial staffs, radio and television managers, and community activists who have led this initiative and the citizens who have been its beneficiaries. Analysis of the impact of civic journalism on “getting out the vote” and in countering negative campaigning in the previous year’s election will be provided. This project will provide journalists and editors, civic educators, community leaders, and government officials with an introduction to civic journalism and with ideas they can implement at home to foster an informed public debate on civic issues.

U.S. Trade Policies

Proposal Due Date: April 1, 1997.

Project Dates: 07/31/97–08/21/97.

Contacts: Susan Lockwood, Gail Curtis.

With the initial stages of the World Trade Organization underway, the United States, along with its world trading partners, is now looking to maintain the hard-won gains toward establishing an international system of free trade. Additionally, regional trade organizations, as represented in the Western Hemisphere by the North American Free Trade Agreement [NAFTA], have presented a further consideration to both business and labor in their relationship to the international marketplace. Intended for trade, commerce, and business professionals, this project will explore the U.S. experience and policies in the post-GATT era and address key issues related to free trade such as non-tariff barriers, agricultural subsidies, environmental regulations, regional trade pacts, and the prospects for expanding cooperative trade arrangements in a free trade and investment climate. The program will provide opportunities to meet with key policy makers in U.S. government economic and trade sectors, and to survey the existing climate in the U.S. for international trade and investment in the private commercial and financial sectors. Visitors will explore the gamut of U.S. perspectives on trade from ardent protectionists to free traders by meeting with labor, business, industry, academic, banking, federal and local government representatives.

The Global Information Highway

Proposal Due Date: May 7, 1997.

Project Dates: 08/07/97–08/28/97.

Contacts: Paul Kreutzer, Colleen Fowler.

The last decade of the 20th century will likely be remembered as the era of global linkage through information technology. This project will introduce visitors to that technology, including the corporate players who created it, the government players wanting to regulate it, and the consumers who are making increasing use of the evolving Internet, telecommunications, and information superhighway. The project will review the activities of major contributors to the information revolution, including software companies, telecommunications conglomerates and entrepreneurs, entertainment companies, and consumer and public interest groups. Issues studied will include uses of the information highway by educational institutions to promote access to learning and by businesses to

facilitate communication as well as sales. Debates such as those over the conflict between the free flow of information and a need to control undesirable information will be highlighted. Implications of national interest in and attempts to regulate an increasingly borderless information flow will be examined by experts and advocates on both sides of the issue. This project is intended for technology industry businesspeople, managers, engineers, regulators, educators, academic and journalist observers of technology and culture, as well as entrepreneurs active in developing information resources.

Building Democracy In Diverse Communities

Proposal Due Date: May 7, 1997.

Project Dates: 08/14/97–09/04/97.

Contacts: Janet Beard, Gail Curtis.

As an increasingly multi-ethnic and even multi-lingual society, the United States faces challenges in absorbing newly-arrived immigrant communities as well as in ameliorating relationships between groups where deep-rooted bitterness still exists. Intended for civic and community leaders, local government officials, social workers, educators, sociologists, cultural historians, and journalists with a substantive interest in the government and culture of the U.S., this project will emphasize the strengths which cultural diversity brings to American society and its government. By illustrating the broad range of opinions and viewpoints held by Americans and how these are distilled through the democratic process, the program will provide a greater understanding of the democratic form of government in the U.S. and how it fosters common values across ethnically and racially diverse communities. Examples of programs which strive to foster understanding and improved relations between the races and ethnic groups which comprise the fabric of U.S. society will be highlighted. By visiting cities and small towns located in diverse economic regions of the country, visitors will also meet with a wide variety of grassroots organizations to observe the extensive range of ways in which American citizens can become involved in the political process and advocate their particular cause or viewpoint.

Radio Broadcasting in the U.S.

Proposal Due Date: June 3, 1997.

Project Dates: 09/11/97–10/08/97.

Contacts: Margery Benson, Azza Zaki.

While frequently overshadowed by its visual sister medium, radio broadcasting continues to play a pivotal role in

providing information and entertainment to its American audience and has received renewed interest to the extent that "talk radio" has assumed an elevated position in American political discourse. This project, designed for mid-level radio producers, programmers, editors, writers, announcers and administrative personnel, will address the principles of responsible and independent journalism while providing an opportunity to upgrade technological knowledge and journalistic skills. It will consist of visits to a wide variety of radio stations representing the spectrum of outlets in the U.S., including commercial, public, religious, national, and local stations. Visitors will hear discussions of broadcasting regulations and journalism ethics, observe programming, news gathering, interviewing and production techniques, and learn about the impact of technology on radio broadcasting in the U.S. Additional topics for discussion will include programming and production of news, radio stations as a business, fundraising for non-profit stations, current affairs and features programs, sports coverage, radio talk shows, cultural and music programs, religious programs, public service and community outreach, and programs for children. The project is timed to coincide with the National Association of Broadcasters' annual "Radio Show" in New Orleans, Louisiana, September 17-20.

Decision-Making in U.S. Foreign Policy

Proposal Due Date: June 3, 1997

Project Dates: 09/18/97-10/09/97.

Contacts: Susan Lockwood, Azza

Zaki.

The way in which the U.S. arrives at decisions with respect to its relations with other nations of the world is complex and difficult to comprehend from distant shores. Even within the nation, the process is perceived by some to be mercurial at best and subject to frequent reversals. With the U.S. emerging from the Cold War as the sole remaining superpower, the process of foreign policy formulation has, if anything, become more complex as the nation wrestles with the implications of its world leadership. This project will expose visitors to the vigorous and open public debate which forms the basis for decision-making in the U.S. foreign policy process, and will provide them the opportunity to meet with foreign policy practitioners and with citizens nationwide attempting to influence the process. Foreign affairs professionals will gain an awareness of the multiplicity of factors which influence and mold U.S. foreign policy and how

philosophical ideals and national interests are reconciled in policy formulation. Special attention will be given to the role of the media in establishing the foreign policy agenda and informing the debate. Case studies based on the U.S. reaction to current trouble spots around the world will provide visitors with insight as to how policy evolves. This project is designed for government officials, politicians, academics and journalists interested in strengthening their understanding of the decision-making process in U.S. foreign policy.

International Conflict Resolution and Preventive Diplomacy

Proposal Due Date: June 3, 1997.

Project Dates: 09/25/97-10/16/97.

Contacts: Paul Kreutzer, Gail Curtis.

In the post-Cold War era, international security concerns have revolved less around large scale superpower encounters and increasingly around ways to resolve often intractable regional conflicts and ethnic wars. This project will familiarize visitors with the activities of U.S. governmental, multi-lateral, and non-governmental organizations active in preventive diplomacy and conflict resolution at the international level. Through case studies in preventive diplomacy, visitors will examine the role of U.S., U.N., and third-party attempts to settle differences before violent crises erupt. Multi-track diplomacy, mediation, and post-conflict rebuilding and conciliation issues will be covered in meetings with organizations involved in both the theory and practice of conflict resolution. Visitors will learn about diplomatic, military, and humanitarian U.S. resources. Academic meetings will describe conflict prevention and resolution curricula and training workshops. This project is designed for conflict resolution and peace studies practitioners and analysts, diplomats, military and defense officials as well as scholars, researchers, and journalists concerned with international affairs.

To Receive a Solicitation Package by Mail, Contact: The Office of International Visitors, Group Projects Division (E/VP), Room 255, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone 202/205-3058, fax 202/205-0792. The Solicitation Package contains more detailed award criteria, required application forms, project concept papers, and guidelines for preparing proposals, including specific criteria for preparation of the proposal and budget.

On all inquiries and correspondence, please specify the names of the USIA Program Officer/Specialist as they

appear on the "Contacts" line for each of the above projects. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 15 copies of the application should be sent to: U.S. Information Agency, Ref.: E/VP-97-1, Office of Grants Management, E/XE, 301 4th Street, SW., Room 336, Washington, DC 20547. Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposals on a 3.5-inch diskette. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit proposals recommended for funding electronically to USIS posts overseas in order that they may share the information with prospective project participants.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support of Diversity" section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview: Programs must maintain a non-partisan character. Programs and awards must conform to all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Guidelines: USIA seeks separate proposals from non-profit organizations for development and implementation of professional programs for USIA-sponsored International Visitors to the U.S. who will participate in eighteen Multi-Regional Group Projects (MRPs). A separate proposal is required for each project. Each project is focussed on a substantive theme. Participants in the

projects will be foreign leaders or potential leaders selected by U.S. embassy committees abroad. Each group will typically consist of from 12 to 30 foreign visitors in addition to the two to three American escort officers, selected by USIA, who accompany them. Subject to approval by USIA, applicants may propose substitution for one of these escort officers by a representative of the applicant, provided the representative agrees to assume all responsibilities of the escort officer. Projects will be 24 to 30 days in length. Many programs begin in Washington, D.C., with an orientation and overview of the issues and a central examination of federal policies regarding these issues. Openings in cities other than Washington, D.C., may be proposed for substantive reasons. If Washington, D.C., is not the opening site, it should be included on the itinerary. Well-paced project itineraries often include programs in four or five communities, including the opening site. Project itineraries should include urban and rural small communities in distinctive geographical and cultural regions of the U.S. The programs should provide numerous opportunities for project participants to experience the diversity of American society and culture. At appropriate points in the project, the visitors should be divided into smaller sub-groups for simultaneous visits to different communities, with subsequent opportunities to share their experiences with the full group once it is reunited. There should be numerous opportunities for the visitors to share a meal or similar experience in the home of Americans of diverse occupational, age, gender, and ethnic groups ("home/family hospitality"). Some projects should include at least one opportunity for an overnight stay in an American home ("homestay"). The visitors should be provided opportunities to address student, civic and professional groups in relaxed and informal settings. "Shadowing" experiences with American professional colleagues may be proposed. Visitors should have numerous opportunities for site visits and hands-on experiences that are relevant to project themes. Proposals should also allow time for visitors to reflect on their experiences, share observations with project colleagues and visit cultural and touristic sites. In cities where such councils exist, arrangements for community visits must be made through the national network of affiliates of the National Council for International Visitors [NCIV].

Program participants will travel on J-1 visas arranged by USIA.

Organizations are required to submit a comprehensive line-item budget in accordance with the instructions in the Solicitation Package. Cost items must be clearly categorized as administrative costs, group project costs, or program costs. Applicants must use the budget format presented in the "1997 Guidelines for Proposals Submitted to the USIA Office of International Visitor Group Projects Division" for all budget submissions. There must be a summary budget as well as a breakdown showing detail for the administrative budget, group project budget and program budget. Proposed staffing and costs associated with staffing must be appropriate to fulfillment of all project requirements, which will include close consultation with the responsible USIA staff officer throughout development and implementation of the program. Program costs proposed may not exceed the guideline amounts. Combined administrative and indirect costs proposed should be controlled and are subject to negotiation. Cost sharing is encouraged and, if applicable, must be shown in your budget presentation. The Agency anticipates that awards to cover administrative and indirect costs (where applicable) will be less than \$20,400.

Organizations that have received a renewal assistance award from the Agency for the Office of International Visitors must submit a budget showing all administrative costs associated with the project for which application is made. Any award to such an organization pursuant to this announcement may be adjusted to reflect the status of the renewal award. Renewal award recipients must identify individuals or organizations to whom they have already paid honoraria in FY1997 if they propose to pay an additional honorarium for any project included in this announcement.

The Agency welcomes proposals from organizations that have not received USIA grants or assistance awards in the past. Agency requirements stipulate that "Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to \$60,000." It is not expected that any of the projects in this announcement will cost \$60,000 or less. It is therefore incumbent on organizations to demonstrate four years of successful experience in conducting international exchange programs to be eligible for an assistance award.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be

deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as USIA's Geographic Area Offices. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Education and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Office of Contracts.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered:

1. Quality of program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission, and be responsive to all goals and requirements stated in the RFP, project concept papers and the "1997 Guidelines for Proposals Submitted to the United States Information Agency Office of International Visitors Group Projects Division."

2. Program planning: The proposed program and work plan should include a planning and implementation timeline, describe any preliminary planning undertaken, and demonstrate logistical capability to implement the program as described.

3. Ability to achieve project objectives: Objectives should be well designed, reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the project's objectives.

4. Multiplier effect/impact: Proposed projects should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and project evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve effective implementation and fulfillment of the project's goals.

7. Institution's record/ability: Proposals should demonstrate an

institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Federal assistance awards, if any. The Agency will consider the past performance of prior USIA award recipients and the demonstrated potential of new applicants. All applicants must demonstrate a minimum of four years of successful experience in conducting international exchange programs.

8. Cost-effectiveness: The administrative and indirect cost components of the proposal, including salaries, should be kept as low as possible and should not exceed the amount stated above.

9. Cost-sharing: Consideration will be given to proposed cost-sharing through other private sector support as well as institutional contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: October 1, 1996.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 96-25682 Filed 10-9-96; 8:45 am]

BILLING CODE 8230-01-M

Exchanges and Training Program With Russia, Ukraine and Uzbekistan

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Citizen Exchanges, Russia/Eurasia Division, of the United States Information Agency's Bureau of Education and Cultural Affairs, announces a competitive institutional grants program. Public or private non-profit organizations meeting the provisions described in 26 CFR 1.501(c)(3) may apply to develop training programs for Russia, Ukraine,

and Uzbekistan. Diminished resources have forced USIA to limit the scope of this announcement; regrettably, proposals for other NIS countries will not be considered. Grant awards are subject to availability of funds.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . . ; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hays Act and the Freedom Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/PN-97-10.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Monday, December 2, 1996. Faxed documents will not be accepted, nor will documents postmarked December 2, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Office of Citizen Exchanges, Russia Eurasia Division, E/PN, Room 220, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, tel: 202-260-6230, fax: 202-619-4350, to request a Solicitation Package, which includes: proposal and budget guidelines and all application forms. Please specify USIA Program Coordinator Cassandra Barber on all inquiries and correspondence. Ms. Barber may also be reached at the following e-mail address: cbarber@usia.gov. Interested applicants should read the complete Federal Register announcement before making inquiries to the Office of Citizen Exchanges, Russia/Eurasia Division, or submitting their proposals. Once the

RFP deadline has passed, the Office of Citizen Exchanges, Russia/Eurasia Division may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow instructions given in the Solicitation Package and send an original and ten copies of completed applications to: U.S. Information Agency, Ref.: E/PN-97-10, Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal.

Content of Proposals

Overview: USIA is interested in proposals that encourage the growth of democratic institutions in Russia, Ukraine, and Uzbekistan. Exchange and training programs supported by institutional grants should operate at two levels: they should enhance institutional relationships; and they should offer practical and comparative information to individuals to assist them with their professional responsibilities. Strong proposals usually have the following characteristics: an existing partner relationship between an American organization and a host-country institution; proven track record of conducting program activity; cost-sharing from American or in-country sources, including donations of air fares, hotel and housing costs; experienced staff with language facility; and a clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant. USIA wants to see tangible forms of time and money contributed to the project by the prospective grantee institution, as well as funding from third party sources.

Unless otherwise specified below, project activity may include: internships; study tours; short-term training; consultations; and extended, intensive workshops taking place in the United States or in Russia, Ukraine, or Uzbekistan. Proposals should reflect the authors' understanding of the political, economic, and social environment in which the program activity will take place.

We encourage applicants to design programs for *non-English speakers*. Programs can take place in the United States or in Russia, Ukraine or Uzbekistan. We want single country programs, not programs that mix Russian, Ukrainian, and Uzbek participants. USIA is interested in proposals whose designs take into account the need for ongoing sharing of information and training beyond the period of USIA grant support. Examples include: "train the trainers" models; support for training centers in Russia, Ukraine or Uzbekistan; plans to create professional networks or professional associations to share information.

Note: While this competition may fund American universities to work with counterpart universities or institutions in Russia, Ukraine, or Uzbekistan, it is not intended to be a university linkage program. Such programs are funded by USIA's Office of Academic Programs (E/A). Proposals whose purpose is to exchange faculty or otherwise support direct academic links should be submitted under E/A's RFP for the College and University Affiliations Programs (CUAP).

USIA will give priority to proposals that respond to the following specific topics for Russia, Ukraine, and Uzbekistan. While proposals for other programs will be considered, reduced program budgets will limit funding opportunities.

For Russia

USIA is interested in proposals for training programs for Russians in specific areas:

—Implementation of Intellectual Property Rights. Although Russia has enacted legislation committing itself to meeting the TRIP amendment standards of the World Trade Organization, the practical steps to implement and enforce its new criminal statutes have yet to be realized. Judges, law enforcement officials, lawyers, procurators and the Russian business community are uninformed and to a certain extent uninterested in the implications of the new laws. USIA is interested in proposals that: (1) assist the Russian legal community to examine how an IPR case would be handled within the

Russian court system; (2) expose Russian legal experts and others associated with IPR issues (such as officials of state copyright agencies) to the practical side of enforcement of IPR in the United States; (3) establish specialized training for judges who will try IPR cases; (4) contain a public education dimension effort to reach Russians who will have to deal with IPR issues professionally. Proposals submitted to USIA should take care to complement, not duplicate, projects funded in this subject area by other U.S. Government agencies and international institutions.

—US-based Internships for Russian Journalists and Media Managers. USIA is interested in proposals for journalistic training and management for Russian regional media organizations (Moscow and St. Petersburg are excluded). Journalistic training in basic skills and concepts could include: effective writing, investigative reporting, objectivity, the clear labeling of editorials and opinion pieces, intellectual property issues and ethics. Media management training (both print and electronic) should focus on management of media as a business: management techniques, desk top publishing, advertising, marketing, distribution, personnel, public relations, and the financial benefits and pitfalls of journalistic advocacy. USIS Moscow will coordinate selection of journalists with the grantee organization. Preference will be given to long-term internships for English speakers. The US program should be a practical, hands-on experience in an American media organization, not an academic course of study.

For Russia and Ukraine

—Staff Exchange between the United States Congress and the Russian Parliament (Duma) and Federal Assembly and the Ukrainian Parliament (Rada). USIA is interested in proposals from American organizations to provide organizational support in Washington, DC for an annual exchange of congressional and parliamentary staff between the US and Russia and between the US and Ukraine, based on the Congress-Bundestag model developed by Germany and the US. The program would provide an annual opportunity for two congressional staff delegation visits to Russia and Ukraine and one delegation visit each for Russian and Ukraine. Each delegation would number 5-10 staff members who would have a chance to observe and

learn about the workings of the other's political institutions and convey the views of members on both sides on issues of mutual concern. Russians and Ukrainians will be programmed separately (i.e., no mixed groups). The length of each exchange would be approximately two weeks. The organization selected to administer the program would be responsible for all logistics in the United States for visiting groups (travel arrangements, accommodations, interpreters, local transportation), as well as appointments and meetings with local media, business, academic and media representatives. The organization would also be responsible for facilitating the outbound travel of US congressional staff delegations to Ukraine and Russia.

Selection of Participants

(1) US Congressional Staff. The program will be announced in the Congressional Record. Staffers should have a demonstrable interest in Russian or Ukraine, but they need not be working in the field of foreign affairs. A review committee will be convened by USIA to select the participants, which in subsequent years of the program would include alumni of the exchange. Participants must be willing to host a group of staffers from Russia or Ukraine for two weeks, assist in arranging meetings and facilitating a visit to the home district of a member.

(2) Duma and Rada Staff Members. Participants must be current staff members of the State Duma or Rada. USIS offices in Moscow and Kyiv will work with the Duma and Rada to select participants.

For Ukraine

—Constitutional Project. Ukraine recently enacted a new constitution. USIA is particularly interested in proposals to support the new Constitutional Court in Ukraine, which was created under the new constitution. Priority will be given to proposals that establish a dialogue with policy makers, government officials, and educators on the meaning of a constitutional form of government and its practical ramifications for governing at national and local levels. USIA encourages proposals for organizations to develop specific materials in Ukrainian and conduct in-country seminars in partnership with Ukrainian institutions to promote public understanding of the new constitution and its implications for Ukrainian society. These efforts would be closely coordinated with the U.S.

mission in Kyiv which has made this a top priority.

For Uzbekistan

—Exchanges and Training for Working Journalists. Priority consideration will go to proposals for working journalists, particularly those covering economic issues. Acquisition of news gathering and reporting skills should be emphasized, along with other important skills such as effective writing, investigative reporting, objectivity, the clear labeling editorials and opinion pieces, intellectual property issues and ethics. US-based practical internships for journalists with a working knowledge of English are encouraged.

Selection of Participants

Proposals should describe clearly the type of persons who will participate in the program as well as the process by which participants will be selected. We recommend that programs with internships in the US include letters of commitment from host institutions, even if tentative. In the selection of foreign participants, USIA and USIS posts abroad retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are often asked by USIA to suggest names of potential participants. Priority will be given to foreign participants who have not previously traveled to the United States.

Visa Regulations

Foreign participants on programs sponsored by the Office of Citizen Exchanges are granted J-1 Exchange Visitor visas by the American Embassy in the sending country.

Proposal Budget

Please refer to the Budget Guidelines in the Program Submission Instructions for complete information.

Applicants must submit a detailed line item budget based on the specific instructions in the Program and Budget Guidelines sections of the Instructions. Proposals for less than \$80,000 will receive preference. Programs with strong cost-sharing will be given priority.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to \$60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be

considered ineligible if they do not fully adhere to the guidelines stated herein and in the Proposal Submission Instructions. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by USIA's Office of East European and NIS Affairs and USIA posts in Moscow, Kyiv, and Tashkent. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the Associate Director, Educational and Cultural Affairs, USIA. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered.

1. Program Planning and Ability To Achieve Objectives

Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in each of the countries. They should be reasonable and attainable. A detailed work plan should explain step by step how objectives will be achieved, including a timetable for completion of major tasks. The substance of seminars, presentations, consulting, internships, and itineraries should be spelled out in detail. Responsibilities of in-country partners should be clearly described.

2. Institutional Capability

Proposed personnel and institutional resources should be adequate and appropriate to achieve the project's goals. The narrative should demonstrate proven ability to handle logistics. Proposal should reflect the institution's expertise in the subject area and knowledge of the conditions pertaining to it in Russia, Ukraine or Uzbekistan.

3. Cost Effectiveness

Overhead and administrative costs for the proposal, including salaries, honoraria, and subcontracts for services, should be kept low. While this announcement does not proscribe a rigid ratio of administrative to program costs, in general, priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from USIA. Proposals should show cost-sharing, both contributions from the applicant and from other sources.

4. Support of Diversity

Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program.

5. Project Evaluation

USIA is results-oriented. Proposals must include a plan and methodology to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire and/or plan for use of another measurement technique (such as a focus group) to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funding. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

Awards made will be subject to periodic reporting and evaluation requirements.

Dated: October 4, 1996.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 96-26082 Filed 10-9-96; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1972, that the Veterans' Advisory Committee on Rehabilitation has been renewed for a 2-year period beginning September 30, 1996, through September 30, 1998.

Dated: October 1, 1996.

By direction of the Secretary.

Eugene A. Brickhouse,

Committee Management Officer.

[FR Doc. 96-26025 Filed 10-9-96; 8:45 am]

BILLING CODE 8320-01-M

Federal Register

Thursday
October 10, 1996

Part II

**Department of
Housing and Urban
Development**

24 CFR Part 572

**Homeownership of Single Family Homes
Program (HOPE 3); Streamlining Rule;
Proposed Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 572

[Docket No. FR-3857-P-03]

**Office of the Assistant Secretary for
Community Planning and
Development; Homeownership of
Single Family Homes Program (HOPE
3); Streamlining Rule**

RIN 2506-AB71

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule is being issued soon after a final rule that streamlines HUD's regulations for the HOPE for Homeownership of Single Family Homes Program (HOPE 3) Program. This rule proposes further amendments to the regulations that comply with the President's regulatory reform initiatives by eliminating remaining provisions that are unnecessarily expansive, in light of existing statutory requirements, but for which notice-and-comment rulemaking is required.

DATES: Comment due date: December 9, 1996.

FOR FURTHER INFORMATION CONTACT:

Gordon McKay, Director, Office of Affordable Housing Programs, Room 7168, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708-2685 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD determined that the regulations for the HOPE for Homeownership of Single Family Homes Program (42 U.S.C. 12891-12898a) (HOPE 3) Program could be improved and streamlined. On September 16, 1996 (61 FR 48796), HUD published in the Federal Register a final rule that completed a previous rulemaking process on the HOPE 3 regulations and made streamlining

changes to those regulations, where prior notice and comment was not required.

This proposed rule will make additional streamlining changes, primarily to the provisions relating to competitions for HOPE 3 funding. Currently, HUD does not have significant amounts of unobligated HOPE 3 funds and does not anticipate additional funds will be appropriated for the HOPE 3 program, and the current regulations on applications for funding include outdated references and are unnecessarily lengthy and prescriptive. By this proposed rule, HUD is preserving those regulations only to the extent necessary to ensure HUD's ability to run future competitions in the event funds become available to make awards under the program.

Thus, this rule would remove most of those provisions containing requirements relating to competitive distributions of HOPE 3 funds. In making these distributions, HUD is required to comply with section 102 of the Department of Housing and Urban Development Reform Act (HUD Reform Act) (42 U.S.C. 3545). The requirements of section 102 are binding, whether HUD maintains implementing provisions in regulatory text in the Code of Federal Regulations (CFR) or in separate published notices announcing competitions for funding.

HUD also notes that, because of recent statutory amendments, direct homeownership assistance is now a permanent eligible activity under both the HOME Investment Partnerships and Community Development Block Grant programs. As a result, families that might have been assisted by the HOPE 3 program may be eligible for homeownership assistance through the HOME or CDBG programs, instead. This availability of other assistance makes future HOPE 3 appropriations and competitions less likely.

This proposed rule would also remove lengthy provisions explaining the Cash and Management Information System that is used to disburse HOPE 3 grant funds (see § 572.230). The information that would be removed is contained in other guidance material and does not need to be codified. Additional changes to the part 572 regulations may be made later, as conforming amendments in rules that streamline other HUD regulations. For example, at the final rule stage, a proposed rule published on April 5, 1996 (61 FR 15340), may affect § 572.410, Environmental Procedures and Standards.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely recognizes administrative changes in HUD's structure and streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends existing regulations by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. Findings of No Significant Impact with respect to the environment were made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the HOPE 3 program. Those findings remain applicable to this rule, and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD

policies or programs, as those policies and programs relate to family concerns, will result from promulgation of this rule.

The Catalog of Federal Domestic Assistance number for this program is 14.240.

List of Subjects in 24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, for the reasons set out in the preamble, part 572 of title 24 of the Code of Federal Regulations is proposed to be amended as follows.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

1. The authority citation for part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

2. Section 572.5 is amended by revising the definition of *Program income*, to read as follows:

§ 572.5 Definitions.

* * * * *

Program income means income earned from the program as described in parts 84 and 85, as applicable, of this title, except that program income does not include proceeds from the sale and resale of properties. Such sale and resale proceeds, and interest earned by the recipient or its designee on those proceeds, are governed by § 572.135 (a) through (c).

* * * * *

§ 572.100 [Amended]

3. Section 572.100 is amended by removing the second sentence of paragraph (a)(2).

4. Section 572.135 is amended by revising paragraph (d), to read as follows:

§ 572.135 Use of proceeds from sales to eligible families, resale proceeds, and program income.

* * * * *

(d) *Program income*. Any program income, as defined in § 572.5, received by the recipient may be added to the funds committed to the grant agreement by HUD and the recipient, in accordance with the requirements of parts 84 and 85, as applicable, of this title.

5. Section 572.210 is amended as follows:

- a. Paragraph (a) is revised;
- b. Paragraphs (b), (c) and (d) are removed;
- c. Paragraphs (f) and (g) are redesignated as paragraphs (b) and (c), respectively; and
- d. A new sentence is added at the end of paragraph (b), as redesignated, to read as follows:

§ 572.210 Implementation grants.

(a) *General authority*. Any implementation grants for the purpose of carrying out homeownership programs approved under this part will be awarded using a selection process and selection criteria to be published in a NOFA.

(b) * * * A previously approved grant amount may not be amended to increase the grant amount.

* * * * *

6. Section 572.230 is revised to read as follows:

§ 572.230 Cash and Management Information (C/MI) System.

Disbursement of HOPE 3 grant funds is managed through HUD's Cash and Management Information (C/MI) System for the HOPE 3 program. Funds that may be disbursed through the C/MI System include funds awarded to the recipient and obligated through the grant approval letter issued by HUD. HOPE 3 funds are drawn down by the recipient or its authorized designee from a United States Treasury account for the program, using the Treasury Automatic Clearinghouse (ACH) System. Any drawdown of HOPE 3 funds from the

United States Treasury account is conditioned upon the submission of satisfactory information about the program and compliance with other procedures specified by HUD in HUD's forms and issuances concerning the C/MI System.

7. Section 572.300 is revised to read as follows:

§ 572.300 Notices of funding availability (NOFAs); grant applications.

When funds are made available for planning grants or implementation grants under this part, HUD will publish a NOFA in the Federal Register, in accordance with the requirements of part 12 of this title, and will select applications for funding on a competitive basis as provided in the applicable NOFA.

§§ 572.305, 572.310, and 572.320 [Removed]

8. Sections 572.305, 572.310, and 572.320 are removed.

9. Section 572.420 is amended by revising the second sentence of paragraph (a)(1), to read as follows:

§ 572.420 Miscellaneous requirements.

(a) * * *

(1) * * * Part 84 of this title (Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and OMB Circular Nos. A-122 (Cost Principles Applicable to Grants, Contract and Other Agreements with Nonprofit Institutions) and, as applicable, A-21 (Cost Principles for Educational Institutions) apply to the acceptance and use of assistance under this part by covered organizations, except where inconsistent with the provisions of Federal statutes or this part. * * *

* * * * *

Dated: September 3, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96-25829 Filed 10-9-96; 8:45 am]

BILLING CODE 4210-29-P

Registered Mail

Thursday
October 10, 1996

Part III

Postal Service

39 CFR Part 111
Address Correction Information; Proposed
Rule

POSTAL SERVICE**39 CFR Part 111****Address Correction Information****AGENCY:** Postal Service.**ACTION:** Proposed rule.

SUMMARY: The Postal Service proposes changing the ancillary service endorsements that mailers use to request an addressee's new address and to provide the Postal Service with instructions on how to handle undeliverable-as-addressed (UAA) mail.

DATES: Comments must be received on or before November 12, 1996.

ADDRESSES: All written comments should be mailed or delivered to the Manager, Address Management, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 7431, Washington, DC 20260-6802. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rocky Matthews, (202) 268-5790.

SUPPLEMENTARY INFORMATION: Currently a wide range of different ancillary service endorsements are used by mailers to request an addressee's new address and to provide the Postal Service with detailed instructions on how to handle undeliverable-as-addressed (UAA) mail. The variations of endorsements and the words used (e.g., "Address Correction" or "Postage Guaranteed") often confuse mailers, postal employees, and mail recipients. To eliminate misunderstandings about the meaning of ancillary endorsements, this rule proposes adopting an endorsement system that is simpler and more consistent than the current system.

Under the proposed rule, only three ancillary service endorsements will be available. Endorsements will consist of one keyword: "Address," "Return," or "Change," followed by the two words "Service Requested." The endorsements

will be the same for all classes of mail. Treatment for each class of mail and applicable charges will remain unchanged with the following exceptions:

(1) First-Class Mail. All current options will remain available. In addition, a new option will be available for requesting that the mailpiece not be forwarded or returned, but that the mailer be provided with a separate address correction, subject to the address correction fee. This new option will be available under the endorsement "Change Service Requested."

(2) Standard Mail (A) Single-Piece Rate. Currently, a mailer has the option of endorsing the mailpiece "Do Not Forward" to request that the Postal Service dispose of the piece if it is undeliverable, with no forwarding, no return, and no address correction provided. Under the proposed rule, this option will no longer be available. Instead, the mailer will be able to choose between using no endorsement, in which case the piece (if uninsured) will be returned to the mailer with the new address or reason for nondelivery attached, subject to return postage at the single-piece rate; or using the endorsement "Change Service Requested," in which case the Postal Service will dispose of the piece and provide the mailer with a separate notice of new address or reason for nondelivery, subject to the address correction fee.

(3) Standard Mail (A). Currently, if a mailpiece weighing 1 ounce or less is endorsed "Address Correction Requested," the entire piece is returned to the mailer with the new address or reason for nondelivery, subject to return postage at the single-piece rate; any heavier piece bearing that endorsement is disposed of and the mailer is provided with a separate notice of the new address or reason for nondelivery, subject to the address correction fee. Under the proposed rule, the Postal Service will no longer make distinctions based on the weight of the piece. Regardless of weight, any piece with the

endorsement "Change Service Requested" will receive the treatment currently accorded to a piece weighing more than 1 ounce, that is, the Postal Service will dispose of the piece and provide the mailer with a separate notice of new address or reason for nondelivery, subject to the address correction fee. The endorsement "Return Service Requested" will provide, regardless of weight, for the return of the entire piece to the mailer with the new address or reason for nondelivery, subject to the appropriate single-piece rate postage.

(4) Standard Mail (A). Currently, a mailer has the option of endorsing the mailpiece "Forwarding and Return Postage Guaranteed" to request that the Postal Service forward the piece without providing an address correction. Under the proposed rule, this option will no longer be available. Instead, a mailer desiring forwarding will use the endorsement "Address Service Requested," in which case the Postal Service will forward the piece and will provide the mailer with a separate notice of the new address, subject to the address correction fee.

(5) Standard Mail (B). Currently, a mailer has the option of endorsing the mailpiece "Do Not Forward, Do Not Return" to request that the Postal Service dispose of the piece if it is undeliverable, with no forwarding, no return, and no address correction provided. Under the proposed rule, this option will no longer be available. Instead, a mailer will be able to use the endorsement "Change Service Requested," in which case the Postal Service will dispose of the piece and provide the mailer with a separate notice of new address or reason for nondelivery, subject to the address correction fee.

The following tables summarize the current and proposed ancillary service endorsements, along with the corresponding treatment of undeliverable-as-addressed (UAA) mail bearing those endorsements.

FIRST-CLASS MAIL, PRIORITY MAIL, AND EXPRESS MAIL

Current		Proposed	
Mailer endorsement	USPS action	Mailer endorsement	USPS action
Forwarding and Address Correction Requested or Forward & Address Correction.	Months 1 through 12: mailpiece forwarded; no charge; separate notice of new address provided; address correction fee charged. Months 13 through 18: mailpiece returned with new address attached; no charge After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; no charge	Address Service Requested ...	No proposed change in USPS action.
Address Correction Requested or Do Not Forward.	Mailpiece returned with new address or reason for nondelivery attached; no charge.	Return Service Requested	No proposed change in USPS action.
		Change Service Requested ...	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged; mailpiece disposed of by USPS. Not available for Priority Mail or Express Mail. Not available for mail with special services (certified, COD, insured, registered, special delivery, special handling).
No endorsement	Months 1 through 12: mailpiece forwarded; no charge Months 13 through 18: mailpiece returned with new address attached; no charge After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; no charge	No endorsement	No proposed change in USPS action.

PERIODICALS

Current		Proposed	
Mailer endorsement	USPS action	Mailer endorsement	USPS action
Return Postage Guaranteed ...	First 60 days: mailpiece forwarded; no charge After 60-day period, or if undeliverable: mailpiece returned with address correction or reason for nondelivery attached; appropriate Standard Mail single-piece rate charged	Address Service Requested ...	No proposed change in USPS action.
		Return Service Requested Change Service Requested	Not available for Periodicals. Not available for Periodicals.
No endorsement	First 60 days: mailpiece forwarded; no charge After 60-day period, or if undeliverable: separate address correction or reason for nondelivery provided; address correction fee charged; mailpiece disposed of by USPS	No endorsement	No proposed change in USPS action.

STANDARD MAIL (A)

Current		Proposed	
Mailer endorsement	USPS action	Mailer endorsement	USPS action
Forwarding and Return Postage Guaranteed, Address Correction Requested or Forward & Address Correction.	Months 1 through 12: mailpiece forwarded; no charge; separate notice of new address provided; address correction fee charged Months 13 through 18: mailpiece returned with new address attached; only Standard Mail (A) weighted fee charged (address correction fee not charged) After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; only Standard Mail (A) weighted fee charged (address correction fee not charged)	Address Service Requested ...	No proposed change in USPS action.
Forwarding and Return Postage Guaranteed.	Months 1 through 12: mailpiece forwarded; no charge Months 13 through 18: mailpiece returned with new address attached; only Standard Mail (A) weighted fee charged (address correction fee not charged) After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; only Standard Mail (A) weighted fee charged (address correction fee not charged)		Not available (use "Address Service Requested").
Do Not Forward, Address Correction Requested, Return Postage Guaranteed or Do Not Forward—Address Cor—Return Guar.	Mailpiece returned with new address or reason for nondelivery attached; only return postage at Standard Mail (A) single-piece rate charged (address correction fee not charged)	Return Service Requested	No proposed change in USPS action.
Address Correction Requested	If mailpiece 1 ounce or less: entire piece returned with new address or reason for nondelivery attached; only return postage at Standard Mail (A) single-piece rate charged (address correction fee not charged) If mailpiece over 1 ounce: address correction or reason for nondelivery provided by Form 3547; subject to address correction fee	Change Service Requested ...	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged; mailpiece disposed of by USPS. Note: if return of the mailpiece is desired, use "Return Service Requested," subject to appropriate Standard Mail (A) single-piece rate.
Do Not Forward	No forwarding or return service provided		Not available (use no endorsement).
No endorsement	Single-Piece Rate Mail Only: mailpiece returned with new address or reason for nondelivery attached; only return postage at Standard Mail (A) single-piece rate charged (address correction fee not charged) Bulk Rate Mail Only: mailpiece disposed of by USPS	No endorsement	No proposed change in USPS action.

STANDARD MAIL (B)

Current		Proposed	
Mailer endorsement	USPS action	Mailer endorsement	USPS action
Forwarding and Return Postage Guaranteed, Address Correction Requested or Forward & Address Correction.	Months 1 through 12: mailpiece forwarded locally at no charge; forwarded out of town as postage due; separate notice of new address provided; address correction fee charged Months 13 through 18: mailpiece returned with new address attached; only return postage at appropriate single-piece rate charged (address correction fee not charged) After month 18, or if undeliverable, or addressee refused to pay postage due: mailpiece returned with reason for nondelivery attached; only forwarding (where attempted) and return postage at appropriate single-piece rate charged (address correction fee not charged)	Address Service Requested ...	No proposed change in USPS action.
Forwarding and Return Postage Guaranteed.	Months 1 through 12: mailpiece forwarded locally at no charge; forwarded out of town as postage due Months 13 through 18: mailpiece returned with new address attached; only return postage at appropriate single-piece rate charged (address correction fee not charged) After month 18, or if undeliverable, or addressee refused to pay postage due: mailpiece returned with reason for nondelivery attached; only forwarding (where attempted) and return postage at appropriate single-piece rate charged (address correction fee not charged)		(Same as no endorsement)
Do Not Forward, Address Correction Requested, Return Postage Guaranteed or Do Not Forward—Address Correction—Return Guar.	Mailpiece returned with new address or reason for nondelivery attached; only return postage at appropriate single-piece rate charged (address correction fee not charged)	Return Service Requested	No proposed change in USPS action.
Do Not Forward, Do Not Return, Address Correction Requested or Do Not Forward or Return " Address Cor.	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged; mailpiece disposed of by USPS	Change Service Requested ...	No proposed change in USPS action.
Do Not Forward, Do Not Return.	No forwarding or return service provided; mailpiece disposed of by USPS		Not available (use "Change Service Requested").
No endorsement	Months 1 through 12: mailpiece forwarded locally at no charge; forwarded out of town as postage due Months 13 through 18: mailpiece returned with new address attached; only return postage at appropriate single-piece rate charged (address correction fee not charged) After month 18, or if undeliverable, or addressee refused to pay postage due: mailpiece returned with reason for nondelivery attached; only forwarding (where attempted) and return postage at appropriate single-piece rate charged (address correction fee not charged)	No endorsement	No proposed change in USPS action

If these proposed standards are adopted, the Postal Service anticipates an effective date of February 1, 1997. In that event, the Postal Service will honor current endorsements for a period of 6 months after that date. After September

1, 1997, these and endorsements other than those adopted will be deemed invalid. For mail bearing invalid endorsements, the service under "Address Service Requested" or "Return Service Requested" will be provided to such mail as appropriate.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Revise the Domestic Mail Manual as set forth below:

F FORWARDING AND RELATED SERVICES

F000 Basic Services

F010 Basic Information

* * * * *

5.0 TREATMENT—CLASSES OF MAIL

5.1 Priority Mail and First-Class Mail

* * * * *

PRIORITY MAIL AND FIRST-CLASS MAIL

Mailer endorsement	USPS action
Address Service Requested ¹ .	Months 1 through 12: mailpiece forwarded; no charge; separate notice of new address provided; address correction fee charged. Months 13 through 18: mailpiece returned with new address attached; no charge. After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; no charge.
Return Service Requested.	Mailpiece returned with new address or reason for nondelivery attached; no charge.

PRIORITY MAIL AND FIRST-CLASS MAIL—Continued

Mailer endorsement	USPS action
Change Service Requested ¹ .	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged; mailpiece disposed of by USPS. Not available for Priority Mail or mail with special services (certified, COD, insured, registered, special delivery, special handling).
No endorsement	Months 1 through 12: mailpiece forwarded; no charge. Months 13 through 18: mailpiece returned with new address attached; no charge. After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; no charge.

¹Valid for all mailpieces, including Address Change Service (ACS) participating mailpieces.

5.2 Periodicals

Undeliverable Periodicals publications (including publications pending Periodicals authorization) are treated as described in the chart below and under these conditions:

* * * * *

e. The publisher may request the return of copies of undelivered Periodicals publications by printing the endorsement "Address Service Requested" on the envelopes or wrappers, or on one of the outside covers of unwrapped copies, immediately preceded by the sender's name, address, and ZIP+4 or 5-digit ZIP Code. The per piece rate charged for return is the appropriate Standard Mail single-piece rate. When the address correction is provided incidental to the return of the piece, there is no charge for the correction. This endorsement obligates the publisher to pay return postage.

* * * * *

PERIODICALS

Mailer endorsement	USPS action
Address Service Requested ¹ .	First 60 days: mailpiece forwarded; no charge.

PERIODICALS—Continued

Mailer endorsement	USPS action
Return Service Requested. Change Service Requested. No endorsement ¹	After 60-day period, or if undeliverable: mailpiece returned with address correction or reason for nondelivery attached; appropriate Standard Mail single-piece rate charged. Not available for Periodicals. Not available for Periodicals. First 60 days: mailpiece forwarded; no charge. After 60-day period, or if undeliverable: separate address correction or reason for nondelivery provided; address correction fee charged; mailpiece disposed of by USPS.

¹Valid for all mailpieces, including Address Change Service (ACS) participating mailpieces.

5.3 Standard Mail (A)

Undeliverable Standard Mail (A) is treated as described in the chart below and under these conditions:

a. Insured Standard Mail (A) is treated as though endorsed "Address Service Requested."

* * * * *

e. When a large volume of identical-weight pieces originates from a single mailer endorsed only "Return Service Requested," the USPS may use the weight of a sample of at least 25 pieces and divide that weight by the number of pieces in the sample. After the average per piece weight is determined, the pieces are weighed in bulk to determine the number of pieces subject to the single-piece rate for return. Pieces of identical weight counted in this manner, regardless of weight, are returned to the mailer with the new address or the reason for nondelivery endorsed on the piece.

f. The "weighted fee" is the appropriate Standard Mail (A) single-piece rate, multiplied by a factor of 2.472 and rounded to the next (higher) whole cent (if the computation yields a fraction of a cent in the result). The weighted fee is computed (and rounded if necessary) for each mailpiece individually. Neither the applicable postage, the factor, nor any necessary rounding is applied cumulatively to multiple pieces. The fee is used during months 1 through 12 when forwarding is unsuccessful and the piece is returned to the mailer. During months 13 through 18, this fee is charged for

pieces endorsed "Address Service Requested."

* * * * *

STANDARD MAIL (A)

Mailer endorsement	USPS action
Address Service Requested ¹ .	Months 1 through 12: mailpiece forwarded; no charge; separate notice of new address provided; address correction fee charged. Months 13 through 18: mailpiece returned with new address attached; only Standard Mail (A) weighted fee charged (address correction fee not charged). After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; only Standard Mail (A) weighted fee charged (address correction fee not charged).
Return Service Requested.	Mailpiece returned with new address or reason for nondelivery attached; only return postage at Standard Mail (A) single-piece rate charged (address correction fee not charged).
Change Service Requested ¹ .	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged; mailpiece disposed of by USPS.
No endorsement.	Single-Piece Rate Mail Only: mailpiece returned with new address or reason for nondelivery attached; only return postage at Standard Mail (A) single-piece rate charged (address correction fee not charged). Bulk Rate Mail Only: mailpiece disposed of by USPS.

¹ Valid for all mailpieces, including Address Change Service (ACS) participating mailpieces.

5.4 Standard Mail (B)

* * * * *

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 96-26089 Filed 10-9-96; 8:45 am]

BILLING CODE 7710-12-P

STANDARD MAIL (B)

Mailer endorsement	USPS action
Address Service Requested ¹ .	Months 1 through 12: mailpiece forwarded locally at no charge; forwarded out of town as postage due; separate notice of new address provided; address correction fee charged. Months 13 through 18: mailpiece returned with new address attached; only return postage at appropriate single-piece rate charged (address correction fee not charged). After month 18, or if undeliverable, or addressee refused to pay postage due: mailpiece returned with reason for nondelivery attached; only forwarding (where attempted) and return postage at appropriate single-piece rate charged (address correction fee not charged).
Return Service Requested.	Mailpiece returned with new address or reason for nondelivery attached; only return postage at appropriate single-piece rate charged (address correction fee not charged).
Change Service Requested ¹ .	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged; mailpiece disposed of by USPS.
No endorsement	Months 1 through 12: mailpiece forwarded locally at no charge; forwarded out of town as postage due. Months 13 through 18: mailpiece returned with new address attached; only return postage at appropriate single-piece rate charged (address correction fee not charged).

STANDARD MAIL (B)—Continued

Mailer endorsement	USPS action
	After month 18, or if undeliverable, or addressee refused to pay postage due: mailpiece returned with reason for nondelivery attached; only forwarding (where attempted) and return postage at appropriate single-piece rate charged (address correction fee not charged).

¹ Valid for all mailpieces, including Address Change Service (ACS) participating mailpieces.

5.5 Express Mail

* * * * *

EXPRESS MAIL

Mailer endorsement	USPS action
Address Service Requested.	Months 1 through 12: mailpiece forwarded; no charge; separate notice of new address provided; address correction fee charged. Months 13 through 18: mailpiece returned with new address attached; no charge. After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; no charge.
Return Service Requested.	Mailpiece returned with new address or reason for nondelivery attached; no charge.
Change Service Requested.	Not available for Express Mail.
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Executive Order

Thursday
October 10, 1996

Part IV

The President

Proclamation 6928—Roosevelt History Month, 1996

Proclamation 6929—National Disability Employment Month, 1996

Proclamation 6930—Fire Prevention Week, 1996

Proclamation 6931—German-American Day, 1996

Proclamation 6932—National Wildlife Refuge Week, 1996

Presidential Documents

Title 3—

Proclamation 6928 of October 4, 1996

The President

Roosevelt History Month, 1996

By the President of the United States of America

A Proclamation

The Roosevelt family has uniquely influenced the direction and quality of life in America for the last century. With two enormously successful Presidents, Teddy and FDR, and a precedent-setting First Lady, Eleanor, the Roosevelt family has left a lasting legacy of exemplary leadership and public service to our Nation.

In 1903, President Theodore Roosevelt established our country's first National Wildlife Refuge. Thanks to his vision and determination, America today enjoys the natural treasures preserved in the largest and most varied conservation system in the world. From 1933 to 1945, President Franklin Delano Roosevelt, with the support of his wife, Anna Eleanor Roosevelt, guided the United States through two of the gravest crises of the 20th century: the Great Depression and World War II. Universally recognized as one of the greatest American Presidents, FDR stands as a symbol of the greatness of our Nation itself. Eleanor Roosevelt, his lifelong companion and dearest friend, transformed the role of the First Lady, traveling the country as an advocate for the poor, the disenfranchised, and the disadvantaged.

Together, their partnership redefined the modern First Family, combining a broad concern for all Americans with a strong sense of the dignity and history of the Presidency. In a time of acute national anxiety, FDR promised Americans "a leadership of frankness and vigor." He recognized that government had to be responsive to the needs of its people and that the Presidency is not merely an executive office but also a position of moral leadership. President Roosevelt moved Americans toward hope, through perseverance and faith in themselves. He spoke directly to average Americans, not only through his fireside chats on radio, but also through his insistence on honesty and justice.

He fought for fairness in government, working to establish Federal programs that met the needs of his time: a welcome job for an idle but eager worker; a government loan to help a family avoid foreclosure; and a retirement income system that still serves working Americans nearly 60 years later. These achievements were steps on the road to FDR's dream of establishing a government that would serve as a model for the world.

In Franklin Roosevelt's view, government should be the perfect public system for fostering and protecting the "Four Freedoms" he enumerated when he addressed the Congress in January 1941. Intended as a rallying cry against the economic and military specters that had swept the globe during the previous decade, this speech recognized four essential freedoms: freedom of speech and expression; freedom of every person to worship God in his own way; freedom from want; and freedom from fear. Roosevelt made it clear that he enumerated these freedoms not as abstract ideals but as goals toward which Americans—and caring people everywhere—could direct their most strenuous public efforts.

Millions of people around the world remember with gratitude his determined leadership as the successful Commander in Chief of America's Armed Forces during this century's most terrible war. It is difficult to imagine any individual other than Franklin Roosevelt who would have been able to oversee

the war effort—not only beating back the spreading stain of totalitarianism by achieving decisive military victories, but also adroitly maintaining unity among our allies. As the world moved under a deepening shadow of violence and terror, FDR displayed an unwavering personal character and resolve that inspired faith among the American people.

And even though FDR did not survive to witness the end of the war he helped so much to win, he nonetheless knew he had set our country's sights in the right direction by dedicating his public career to a safer, stronger America—citizens living and working together in a community of fairness, harmony, and peace. As the final words of his Four Freedoms speech expressed: "To that high concept there can be no end save victory."

After her husband's death, Eleanor Roosevelt continued the vigorous advocacy work she and FDR had begun in the White House, serving on the United States Delegation to the United Nations, acting as Chairperson of the Human Rights Commission during the drafting of the Universal Declaration of Human Rights adopted by the U.N. in 1948, working as a member of the National Advisory Committee of the Peace Corps for President Kennedy, and finally serving as Chair of President Kennedy's Commission on the Status of Women. By the time of her death in 1962, she had earned the unofficial title of First Lady of the World, reaffirming the virtues to which she and her husband had dedicated their lives.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 1996 as Roosevelt History Month. I call upon government officials, educators, labor leaders, employers, and the people of the United States to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.



Presidential Documents

Proclamation 6929 of October 4, 1996

National Disability Employment Awareness Month, 1996

By the President of the United States of America

A Proclamation

As we rapidly approach the 21st century, we are entering an age dominated by information and technology, the microchip and the global marketplace. We can't afford to waste the talents of a single person if we are to succeed in this exciting and challenging new world, and people with disabilities have a major role to play in helping us to achieve a dynamic, productive work force in a united community.

In the darkest days of World War II, the American people looked to President Franklin Delano Roosevelt, a person with a disability, for leadership and strength. Today, as college presidents and scientists, world-class athletes and physicians, our citizens with disabilities make their own invaluable contributions to our Nation's strength. From Main Street to Wall Street, they have performed successfully at every level of business and government, demonstrating in large ways and small that they can meet the same challenges as everyone else.

We can be proud of the great progress we have made in eliminating overt discrimination. Leaders of business and industry, veterans service organizations, and labor, as well as community leaders from all walks of life, have worked together to implement the Americans with Disabilities Act, which bans discrimination in recruitment, interviewing, hiring, and advancement.

Yet, 50 years after President Roosevelt's death, too many doors to employment remain closed to individuals with disabilities. We must work to eradicate more subtle forms of discrimination. We must make sure that our words of support for empowerment and inclusion continue to be reflected in our policies. It is up to all of us—employers, labor, educators, veterans, people with disabilities, and government—to stay the course until every barrier against individuals with disabilities comes down.

In recognition of the great potential of people with disabilities, and to encourage all Americans to work toward their full participation in our work force, the Congress, by Joint Resolution, approved August 11, 1945, as amended (36 U.S.C. 155), has designated October of each year as "National Disability Employment Awareness Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 1996 as National Disability Employment Awareness Month. I call upon government officials, educators, labor leaders, employers, and the people of the United States to observe this month with appropriate programs and activities that reaffirm our determination to fulfill both the letter and the spirit of the Americans with Disabilities Act.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William Clinton

[FR Doc. 96-26223

Filed 10-9-96; 8:45 am]

Billing code 3195-01-P

Presidential Documents

Proclamation 6930 of October 5, 1996

Fire Prevention Week, 1996

By the President of the United States of America

A Proclamation

Our Nation has a long tradition of unity in the face of adversity, and Americans have always stood together to fight one of our most terrifying and preventable problems—fire. We are fortunate to have so many dedicated public and private organizations working diligently to promote fire prevention and safety. Each October, Fire Prevention Week gives us an opportunity to remember family and friends who have been the victims of fire, and to redouble our efforts to prevent these tragedies.

Uncontrolled, fire can destroy homes, livelihoods, and lives. This year, in the wake of one of the most serious wildland fire seasons in history and a troubling series of arsons at houses of worship, we must join together and rededicate ourselves to fire prevention efforts. Whether working to stop church arsons or to avoid accidental fires in the home, we all have an important role to play.

The National Fire Protection Association has selected “Let’s Hear it for Fire Safety: Test Your Detectors!” as the theme for Fire Prevention Week, 1996, and joins with the Federal Emergency Management Agency to communicate this lifesaving message. This year’s theme focuses on a vital and simple element of home fire protection—smoke detectors.

Smoke detectors can provide early warning and reduce the risk of dying in a home fire by almost half. The theme of this year’s Fire Prevention Week reinforces the need for regular testing of home smoke detectors. The combination of a working smoke detector with a well-rehearsed escape plan can enable people to exit safely and quickly in the event of a fire.

Thanks to the commitment and support of our Nation’s fire and emergency services, we continue to make fire prevention and fire safety a top priority in America. Too often, these dedicated champions of fire safety pay the ultimate price in service to their communities. Last year, 102 firefighters died, and more than 94,500 were injured. On Sunday, October 13, 1996, we will pay our respects to these courageous men and women at the National Fallen Firefighters Memorial in Emmitsburg, Maryland.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 6 through October 12, 1996, as Fire Prevention Week. I encourage the people of the United States to take an active role in fire prevention not only this week, but also throughout the year. I also call upon every citizen to pay tribute to the members of our fire services who have lost their lives or been injured in service to their communities, and to those men and women who carry on their noble tradition.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William Clinton

[FR Doc. 96-26225

Filed 10-9-96; 8:45 am]

Billing code 3195-01-P

Presidential Documents

Proclamation 6931 of October 5, 1996

German-American Day, 1996

By the President of the United States of America

A Proclamation

Germans were among the first settlers of the United States. They, like other immigrants to our country, came to America seeking a better life for themselves and their families. In building this better life, they have immeasurably enriched the lives of their fellow Americans.

From the beginning of the colonial period and throughout the history of our republic, German Americans have contributed their intellect, wealth, and culture to building, defending, and improving American life. Organized settlement in America by Germans began as early as 1683, with the arrival of German Mennonites in Pennsylvania at the invitation of William Penn. Pennsylvania soon became the center and stronghold of German settlement throughout colonial times as small, vigorous communities spread to Maryland and the other colonies. Today, robust German-American communities can be found throughout the United States.

The strength of character and personal honor so important in the German cultural tradition have also found their way into the core values of American society. More U.S. citizens can claim German heritage than that of any other national group. And every successive generation of German Americans seems to produce new heroes and heroines who earn the admiration of a grateful world.

For example, Carl Schurz served as a Union General in the Civil War and later rose to become a distinguished American statesman, both as Senator from Missouri and as Secretary of the Interior. Johann Peter Zenger, the publisher of *New York Weekly Journal* in the early 18th century, was an early and vigorous champion of the free press in America. And German-born Albert Einstein made monumental and historic contributions to our understanding of the universe.

Our culture has also benefited abundantly from German-American women. Anna Ottendorfer was a talented newspaper publisher and philanthropist. The four Klumpke sisters enriched American life with their contributions to art, medicine, music, and astronomy, while Lillian Blauvelt and Fannie Bloomfield Zeisler enhanced American music.

America has welcomed Germans in search of civic freedoms, and their idealism has reinforced what was best in their new country. German-American men and women have contributed immensely to the fabric of our Nation, and it is appropriate that we pause to honor their important role in building our country.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Sunday, October 6, 1996, as German-American Day. I encourage Americans everywhere to recognize and celebrate the contributions that millions of people of German ancestry have made to our Nation's liberty, democracy, and prosperity.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William Clinton

[FR Doc. 96-26226

Filed 10-9-96; 8:45 am]

Billing code 3195-01-P

Presidential Documents

Proclamation 6932 of October 7, 1996

National Wildlife Refuge Week, 1996

By the President of the United States of America

A Proclamation

As we prepare to meet the challenges of the 21st century, protecting the environment remains our sacred responsibility. Our National Wildlife Refuge System is a network of special places set aside to conserve the natural habitat of our fish and wildlife. My Administration is dedicated to strengthening this invaluable network of refuges that truly enhance the lives of all Americans.

President Theodore Roosevelt established the first National Wildlife Refuge in 1903, and his vision remains the guiding force for the Refuge System today: "... keeping for our children's children, as a priceless heritage, all the delicate beauty of the lesser and all the burly majesty of the mightier forms of wild life Wild beasts and birds are by right not the property merely of the people alive today, but the property of the unborn generations whose belongings we have no right to squander."

What began 93 years ago with a small island in Florida has grown into a system of more than 500 refuges spanning all 50 States and several trust territories. It is home to resident and migratory wildlife and includes lands of breathtaking beauty and diversity, from the tropical mangroves of Florida's Key Deer National Wildlife Refuge to the majestic peaks of the Arctic National Wildlife Refuge in Alaska. This mosaic of magnificent places provides Americans a wide range of opportunities—both educational and recreational—to learn about our environment and our country's heritage, to observe and photograph, and to hunt and fish. Our national wildlife refuges are among our most treasured areas, and we must reaffirm our commitment to preserving these precious resources for our children, for our communities, and for future generations. Working together, we can ensure the health and vitality of our wildlife and our Nation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 6 through October 12, 1996, as National Wildlife Refuge Week. I invite all Americans to learn about, appreciate, and celebrate this magnificent collection of lands that we as a people have set aside for wildlife and for the enjoyment of future generations. I also ask all to join me in a renewed commitment to responsible stewardship of our country's irreplaceable natural resources.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.



Federal Register

Thursday
October 10, 1996

Part V

The President

Proclamation 6933—Child Health Day,
1996

Presidential Documents

Title 3—

Proclamation 6933 of October 7, 1996

The President

Child Health Day, 1996

By the President of the United States of America

A Proclamation

The health of our children is part of our heritage as a Nation, passed from one generation to the next. It is also our hope for the future. Our children embody our dreams and are the vessel through which we seek an ever deeper understanding of the full reach of human promise. Their physical, mental, and social well-being is the fulfillment of that potential.

For previous generations, diseases were a deadly shadow hovering over every new birth. Thanks in large part to medical advances and improved public health practices, most of today's children are no longer threatened by these afflictions. Childhood immunizations alone have saved countless American lives in the past decade, and today we are increasing our efforts to identify and immunize children who need this protection.

Since we now have the knowledge and resources to protect our children from many childhood diseases—including diphtheria, pertussis, poliomyelitis, measles, mumps, and rubella—we have the obligation to reach out to our population and do so. Immunization is a cost-effective, common-sense means of fighting disease, and States wisely require immunizations for schoolchildren and for children attending child care centers. I signed the Comprehensive Childhood Immunization Initiative so that children will receive the vaccinations they need. This initiative makes vaccines affordable for families and improves immunization outreach, with the goal that 90 percent of all two-year-olds should be fully vaccinated by the year 2000.

However, even if we achieve complete immunization of all American children, our youth today face another potential threat every bit as dangerous as disease—the devastation of violence. Children are becoming more frequent victims, and violence among children is increasing as they emulate the violence in their environment. Each year the tragic effects can be seen in the lives of millions of children. It can be observed among those who are neglected or abused, of whom more than 1,000 die each year. It can be found especially in the lives of those who witness violence against a parent—and who themselves face a significant chance of becoming victims of that same brutality.

As a Nation, we must continue our commitment to eliminating violence and to strengthening children and families. To that end, we have launched initiatives to encourage the use of school uniforms, the adoption of curfews, and the intensification of anti-truancy programs. And we have also expanded the drug-free school program to include anti-crime efforts as well, enhancing the overall safety of our schools.

America's future rests with healthy children and strong families. All across this land—within our homes and health care settings; our churches and communities; our schools and child care centers; our legislatures and halls of justice; our factories, shops, and offices—we are all charged with the responsibility to safeguard our legacy by protecting and nurturing the bodies, minds, and spirits of our children.

To emphasize the significance of fostering children's healthy development, the Congress, by joint resolution approved May 18, 1928, as amended (36

U.S.C. 143), has called for the designation of the first Monday in October as "Child Health Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Monday, October 7, 1996, as Child Health Day. On that day and every day throughout the year, I urge all Americans to renew and deepen their commitment to protecting our most precious natural resource—our children.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

A handwritten signature in black ink that reads "William J. Clinton". The signature is written in a cursive style with a large, prominent "W" and "C".

[FR Doc. 96-26315
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

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STATE DEPARTMENT

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Class B airspace; published 9-11-96

Class D and Class E airspace; published 7-3-96

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AGRICULTURE DEPARTMENT**Federal Crop Insurance Corporation**

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AGRICULTURE DEPARTMENT**Farm Service Agency**

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AGRICULTURE DEPARTMENT**Rural Business-Cooperative Service**

Water and waste loan and grant programs; Federal regulatory review; comments due by 10-15-96; published 9-12-96

AGRICULTURE DEPARTMENT**Rural Housing Service**

Water and waste loan and grant programs; Federal regulatory review; comments due by 10-15-96; published 9-12-96

AGRICULTURE DEPARTMENT**Rural Utilities Service**

Water and waste loan and grant programs; Federal regulatory review; comments

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Pacific Coast groundfish; comments due by 10-15-96; published 10-3-96

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Tuna, Atlantic bluefin fisheries; comments due by 10-15-96; published 9-17-96

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COMMODITY FUTURES TRADING COMMISSION

Commodity pool operators and commodity trading advisors:

Electronic media use; interpretation; comments due by 10-15-96; published 8-14-96

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INTERIOR DEPARTMENT Fish and Wildlife Service

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Sonoma alopecurus, etc. (nine plants from

grasslands or mesic areas of central coast of California); comments due by 10-15-96; published 9-11-96

Suisun thistle, etc. (two San Francisco Bay California tidal marsh plants); comments due by 10-15-96; published 9-6-96

Migratory bird hunting: Bismuth-tin shot as nontoxic for waterfowl and coot hunting; approval; comments due by 10-15-96; published 8-15-96

Migratory bird permits: Canada geese, injurious; control permits; environmental assessment; comments due by 10-18-96; published 9-3-96

JUSTICE DEPARTMENT Drug Enforcement Administration

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State plans; development, enforcement, etc.: North Carolina; comments due by 10-15-96; published 9-13-96

LIBRARY OF CONGRESS Copyright Office, Library of Congress

Digital audio recording technology (DART); statements of account; verification; comments due by 10-16-96; published 9-23-96

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Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations: Redwood Valley, CA; comments due by 10-18-96; published 9-3-96

Firearms: Firearms and ammunition; manufacturers excise tax; comments due by 10-15-96; published 7-16-96

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TREASURY DEPARTMENT Thrift Supervision Office

Risk-based capital: Collateralized transactions; comments due by 10-15-96; published 8-16-96

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.R. 1350/P.L. 104-239

Maritime Security Act of 1996 (Oct. 8, 1996; 110 Stat. 3118)

H.R. 3056/P.L. 104-240

To permit a county-operated health insuring organization to qualify as an organization exempt from certain requirements otherwise applicable to health insuring organizations under the Medicaid program notwithstanding that the organization enrolls Medicaid beneficiaries residing in another county (Oct. 8, 1996; 110 Stat. 3140).

Last List October 7, 1996